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06-AFC-6
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8 STATE OF CALIFORNIA

9 State Energy Resources

10 Conservation And Development Commission

11 In the Matter of:

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13 **EASTSHORE ENERGY CENTER**
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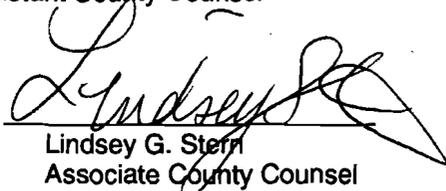
Docket No.: 06-AFC-6

County of Alameda's Supplemental
Comments on Presiding Member's
Proposed Decision and Supplemental
Evidentiary Hearing

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18 DATED: July 28, 2008

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16 **INTRODUCTION**

17 Intervenor County of Alameda (the "County") hereby submits its supplemental comments
18 after the July 21, 2008 hearing on the Presiding Member's Proposed Decision and
19 Supplemental Evidence requested therein.¹ As previously stated, the County supports the
20 Presiding Member's well reasoned and diligently analyzed recommendation that the Eastshore
21 Application for Certification be denied. The County makes these comments for the record, but
22 without the intent that the Presiding Member's Proposed Decision ultimately recommending
23 denial be modified.

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28 ¹ The County reincorporates by reference its previous Comments filed July 14, 2008 as well as its
Opposition to Applicant's Motion to Reopen the Evidentiary Record, filed herewith.

1 **SPECIFIC COMMENTS**

2 **1. COUNTY'S COMMENTS RELATING TO THE REVISED NO2 STANDARDS**

3 a. THE REVISED NO₂ STANDARD IS RELEVANT TO THE PMPD

4 The Presiding Member's Proposed Decision (PMPD) specifically requested that Applicant
5 and Staff consult with the California Air Resources Board (CARB) to create a modeling protocol
6 to ensure that the project complied with the new NO₂ standard. Staff correctly responded that
7 the BAAQMD regulations at the time the application is deemed complete are the relevant
8 standards. (Ex. 211; BAAQMD Reg 2-1-409) However, that conclusion is only applicable to
9 BAAQMD compliance, and not the greater and more comprehensive environmental analysis
10 akin to CEQA. (See RT 12/17/07 36:10-13.) Thus, the question remains open.

11 If the question of applicability of the new NO₂ standards was so easily foreclosed as Staff
12 and the Applicant assert, then there would have been no reason for the Presiding Member's
13 Proposed Decision to require that the parties coordinate on methodology and confirm that the
14 project would comply with the new standards and demand testimony and evidence to that effect.
15 Clearly, the new standards carry weight in the overall decision.

16 b. THE PARTIES DID NOT COORDINATE METHODOLOGIES TO ENSURE COMPLIANCE

17 As revealed at the July 21, 2008 hearing, Applicant and Staff did not actively consult with
18 CARB to determine the proper modeling protocol for the new standards. Moreover, a
19 comparison of written testimony submitted by the Applicant to that submitted by Staff indicates
20 that they acted contrary to the PMPD's request and did consult or utilize the same
21 methodologies or protocol in the preparation of their supplemental testimony.

22 Staff essentially brushed aside the PMPD mandate by stating that new protocols were
23 unnecessary because the applicable standards were those that were in effect at the time the
24 application was deemed complete. However, to address the PMPD request, Staff provided
25 additional testimony on protocol. Staff's position is that no protocol has been developed, and
26 that "without a new protocol and the results of new modeling, staff cannot predict whether OLM
27 or PVMRM would similarly show reductions in modeled impacts for operational emissions." (Ex.
28 211) Staff refers to figures obtained from modeling during the construction phase, but not

1 during the operational phase. (Id.) In contrast, the Applicant presented testimony that it
2 successfully completed its OLM analysis using 2007 BAAQMD guidance. It makes no mention
3 of the PVMRM or possible differences between construction and operational phases. This
4 inconsistency illustrates that not only did Staff and Applicant not comply with the PMPD request,
5 but that it remains unclear whether the project's emissions will comply with the new NO₂
6 standards.

7 **2. COUNTY'S COMMENTS RELATING TO THE CARB REPORT**

8 The County applauds the Presiding Member's concerns relating to the public health effects
9 of particulate matter, and in particular his directive to include the March 19, 2008 CARB Report
10 in consideration of the Application. The County believed that the CARB Report is of greater
11 concern than Staff and Applicant believe, especially in light of the need to err on the side of
12 caution when assessing matters of public health and safety. However, much more information
13 is contained in the May 22, 2008 CARB draft report entitled *Methodology for Estimating*
14 *Premature Deaths Associated with Long-Term Exposures to Fine Airborne Particulate Matter in*
15 *California*, that was provided by the Alameda County Department of Public Health. In the event
16 that the Applicant's motion to reopen the evidentiary record is granted (which will unnecessarily
17 delay closure of this process by nearly one year), the County will likely file its own warranted
18 motion to introduce this critical public health information, the Final Draft of which is expected
19 August of 2008, formally into the record.

20 **3. COUNTY COMMENTS RELATING TO THE POWER PURCHASE AGREEMENT**

21 The urgency of the project application has dissipated with the Power Purchase Agreement
22 ("PPA") with PG&E, which Applicant terminated on May 16, 2008. (RT 7/21/08 39:23) The
23 proposed "location [was] the primary deciding factor in this case." (RT 12/18/07 109:20-21.)
24 Now that Applicant has terminated the PPA, the project could actually relocate to connect to
25 another substation that would not be hazardous to aviation. With new viable alternatives, not
26 only is the flyover proposed by the Applicant in its motion to reopen the record unnecessary, the
27 environmental assessment relating to project alternatives must be conducted. (See CEQA
28

1 Guidelines, 14 Cal. Code Regs. 15162(a)(3) requiring further EIR if mitigation measures or
2 alternatives found infeasible are in fact feasible).

3 **CONCLUSION**

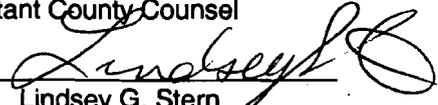
4 As stated previously, the County supports the Presiding Member's Proposed Decision
5 recommending that the Application be denied. The County further joins the Presiding Member's
6 concerns related to the public health and air quality matters discussed herein.

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Respectfully Submitted this 28th of July, 2008.

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County Counsel, in and for the County of
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY

Docket No. 06-AFC-6

PROOF OF SERVICE
(Revised 4/21/2008)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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DECLARATION OF SERVICE

I, Dalia Liang, declare that on July 28, 2008, I deposited copies of the following documents:

1. *County of Alameda's Opposition to Applicant's Motion to Reopen the Evidentiary Record; and,*
2. *County of Alameda's Supplemental Comments on Presiding Member's Proposed Decision and Supplemental Evidentiary Hearing;*

in the United States mail at Oakland, California, with first-class postage thereon fully prepaid and addressed to the those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

OR

I deposited the same documents at a designated place for collection maintained by Federal Express, an express service carrier, with fully-prepaid delivery fees, and addressed to those identified on the Proof of Service listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on this 28th day of July, 2008



Dalia Liang