



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
 COMMISSION OF THE STATE OF CALIFORNIA  
 1516 NINTH STREET, SACRAMENTO, CA 95814  
 1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE  
**EASTSHORE ENERGY CENTER IN HAYWARD**  
 BY TIERRA ENERGY

**DOCKET No. 06-AFC-6**  
 (AFC ACCEPTED 11/8/06)

**ERRATA TO THE REVISED PRESIDING MEMBER’S PROPOSED DECISION**

The following list of Errata shall be incorporated by reference into the Revised Presiding Member’s Proposed Decision (RPMPD), which is scheduled for hearing by the full Commission at its October 8, 2008, Business Meeting. The Errata are based on comments filed by the parties and clarifications of the record.

**Introduction**

- 1) *Page 2, after item number 5, add new paragraph as follows:*

Certification decisions are determined on a case-by-case basis after consideration of all the documentary evidence and testimony submitted by the parties. In this regard, we clarify that this Decision is not precedential and does not establish Commission policy on the practicalities of locating power plants near operating airports.

- 2) *Page 5, Air Quality paragraph, revise as follows:*

Applicant and Staff provided testimony at the July 21, 2008, Supplemental Evidentiary Hearing indicating ~~that the EEC would comply with the stringent new state NO<sub>2</sub> standard adopted by CARB on March 20, 2008~~ their belief that the new state NO<sub>2</sub> standard adopted by CARB on March 20, 2008, does not apply to the EEC. According to Staff, the project is only required to comply with the standard in effect at the time that the application was deemed complete. Staff notes, however, that if the Commission should require the project to comply with the new NO<sub>2</sub> standard, Staff would need to develop a new protocol and modeling analysis in conjunction with CARB and BAAQMD guidance.

To mitigate PM emissions, Condition **AQ-SC8** requires the project owner to provide evidence of appropriate Emission Reduction Credits (ERCs) and/or woodstove/fireplace retrofit credits prior to initiating construction. Failure to do so will delay construction.

<b>DOCKET</b>	
<b>06-AFC-6</b>	
DATE	<u>OCT 07 2008</u>
RECD.	<u>OCT 07 2008</u>

## **Project Purpose and Description**

- 3) *Page 21, second paragraph, change first two sentences to read:*

The Applicant proposed to construct, own, and operate the EEC under a 20-year power purchase agreement (PPA) with Pacific Gas & Electric (PG&E) to supply up to 115.5 MW of electricity at the Eastshore Substation in Hayward. However Applicant terminated the PPA on May 18, 2008, and no longer has a contract to sell power to PG&E.

- 4) *Page 24, second full paragraph, change first sentence to read:*

Under the defunct PPA with PG&E, the EEC was designed to connect to the electric grid...

- 5) *Page 25, Finding 2, revise as follows:*

The Applicant previously had a 20-year power purchase agreement (PPA) with PG&E to supply up to 115.5 MW of peaking power at PG&E's Eastshore Substation pursuant to the 2004 Request for Offer approved by the CPUC; however, Applicant terminated the PPA on May 18, 2008, and no longer has a contract to sell power to PG&E.

## **Project Alternatives**

- 6) *Page 32, footnote 7, add the word "defunct" as follows:*

...specific terms of the defunct RFO contract...

- 7) *Page 41, revise Finding 10, as follows:*

Applicant has stated that even in light of the termination of its power purchase agreement, it still retains the project objective of interconnecting at the Eastshore Substation.

## **Facility Design**

- 8) *Page 64, third full paragraph, after first sentence, add new second and third sentences to read:*

Applicant no longer has a power purchase agreement (PPA) with PG&E to interconnect at the Eastshore Substation; however, the analysis for Facility Design is based on the evidentiary record, which was closed prior to termination of the PPA and, thus, interconnection at the Eastshore Substation was assumed.

## **Transmission System Engineering**

- 9) *Page 93, add new paragraph above first full paragraph:*

Applicant no longer has a power purchase agreement (PPA) with PG&E to interconnect at the Eastshore Substation; however, the analysis for Transmission System Engineering is based on the evidentiary record, which was closed prior to termination of the PPA and, thus, interconnection at the Eastshore Substation was assumed.

- 10) *Page 94, last paragraph, after second sentence, add the following:*

We note that the anticipated project online date at the end of 2008 is unrealistic due to the October 2008 publication date of this Decision, the denial of certification, and the project's defunct PPA with PG&E. Thus, CAISO's interconnection approval as of January 2007 could be reconsidered at a later date.

- 11) *Page 96, Finding 9, at end of sentence, add the following:*

; however, since the project's power purchase agreement with PG&E for interconnection at the Eastshore Substation is no longer in effect, the CAISO may eventually reconsider its interconnection approval.

## **Local System Effects**

- 12) *Page 120, third paragraph, after third sentence, add new footnote:*

[fn] Applicant no longer has a power purchase agreement (PPA) with PG&E to interconnect at the Eastshore Substation; however, the analysis for Local System Effects is based on the evidentiary record, which was closed prior to termination of the PPA and, thus, interconnection at the Eastshore Substation was assumed.

## **Air Quality**

- 13) *Page 128, last sentence of first paragraph, revise as follows:*

Federal and state ambient air quality standards are shown below in Staff's Air Quality Table 2, as revised by Applicant's July 21, 2008, supplemental testimony. (Ex. 58.)

- 14) *Page 128, Table 2, add additional source as follows:*

See also Exhibit 58.

- 15) *Page 140, last sentence of first full paragraph, revise as follows:*

...summarized below in Staff's Air Quality Table 16, as modified by Applicant's July 21, 2008, supplemental testimony, reflect this update.

- 16) *Page 140, Table 16, correct 157,06 to 157.06 and add additional source as follows:*

See also Exhibit 58.

- 17) *Page 140, footnote 40, correct as follows:*

[fn] Project-only 1-hour NO<sub>2</sub> impacts and the cumulative multi-source modeling analysis provided by Applicant in April/May 2007~~8~~ were revised in accordance with BAAQMD Permit Modeling Guidance (June 2007) for a Refined Air Quality Impact Analysis, using the Tier 3 Ozone Limiting Method (OLM) methodology specifically identified in BAAQMD's Modeling Guidance. Applicant's~~The~~ supplemental "refined" analysis indicates that the EEC will comply with the new NO<sub>2</sub> standard. (Ex. 58, Air Quality Testimony of Gregory Darvin, p. 3.)

- 18) *Page 148, Table 20, add additional source as follows:*

See also Exhibit 58.

- 19) *Page 151, add footnote after 3<sup>rd</sup> sentence, last paragraph:*

[fn] Likewise, Mr. Sarvey's assertion that the project violates the state's annual PM<sub>10</sub> standard and the federal annual PM<sub>2.5</sub> standard based on Applicant's Table 8.1-34 (Ex. 1, p. 8.1-56) was not litigated during the proceeding.

- 20) *Page 152, footnote 49, add sentence at the end as follows:*

According to Staff, evaluating the project's compliance with the new NO<sub>2</sub> standard requires developing a new protocol and new modeling analysis in conjunction with CARB and BAAQMD guidance. (Ex. 211.)

- 21) *Page 156, Finding 24, is revised as follows and add Finding 25:*

~~Supplemental air quality evidence submitted by Applicant and Staff demonstrates that the project will comply with~~ Supplemental testimony submitted by Applicant and Staff indicates that CARB's new NO<sub>2</sub> emissions standard does not apply to the EEC since the project is only required to comply with the standard in effect at the time that the application for certification was deemed complete.

25. Implementation of all the Conditions of Certification, listed below, ensures that, if certified, the EEC will be mitigated sufficiently to avoid any direct, indirect, or cumulative significant adverse impacts to air quality.

### **Public Health**

- 22) *Page 203, second “protocol” paragraph, revise as follows and delete third “protocol” paragraph in its entirety:*

Protocol: The project owner shall use OEHHA’s ~~more stringent REL~~ “reference exposure level” (REL) for acrolein emissions in effect at the time that source tests required by this Condition are conducted. ~~0.19 micrograms per cubic meter of air.~~

### **Land Use**

- 23) *Page 325, footnote 106, delete reference to Fremont Bank letter and revise as follows:*

[fn] ~~See, e.g., the letter from Fremont Bank adjacent to the EEC site opposing the project. (Ex. 302.) See also Exhibits 207 and 305.~~

- 24) *Page 331, footnote 112, add the following after the last sentence:*

In its comments on the Revised PMPD, Applicant asserts that the City’s failure to adopt a zoning ordinance to implement the Business and Technology Center is further evidence of the City’s bias against the EEC. Applicant also notes that the adjacent Berkeley Farms processing facility indicates that industrial activities are allowed in the area designated for the Business and Technology Center. (Applicant’s Comments on Revised PMPD, Attachment 1 at 1-5.) We find these arguments are specious at best. The City may exercise discretion under its Exclusionary Zoning Ordinance to determine appropriate development consistent with the General Plan. Berkeley Farms is an existing facility in a zone that has been targeted for change. The EEC is a new project that does not fit the criteria for future development in the area.

### **Traffic and Transportation**

- 25) *Page 361, add footnote at end of first sentence of first paragraph as follows:*

[fn] According to Applicant, those 45 over-flights of the site represent 0.01 percent of the 10,000 flights per month arriving and departing the Hayward Executive Airport. (Applicant’s Comments on the Revised PMPD, Attachment 1 at 8, citing 12/18/07 RT 225-226, Ex. 20: Testimony of Marshall Graves at 12.)

However, we note that the flights over or near the EEC site are the focus of this analysis, not every other flight related to Hayward airport airspace.

26) *Page 367, add footnote at end of first full paragraph as follows:*

[fn] In its comments on the Revised PMPD, Applicant asserted that its vertical velocity calculations demonstrate that 330 feet is the highest altitude where a threshold velocity of 4.3 m/s could be reached and that more than 99.9 percent of the time, the altitude would be lower, since there were only 9 calm hours in the 7 years of weather data examined. (Applicant's Comments on the Revised PMPD, Attachment 1 at 9-11, citing Ex. 20: Testimony of Corbin and Darwin at 6-10.) See next footnote, below.

27) *Page 370, third full paragraph, correct "range of 300 to 400" as follows:*

...range of 330 to 480 feet AGL

28) *Page 371, second paragraph, correct "range of 300 to 400" as follows:*

...range of 330 to 480 feet AGL

29) *Page 371, footnote 131, add the following after the last sentence before the citation:*

Applicant did not file a petition for reconsideration as required by Commission regulations but continued to argue the motion in its Comments on the Revised PMPD. (See Cal. Code Regs., tit. 20, § 1215; Applicant's Comments on the Revised PMPD at 2-3, Attachment 1 at 7-8, 10-11.)

30) *Page 383, Finding 20, correct "300 (average)" as follows:*

...330 (average)...

### **Socioeconomics**

31) *Page 389, strike the word "public" from the second sentence.*

Dated: October 7, 2008, at Sacramento, California.

### ***Original Signed By:***

---

JEFFREY D. BYRON  
Commissioner and Presiding Member  
Eastshore AFC Committee