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<b>DOCKET</b>	
<b>06-AFC-6</b>	
<b>DATE</b>	NOV 13 2007
<b>RECD.</b>	NOV 13 2007

November 13, 2007

California Energy Commission  
Docket Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: Docket No. 06-AFC-6

Dear Docket Unit:

Enclosed for filing with the California Energy Commission via electronic e-mail is one (1) original of the **Intervener's Petition to Set Aside Dates for the Eastshore Energy Center Pre-Hearing Conference and Evidentiary Hearing.**

The attached Proof of Service has been satisfied by e-mail to all parties.

Sincerely,

Paul N. Haavik, Intervener

**State of California  
Energy Resources Conservation  
And Development Commission**

In the matter of	)	Docket No. 06-AFC-6
	)	
	)	
Eastshore Energy Center	)	
	)	

**Petition for Committee to Set Aside Dates for the Pre- Hearing Conference  
and Evidentiary Hearing for the Eastshore Energy Center**

**Paul N. Haavik, Intervener, in accordance with Title 20 CCR sub-section 1712 and the Committee Order dated March 12, granting intervener status and a party to this matter hereby files the attached Petition requesting the Committee for the Eastshore Energy Center to set aside the dates for the Pre-Hearing Conference and Evidentiary Hearing.**

**Paul N. Haavik, Intervener  
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Telephone: 510-427-9057  
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## **BACKGROUND:**

On September 9, 2006, the Eastshore Energy Center filed an Application for Certification. On November 8, 2006 the application was accepted as data adequate. Several workshops were held at the Hayward City Hall on 1/29/07, 3/19/07 and 5/11/07. A Committee Status Conference was held in the Hayward City Hall Council Chambers on June 6, 2007. Over 100 members attended the Status Conference. On July 3, 2007, a Second Revised Scheduling Order was published. The Order indicated that the Preliminary Staff Assessment (PSA) would be published July 31, 2007. The PSA was published on August 7, 2007. A PSA workshop was held on September 6, 2007.

On September 19, 2007, the Staff Status Report 8 was issued indicating that the Final Staff Assessment (FSA) would be published at the end of October. On October 17, 2007 the Committee issued a Notice for the Pre-Hearing Conference (PHC) and Evidentiary Hearing (EH). The dates were set as PHC-11/26/07 and EH-12/17/07. The Final Staff Assessment was published on November 9, 2007 at 4:55pm.

## **DISCUSSION:**

There have been numerous delays to the Certification process for the Eastshore Energy Center. None of these Delays have been created by the Intervener, the residents of Hayward and/or several interested Agencies.

In fact, the delays have been created by the California Energy Commission (CEC) Staff, the Amendment to the Russell City Energy Center and Agencies that supplied requested information to the CEC staff.

There have been several discussions relating to cumulative affects for both the Eastshore Energy Center and the Russell City Energy Center. Both the Amendment for the Russell Center Energy Center and the FSA for the Eastshore Energy Center devoted several pages of discussion on this matter.

It can only seem somewhat coincidental that the FSA for the Eastshore Energy Center was published after a hearing by the Commission on November 7, 2007. At that hearing, there was discussion of cumulative issues including the Federal Aviation Authority.

The FSA was delayed by almost ten (10) days. The FSA was published at 4:55pm on Friday, November 9, 2007. Hard copies of the FSA were to be sent out accordingly. It may also be noted that Monday, November 13, 2007, was a legal Holiday with Post Offices closed, California Energy Commission closed, County and City Offices closed. Essentially no business could be conducted on Monday, November 13, 2007.

The Pre-Hearing Conference and Evidentiary Hearing dates were already set on October 17, 2007. On October 10, 2007, the Intervener e-mailed Ms. Susan Gefter, Hearing Officer that it was premature to set Hearing dates, without the FSA being published or at minimum a firm date. Ms. Gefter did change the dates for the PHC and ED in the Notice of the Committee.

On November 2, 2007 at 7:00pm, the Intervener e-mailed Ms. Gefter and reminded her that the FSA had not been published and requested that the dates for the PHC and EH be set aside. The Intervener has received no reply.

The Committee Notice of October 17, 2007 indicates that all documents must be served and filed by 5:00pm, November 19, 2007.

This is utterly absurd to expect a full response for statements, testimony, witnesses, exhibits and evidence to be accumulated and presented in five (5) working days. The hard copies of the FSA are still not available to the Public as of this filing. There are documents (FAA letter, dated 10/09/07) that are not easily available to the public. This FAA letter was a topic of the Russell City Energy Center Amendment Hearing on November 7, 2007. This document has been docketed but not posted to the Eastshore Energy Center Website. To retrieve a logged document by the public is very arduous and timely. Several of the other aviation agency documents have been docketed and posted. It seems very perplexing to the Intervener that this most important document has not been posted. The FAA document has been referenced in the FSA but not attached.

This above issue is just one of several that support additional time to prepare.

The Applicant is opposed to any further delays and suggested that the PSA could have been used for reference and preparation. The Applicant also reminded the Intervener that California Code of Regulations Title 20 Section 1747 on requires the FSA to be published 14 days prior to the hearing.

It seems unreasonable that any preliminary work be completed for the PHC until the FSA and its seven hundred and forty-three pages are reviewed. The PSA was published on August 7, 2007. The FSA published on November 9, 2007. Any knowledgeable person would think that in the three (3) months of preparation of the FSA there would be considerable changes or if not then, why did it take the staff three (3) months to complete the FSA?

The Intervener would remind the Committee that over 1500 letters of interest have been received by the CEC staff. The City of Hayward and Alameda County will be active in the Pre-Hearing Conference and Evidentiary Hearing. There have been several hundred residents interested that attended many of the meetings. The FSA references several public comments and responses that the public will certainly want to comment on, at the PHC and EH.

The public and several public groups have little faith in the CEC process for Certification of a power plant.

The intervener is certainly aware of the possible retirement of the Hearing Officer and the expiration of Mr. Geesman's term. Completing the Certification process before these two (2) events occur seems relevant in prematurely setting the dates for the PHC and EH. It would also appear to be a rush to judgment.

#### **CONCLUSION AND RECOMMENDATION:**

It would only seem appropriate that the Committee set aside the dates for the Pre-Hearing Conference and Evidentiary Hearing. In the interest of the City of Hayward residents, public agencies and public/private groups it would be necessary to have at least thirty (30) days to prepare for the Pre-Hearing Conference. The CEC staff allowed three (3) months to complete their FSA which also includes the staff's testimony and evidence. Allowing five (5) days for preparation by the Intervener, residents, agencies and various groups is simply out of the question.

This would certainly leave the public's opinion at its' lowest for support of a complete, professional and fair assessment of the AFC process.

It is therefore respectfully recommended that the Committee set aside the scheduled dates for the Pre-Hearing Conference and Evidentiary Hearing and that the Committee re-schedule the Pre-Hearing Conference on or about December 10, 2007. It is also respectfully recommended that the Evidentiary Hearing date be set on or about January 7, 2008.

Dated: November 13, 2007

Respectfully Submitted,

Paul N. Haavik, Intervener

(4)

**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 10/12/2007)**

**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:

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 06-AFC-6  
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## **DECLARATION OF SERVICE**

I, Paul N. Haavik, declare that on 11/13/07, I deposited copies of the attached Petition to set aside Dates of the Pre-Hearing Conference and Evidentiary Hearing in the United States mail at Hayward, CA, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

***OR***

Transmission via electronic mail was consistent with the requirements of the 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.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_/S/\_\_\_\_\_  
Paul N. Haavik