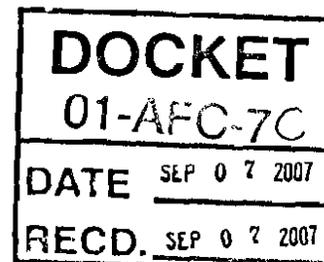


September 7, 2007

VIA FACSIMILE AND MAIL



Commissioner John Geesman
Commissioner Jeffrey Byron
California Energy Commission
1516 9th Street
Sacramento, CA 95814

Re: Comments on Russell City Energy Center Presiding Member's Proposed Decision
(Amendment No. 1, Docket Number 01-AFC-7C)

Dear Commissioners:

This letter provides comments on the California Energy Commission's ("Commission") Presiding Member's Proposed Decision ("Proposed Decision") for the Russell City Energy Center Amendment No. 1 (RCEC). Eastshore Energy, LLC ("Eastshore") is timely filing these comments in accordance with the adjusted comment period.

Eastshore is proposing to construct a 115.5 megawatt nominal capacity intermediate/peaking load facility located at 25101 Clawiter Road. Both the RCEC and Eastshore facilities are proposed to be located in the City of Hayward, approximately 3,000 feet apart.

Eastshore supports the Proposed Decision's approval of Amendment No. 1 to the Energy Commission Decision on the Application for Certification for the Russell City Energy Center (September 2002). (Proposed Decision at 1). The RCEC project should receive its license and go forward as planned. Nonetheless, Eastshore is concerned about the cumulative impacts language in the Proposed Decision on pages 193 and 194 and the potential implications of that language on the Committee's proposed decision on Eastshore.

The Committee should revise the Proposed Decision to conclude that there is no RCEC impact to aviation safety.

Eastshore believes the RCEC record supports a finding of no or de minimis impact on the reduction in airspace around the Hayward Executive Airport from the RCEC project. Eastshore believes this conclusion is supported by RCEC's testimony.

First, there will be little if any reduction in unrestricted airspace as RCEC is immediately adjacent to the existing KFAQ broadcast towers, which are actually higher than RCEC stacks. Therefore, the space is already restricted. (See RCEC Supplemental Testimony Regarding Thermal Plumes and Aviation – Cumulative Impacts [responding to CEC Staff's Late Filed Addendum to the Staff Assessment] at 2, July 19, 2007.)

Second, the RCEC site is more than 1.5 miles from the airport. Consequently, RCEC will not have any effect on future airport development plans and will present little, if any, obstacle to air navigation. (See RCEC Supplemental Testimony Regarding Thermal Plumes and Aviation – Cumulative Impacts [responding to CEC Staff's Late Filed Addendum to the Staff Assessment] at 2, July 19, 2007.)

Third, even assuming that there was a slight restriction in the Hayward Executive Airport area, the restriction would affect less than 10 acres out of 3,400 acres on the west side of the airport, and would impact less than 40 flights per month. (See RCEC Supplemental Testimony Regarding Thermal Plumes and Aviation – Cumulative Impacts [responding to CEC Staff's Late Filed Addendum to the Staff Assessment] at 2, July 19, 2007.)

Taking into consideration all of the above factors, there would be little, if any, impact from the RCEC project on aviation safety. If the Commission finds no impairment to aviation, the Commission does not need to evaluate potential cumulative impacts with Eastshore. The Commission is not required to compare no impact to any potential impact from a reasonably foreseeable project.

The Proposed Decision or final Commission Decision on RCEC should delete language directing action or implying early determinations on Eastshore

Should the Committee or the Commission disagree with the no impact conclusion presented above, Eastshore respectfully requests the Committee and the Commission delete the following language on page 193 of the Proposed Decision:

We note, however, that the Eastshore project is undergoing Energy Commission review; during that review the Commission can and should consider the direct and cumulative effects of any airspace restrictions over that project and impose proper mitigation, deny the project or override any effects that cannot be mitigated.

(Proposed Decision at 193.) Eastshore has two concerns about the sentence quoted above. First, the sentence implies that if an airspace restriction is found, there is a requirement to impose mitigation, deny the project or override any effects that cannot be mitigated. Since the Commission has yet to determine whether such airspace restriction exists for Eastshore and whether any such impact is or is not significant, it is premature to imply a requirement for mitigation, denial or override. Second, Eastshore is concerned this sentence can be read to imply that at least the Committee, which is the same for both projects, is telegraphing an intent to

approve RCEC and potentially reject Eastshore. We hope this is not the case but are concerned the language can be read to imply such a result. Eastshore expects to be judged on the merits of its facts and not prejudged in another siting case in which Eastshore has not participated.

Eastshore also requests the language shown as deleted below be removed from the final decision.

3. . . . To the extent that a potential cumulative effect on aircraft safety exists by virtue of the restriction of navigable airspace for the proposed Eastshore Energy Center project in addition to that set aside for this project, there is insufficient information to fully evaluate the impact at this time ~~but the Energy Commission can and should fully consider that cumulative impact in its consideration of the Eastshore project.~~

(Proposed Decision at 194 [deletion inserted].) Eastshore is uncomfortable with any directive contained within the RCEC decision implying that a certain action must be taken in the Eastshore proceeding. Consistent with the Warren-Alquist Act and the California Environmental Quality Act the Commission must evaluate the potential cumulative impacts of a project in a siting proceeding. Eastshore and Commission Staff have evaluated the cumulative impacts of both projects in the Eastshore proceeding. Eastshore is in no way implying that such impacts should not be evaluated in the Eastshore proceeding. Eastshore's concerns relate to the potential implications of the language used in this decision.

Eastshore does not believe that either of its requested changes to the language in the Proposed Decision is of such consequence as to require recirculation of the Proposed Decision. The subject sentences do not enhance the evidence in the RCEC record nor do they provide any additional information regarding the impacts of RCEC or the cumulative impacts of the two projects. Therefore, Eastshore respectfully requests the quoted language be deleted from the final Commission Decision on RCEC.

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Conclusion

Eastshore thanks the Committee for their consideration of this request. Again, Eastshore believes the evidence in the RCEC record supports a finding of no impact to airspace from RCEC. If the Committee or Commission does not agree, Eastshore requests that the Proposed Decision or final decision of the Commission be revised to delete the sentence and phrase noted above that appear on pages 193 and 194 of the Proposed Decision.

Very truly yours,

DOWNEY BRAND LLP



Jane E. Luckhardt

cc: Paul Kramer, Hearing Officer
Dick Ratliff, Senior Staff Counsel
Greg Wheatland, Ellison, Schneider & Harris
Docket Unit, 01-AFC-7C

JEL:np

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