

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA

<b>DOCKET</b>	
03-AFC-2	
DATE	JUN 9 2006
RECD.	JUN 9 2006

APPLICATION FOR CERTIFICATION  
FOR THE LOS ESTEROS CRITICAL ENERGY  
FACILITY, PHASE 2  
(LOS ESTEROS 2)

DOCKET No. 03-AFC-2

(Revised 7/29/05)

**COMMITTEE ORDER RE: STAFF'S REQUEST FOR HEARING**

**-and-**

**NOTICE OF HEARING**

**A. Background**

On May 26, 2006, Energy Commission staff (Staff) filed its *Motion for Override of LORS Noncompliance* (Motion). The Motion details the nature of the noncompliance of the Los Esteros Phase 2 Project (Project) with a zoning permit issued by the City of San Jose (City). The Motion states that, notwithstanding Staff's efforts to meet and consult with the City in an attempt to eliminate the noncompliance, Staff and the City have reached an impasse. Staff therefore requests a Committee hearing to present additional evidence and legal argument in support of "override" findings, which the Commission can make pursuant to Public Resources Code 25525.<sup>1</sup> This Order grants Staff's request for hearing.

**B. Notice**

**NOTICE IS HEREBY GIVEN** that the Committee will conduct a public Evidentiary Hearing in this case as follows:

**WEDNESDAY, June 28, 2006**  
**Beginning at 9:00 a.m.**  
**California Energy Commission**  
**1516 9<sup>th</sup> Street**  
**Hearing Room A**  
**Sacramento, California 95814**  
**(Wheelchair Accessible)**

<sup>1</sup> Public Resources Code section 25525 states that the Commission may not certify a power plant in the face of nonconforming applicable laws, ordinances, regulations, and standards (LORS) unless the Commission finds that the plant is required for "public convenience and necessity" and "that there are not more prudent and feasible means of achieving public convenience and necessity".

The purpose of the evidentiary hearing is to hear comment and legal argument from the parties and involved public agencies regarding the appropriate legal and conceptual criteria for the Commission to apply in considering an "override" of local land use requirements. The formal parties in the case may also present additional evidence relevant to potential "override" findings pursuant to Public Resources Code section 25525. Testimony from all parties seeking to introduce additional evidence as well as comments from non parties who intend to appear at the hearing must be filed with the Commission's Docket Unit and served on all parties listed on the attached Proof of Service list **no later than close of business, Thursday, June 22, 2006**. In addition to service by U.S. Mail, all participants must email their comments and/or copies of testimony to email addresses on the Proof of Service list by the deadline noted.

### **C. Public Participation**

Members of the public and interested governmental agencies are invited to attend this hearing, and may offer unsworn public comment upon the matters discussed. These public comments will be entered into the record of the proceeding and the Committee may rely on them to supplement or explain the evidence of record. Public comments by themselves, however, are not sufficient to support a finding of fact or a decision on any issue.

The Commission's Public Adviser, Margret Kim, is available to provide information or to assist those interested in participating in this hearing. The Public Adviser can be reached at (916) 654-4489 or, toll free, at 1-800-822-6228; or e-mail: **[pao@energy.state.ca.us]**.

The period for timely intervention has lapsed. For further information contact Margret Kim, the Public Adviser as indicated above.

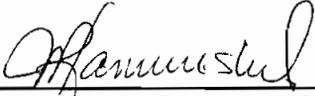
### **D. Additional Information**

If you have a disability and need assistance in order to participate, contact Ms. Kim at (916) 654-4489 or (800) 822-6228, or email: **[pao@energy.state.ca.us]**, at *least 5 days prior to the proceeding*.

Technical questions concerning the project should be addressed to Bob Worl, the Commission Staff's Project Manager, at 916-651-8853 or email at: **[rworl@energy.state.ca.us]**.

Questions of a legal or procedural nature should be directed to Gary Fay, the Committee's Hearing Officer, at 916-654-3893.

Dated June 9, 2006, at Sacramento, California.



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JACKALYNE PFANNENSTIEL  
Chair and Presiding Member  
Los Esteros Critical Energy Facility, Phase 2

Proof of Service List (Revised on 4/25/06)  
filed with Original Document. Mailed from  
Sacramento on 6/9/06 SP.

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APPLICATION FOR CERTIFICATION  
FOR THE LOS ESTEROS CRITICAL  
ENERGY FACILITY, PHASE 2  
(LOS ESTEROS 2)

DOCKET No. 03-AFC-2

(Revised 4/25/06)

**PROOF OF SERVICE**

**DOCKET UNIT**

*Instructions: Send an original signed document plus 12 copies and/or an electronic copy plus one printed copy to the address below:*

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 03-AFC-2  
1516 Ninth Street  
Sacramento, CA 95814-5512  
**doCKET@energy.state.ca.us**

*Also send a printed or electronic copy of all documents to each of the following:*

**APPLICANT**

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County of Santa Clara Planning Office  
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County Government Center  
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East Wing, 7th Floor  
San Jose, CA 95110-1705

Santa Clara Valley Water District  
Luis Jaimes  
5750 Almaden Expressway  
San Jose, CA 95118-3686

California Air Resources Board (CARB)  
Michael Tollstrup  
Project Assessment Branch  
P.O. Box 2815  
Sacramento, CA 95812  
**mtollstr@arb.ca.gov**

William DeBoisblanc, Director Permit  
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Bay Area Air Quality Mgmt. District  
939 Ellis Street  
San Francisco, CA 94109

Regional Water Quality Control Board  
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#### **INTERESTED PARTICIPANTS**

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#### **INTERVENORS**

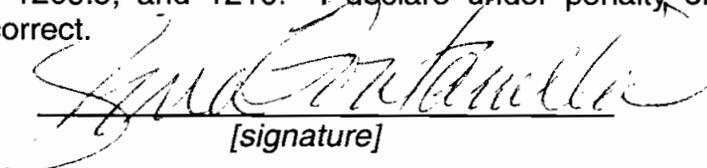
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#### **DECLARATION OF SERVICE**

I, Gina Fontanilla, declare that on June 9, 2006, I deposited copies of the attached **COMMITTEE ORDER RE: REQUEST FOR HEARING AND NOTICE OF HEARING** in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. I declare under penalty of perjury that the foregoing is true and correct.

  
[signature]

## INTERNAL DISTRIBUTION LIST

**FOR YOUR INFORMATION ONLY! Parties DO NOT mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:**

JACKALYNE PFANNENSTIEL, Vice Chair  
Presiding Member  
MS-33

Ed Boullion  
Hearing Officer  
MS-9

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Hearing Officer  
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Bob Worl  
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Dick Ratliff  
Staff Counsel  
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