

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

**APPLICATION FOR CERTIFICATION FOR THE
EAST ALTAMONT ENERGY CENTER
(EAST ALTAMONT)**

DOCKET NO. 01-AFC-4

**ERRATA TO THE COMMITTEE'S
REVISED PRESIDING MEMBER'S PROPOSED DECISION**

On May 15, 2003, the Committee published the Revised Presiding Member's Proposed Decision (RPMPD) for East Altamont. On June 3, 2003, the Committee conducted a conference to receive comments on the RPMPD. The parties presented written comments prior to the Committee Conference and appeared at the conference to present their comments.

In addition, several interested agencies and members of the public appeared and provided comments during the course of the proceedings. The Mountain House Community Services District (MHCSD), through Mr. Paul Sensibaugh, appeared and provided oral comments. He also requested that the Committee grant MHCSD additional time to make written comments. The Committee granted the request in view of the fact that it considers MHCSD a necessary agency to these proceedings.

In light of granting MHCSD's request, the Committee cancelled its plan to have the Energy Commission adopt the RPMPD at its June 11, 2003, Business Meeting. Instead, the Committee, having reviewed the entire oral and written comments filed in the proceedings, hereby files the following **ERRATA**.

The Energy Commission's Final Decision will incorporate these changes, as adopted, and other minor editorial and chronological corrections as deemed appropriate by the Hearing Officer.

I. COMPLIANCE AND CLOSURE

- A. Page 45-46: delete in its entirety **COM-3**. (6/03/03 RT 20:1-11.)
- B. Page 49: delete paragraph 11 of **COM-8**. (6/03/03 RT 20:1-11.)
- C. Page 50, footnote 28 (now 30) is revised to read as follows:

“The Committee has accepted Staff’s recommended language for Condition **COM-9**. (Ex. 1 A; Jt. Ex. 5 B; 10/16 RT 511:23-518:5; 10/21 RT 22:6-24-11; 10/22 RT 280:20-281-16; Cf. Staff’s Closing Brief, pp. 41-44; Applicant Opening Brief on Phase 3 issues, pp. 27-29 & Att. A.) However, the language requirements of **COM-9** will be subject to replacement or termination pursuant to the Commission’s future rulemaking on security that will promulgate guidelines applicable to all similarly situated projects coming before the Energy Commission. Condition 9 will be suspended in the event that the Commission’s rulemaking has not taken place by January 1, 2005. (6/03/03 RT 20:12-28:8.)”

II. **ENGINEERING ASSESSMENT**

A. **TRANSMISSION SYSTEM ENGINEERING**

1. On page 91, delete the final sentence of the fifth full paragraph, which reads, “We have adopted Staff’s modification of **Condition TSE-1**.” The sentence now reads:

“We accept Applicant’s position that a Facility Interconnection Agreement is a bilateral contract between applicant and the participating transmission owner. (2/24/03 RT; Staff’s Supplemental Comments, dated March 5, 2003, pp. 15-16; 6/03/03 RT 32:1-4:13; Applicant’s Supplemental Comments on RPMPD, pp. 18-19.)”

2. Page 94, under **TSE-1**, paragraph 8, subsection ii, is modified to read, as follows:

“An executed Facility Interconnection Agreement with Western. (6/03/03 RT 32:2-37:24.)”

III. **PUBLIC HEALTH AND SAFETY ASSESSMENT**

A. **AIR QUALITY**

1. Page 147, footnote 66 (now note 53) has been modified to read as follows:

“53 Applicant disagrees that it has accepted Staff’s threshold position but Applicant and Staff agree that SO₂ emissions taken independently are sufficiently low that they do not trigger emission-offset requirements within the BAAQMD. (Ex. 4 G, p. 2.1-15; Staff Opening Brief on Phase 2 Topics, p. 19; (6/03/03 RT 133:10-13.)”

2. Page 153, paragraph number 8, append the following after the last sentence:

“In arriving at this conclusion, we considered both Staff’s logic and arguments as well as SJVUAPCD & BAAQMD and Applicants arguments/ calculations. The Committee concludes that Staff has not made its case and that the Applicant and SJVUAPCD did in regards to the amount of mitigation necessary. The Committee will therefore adopt 66.8 tons of NO_x per year through the operational life of the project as the mitigation required from the project (CEQA impact).”

3. Page 155, add a new first paragraph, which reads as follows:

“Our June 3, 2003, Committee Conference noted some confusion regarding our intent in drafting AQ-SC5. Our intent, in plain language, is for Applicant to mitigate to zero the CEQA impact identified above as 66.8 tons of NO_x, per year, through the operational life of the project. We will allow Applicant to apply the results of the AQMP towards this goal. However, in the event of a shortfall from this amount, Applicant will be required to make up the shortfall either through purchasing and surrendering additional ERCs or through providing additional funding to the AQMA for additional projects. Applicant may carry over to future years any surplus mitigation (tons) generated in any one year. Applicant must make up any shortfalls within the next year. Applicant may not amortize any mitigation shortfalls over more than one year.”

4. Page 156, Finding 11 is modified to read as follows:

11. The new Federal standards for PM_{2.5} are not relevant to this case because there have been no violations of the standards and implementation of the new AAQS has not begun.

5. **AQ-SC1** has been revised and now reads as follows:

“**AQ-SC1** The project owner shall fund all expenses for an on-site air quality construction mitigation manager (AQCMM) who shall be responsible for maintaining compliance with conditions AQ-SC2 through AQ-SC4 for the entire project site and linear facility construction. The on-site AQCMM may delegate responsibilities identified in Conditions AQ-SC1 through AQ-SC4 to one or more air quality construction mitigation monitors. The on-site AQCMM shall have full access to areas of construction of the project site and linear facilities, and shall have the authority to appeal to the CPM to have the CPM stop any or all construction activities as warranted by applicable construction mitigation conditions. The on-site AQCMM, and any air quality construction mitigation monitors responsible for compliance with the requirements of AQ-SC4, shall have a current certification by the California Air Resources Board for Visible Emission Evaluation prior to the commencement of ground disturbance. The AQCMM may have other responsibilities in addition to those described in this condition. The on-site AQCMM shall not be terminated without written consent of CPM.”

“Verification: At least sixty (60) days prior to the start of ground disturbance, the project owner shall submit to the CPM, for approval, the name, current ARB Visible Emission Evaluation certificate, and contact information for the on-site AQ-CMM and air quality construction mitigation monitors.”

6. under **AQ-SC3:**

a. subsection “a” is revised and now reads as follows:

“a) All unpaved roads and disturbed areas in the project and linear construction sites shall be watered until sufficiently wet for every four hour of construction activities, or until sufficiently wet to comply with the dust mitigation objectives of **Condition AQ-SC4**. The frequency of watering can be reduced or eliminated during periods of precipitation.”

b. subsection “f” is revised and now reads as follows:

“f) All entrances to the construction site shall be graveled or treated with water or dust soil stabilization compounds.”

c. subsection “m” is revised and now reads as follows:

“m) Wind erosion control techniques, such as windbreaks, water, chemical dust suppressants, and vegetation, shall be used on all construction areas that may be disturbed. Any windbreaks used to comply with this condition shall remain in place until the soil is stabilized or permanently covered with vegetation.”

d. subsection “n” is revised and now reads as follows:

“n. **Fugitive Dust.** Any construction activities that may cause fugitive dust in excess of the visible emission limits specified in **Condition AQ-SC4** shall cease when the wind exceeds 15 miles per hour unless water, chemical dust suppressant, or other measures have been applied to reduce dust to the limits set forth in **AQ-SC4**.”

e. subsection “o” is revised and now reads as follows:

“o. Diesel Fired Engines.

(1) All diesel-fueled engines used in the construction of the facility shall be fueled only with ultra-low sulfur diesel, containing no more than 15-ppm sulfur.

(2) All diesel-fueled engines used in the construction of the facility shall have clearly visible tags issued by the on-site

AQCMM that shows the engine meets the conditions set forth herein.

(3) All large construction diesel engines, which have a rating of 100 hp or more, shall meet, at a minimum, the 1996 ARB or EPA certified standards for off-road equipment, and shall be equipped with catalyzed diesel particulate filters (soot filters), unless certified by engine manufacturers or the on-site AQCMM that the diesel engine is not available or the use of such devices is not practical for specific engine types. For purposes of this condition, a diesel engine is “not available” or the use of such devices is “not practical” if the AQCMM in applying recognized industry practices certifies that:

- The device is not available. For purposes of this condition, “not available” means that a device certified by either CARB or EPA is: (i) not in existence at any location for use by the project owner at or near the time project construction commences; (ii) in existence but the construction equipment is intended to be on-site for ten (10) days or less or (iii) not available for a particular piece of equipment.
- Despite the project owner’s best efforts, use of the device is not practical. For purposes of this condition, “not practical” means any of the following: (i) the use of the soot filter is excessively reducing normal availability of the construction equipment due to increased downtime for maintenance, and/or reduced power output due to an excessive increase in backpressure; (ii) the soot filter is causing or is reasonably expected to cause significant engine damage; (iii) the soot filter is causing or is reasonably expected to cause a significant risk to workers or the public; or (iv) other good cause approved by the CPM.

The project owner shall notify the CPM within seven (7) days of determining that a soot filter is unavailable or not practical, and the reasons therefore.

Verification: In the Monthly Compliance Report, the project owner shall provide the CPM a copy of the construction mitigation report and any diesel fuel purchased records, which clearly demonstrates compliance with condition AQ-SC3.”

f. delete former subsections “p” “q” and “r.”

7. **AQ-SC4** is revised as follows:

“AQ-SC4 No construction activities are allowed to cause visible emissions at or beyond the project site property boundary or the adjacent lands owned by the applicant. No construction activities are allowed to cause visible plumes that exceed 20 percent opacity at any location on the construction site. No construction activities are allowed to cause any visible plume in excess of 200 feet beyond the centerline of the construction of linear facilities.”

8. under **AQ-SC5**:

a. Page 159, first line, add the clause “to mitigate cumulative impacts to” and strike the words “to enhance” air quality....”

b. Page 159, second paragraph, after NO_x, add the clause “through the economic life of the project.”

c. Page 159, add a new subparagraph 3 as follows, “Applicant may apply to future years any mitigation created in excess of 66.8 tons of NO_x. Applicant must make up any mitigation shortfall in the year immediately following the shortfall.”

d. Page 159, renumber former paragraph 3 to 4. After the dollar figure, add the word “required.”

e. Page 159, renumber former paragraph 4 to 5, which now reads:

“If it proves not feasible to obtain the reductions in the northern San Joaquin Valley, the reductions shall be obtained in other parts of the SJVUAPCD. The annual target of 66.8 tons of NO_x shall be obtained prior to the start of commercial operation.”

f. Page 160, renumber former paragraph 5 to 6. In the next to last sentence, strike the clause “as approved by the CEC” and add the clause “after consultation with the CPM” upon licensing....”

g. Page 160, in the Verification

- paragraph 1, line 1, strike “CEC” and replace it with “CPM;”
- paragraph 1, line 3, strike “approve” and replace it with “concur with”;
- paragraph 2, first bullet now reads “the purchase of any additional ERCs in the Northern San Joaquin region;”
- add before the last bulleted item an additional bullet that reads “any shortfall (or excess) of reductions from the annual target of 66.8 tons of NO_x, and;”.

- h. Page 161, after the four bulleted items, the paragraph beginning with "Such reports" is revised to read:

"Such reports shall continue to be filed at the end of each calendar year, with the last report due after the end of the calendar year in which the project permanently ceases to operate or sufficient ERC's have been tendered to result in 66.8 tons of NO_x through the remaining operational life of the project."

B. WORKER SAFETY/FIRE PROTECTION

1. Page 206, in the Committee Discussion, delete the three final paragraphs and insert in its place the following paragraphs:

"Applicant, ACFD, and Staff agree on the estimate of response times. While we could agree that the response times are comparable for a rural area, the region is quickly becoming urbanized and is already impacted by urban traffic patterns. Hence, we believe that the agreed upon response times are optimistic. As an example, it may not always be the case that a hazardous material response coming from San Leandro could be made in 35 minutes during the height of rush hour traffic as claimed by ACFD. As a result, the Committee concludes that ACFD may, from time to time, have to rely on other entities such as TFD to provide emergency response to EAEC and /or be the first responder under mutual aid arrangements.

During the June 3, 2003 RMPD Conference, Applicant submitted into evidence the EAEC Cooperative Agreement , an agreement between EAEC and Alameda County (Cooperative Agreement). Under Article 6 of the Agreement, Applicant would make contributions for (a) improved emergency services response (Emergency Response) in the County's Mountain House Area....(Exhibit 4A-1, pp. 9-10.)"

However, little detail is provided in the Cooperative Agreement indicating what these improvements would actually be. Article 6.2 indicates that the EAEC shall make a \$500,000 contribution to the County for Emergency Response Improvements, with the County being required to develop a plan and budget to be submitted to EAEC for approval. Article 6.2 goes on to state that "such plan will expend approximately half of the budget on improving services through the County and half of the budget on improving services either through other agencies or to provide a direct benefit to other agencies who respond to the Mountain House Area."
(*Ibid.*)

The Cooperative Agreement is silent on how the foregoing plan would expend approximately half of the budget on improving services either through other agencies or to provide a direct benefit to other agencies who respond to the Mountain House Area. Under questioning at the June 3 RPMPD Conference as to what is envisioned for Emergency Response Improvements, Chief McCammon indicated that ACFD is considering proposing a helicopter service that would be used for wild fire response and for emergency evacuation. The helicopter services would be shared with several other counties. The Committee is concerned that this would not best serve EAEC or the community (Mountain House) in the vicinity of EAEC.

The Committee is pleased to note the Cooperative Agreement signatories' "desire to further the mutual benefit of the Emergency Response Improvements" and EAEC's provision of funds for these purposes. The Committee concludes that the Cooperative Agreement can be the vehicle for addressing the resource and response issues to EAEC and the Mountain House community area.

Accordingly, the Committee urges Applicant, ACFD, and the local Mountain House Community (including TFD, its fire services provider) to work together to develop and implement an acceptable plan as called for in the Cooperation Agreement. To encourage the parties, Applicant is required to obtain CPM approval of plan content before making payment under Article 6 of the Cooperation Agreement. **(Condition WORKER SAFETY-4)**"

2. Page 207, under Findings:

a. Finding number 3, delete the final sentence "Applicant will contract with TFD for initial response."

b. Finding number 4 has been revised and now reads as follows:

"4. ACFD's closest Fire Station to the site is Station No. 8, located at 1617 College Avenue in Livermore. Staff determined that the response time to the proposed project site is estimated to be 15 minutes, a determination we view as optimistic."

c. Finding number 8 is deleted in its entirety. Renumber the following findings in order.

d. Finding number 9 is revised as follows:

"9. Alameda County's provision of EMS services could be enhanced through cooperative efforts with other entities servicing the EAEC and Mountain House area."

e. Finding number 10's language is deleted. New language is inserted as follows:

"10. Applicant shall obtain CPM approval of the plan under Article 6 of the EAEC Cooperation Agreement before payment is disbursed to Alameda County."

3. Page 209-10 under Conditions of Certification, the language of Condition **WORKER SAFETY-4** and the Verification is deleted. New language is inserted as follows:

"WORKER SAFETY-4 Applicant will meet and confer with the ACFD, and the local Mountain House community (including TFD, its fire services provider) to develop a plan for emergency response enhancement as set forth in Article 6 of the EAEC Cooperation Agreement. Before payment is disbursed to Alameda County, Applicant will submit the plan document for approval to the CPM.

Verification: At least thirty (30) days prior to the start of site preparation activities, the project owner shall submit to the CPM for approval a copy of the foregoing plan. The project owner shall present evidence to the satisfaction of the CPM that the required disbursement under Article 6 of the Cooperation Agreement has occurred.

C. **HAZARDOUS MATERIALS MANAGEMENT**

1. Page 213, footnote 86, delete the last two sentences and replace them with the following language:

"See our discussion in footnote 30, *ante*." [footnote 28 in the RPMPD.]

2. Pages 224-26 in the Conditions of Certification:

a. In **HAZ-1**, change the reference "Appendix C" to "AFC Supplement B, Table HM-2,"

b. In **HAZ-4**, append to the next to final sentence the clause "if exposed to rainfall;"

c. In **HAZ-5**, change the reference "100" to "50."

IV. ENVIRONMENTAL ASSESSMENT

A. SOIL AND WATER RESOURCES

1. Page 273, next to last paragraph, insert after colon the following language contained in the PMPD that was inadvertently omitted from the RPMPD.
 - the FSA projection does not account for potential uses of recycled water within the MHCSD;¹¹²
 - nor does it account for the seasonal fluctuations in supply and demand of recycled water;
 - and the effect of such fluctuation on facility sizing. (10/16 RT 189:25-190-6; Ex. 4D, p. 2.15-9.)
2. Page 274 and following, renumber footnotes following insertion of note 112.
3. Page 280-81, delete the entire final paragraph as duplicative of the one preceding it, and reorder footnotes accordingly.
4. Delete pages 304-322 as duplicative due to a formatting error of pages 323-341.
5. Page 359, Finding number 4, after the word “flows” insert the clause “from process areas.”
6. Page 360, Finding number 15, after BBID add the clause, “MHCSD, or any other entity, individually or jointly.”
7. Page 360, Finding number 16 now reads:

“16. Applicant has identified specific routes for a recycled water pipeline extending from the MHCSD’s treatment facility to the EAEC and acknowledged that recycled water could be made available to EAEC by the year 2005.”
8. Page 361, Finding number 17, after EAEC, strike the words “from the MHCSD and BBID” before the....
9. Page 361, delete Finding number 25, and renumber the following Findings accordingly.
10. Page 361, delete Finding number 26, and renumber the following Findings accordingly.

¹¹²**SOILS & WATER Table-13**, *infra*, shows an allocation whereby the remaining recycled water not distributed to the EAEC would be used within the MHCSD.

11. Page 362, add the following first sentence to renumbered Finding 25 (formerly Finding # 27): "RWQCB has established waste discharge standards for a MHCSD discharge to Old River." MHCSD is currently....Renumber the following Findings accordingly.
12. Page 362, delete old Finding number 28, and renumber the following Findings accordingly.
13. Page, 363, old Finding number 34 (renumbered Finding 31) is revised as follows:

"31 Dry cooling is not necessary as Applicant may achieve its design capabilities for the EAEC by implementing the fresh water savings to avoid any direct, adverse water quality implications as identified in this section and imposed by our Conditions." Renumber the following and final Finding as 32.

14. Pages 366-67, **SOIL & WATER-5** is revised as follows:

"SOILS&WATER 5: Prior to plant operation, a pipeline capable of conveying 5,900 gallons per minute of recycled water from MHCSD's treatment facilities to EAEC shall be built. Prior to the start of project operation, the project owner shall submit a formal request to BBID or MHCSD (or any other potential recycled water supplier) pursuant to Water Code section 13580.7 for recycled water to satisfy the cooling water needs of the project. Prior to using fresh inland water, the project owner shall accept for use all the recycled water available to convey to the project at a cost comparable to or lower than the cost of fresh water conveyed to the project."

Verification: No later than sixty (60) days prior to the start of plant operation, the project owner shall submit to the CPM evidence that the pipeline has been built and is capable of conveying no less than 5,900 gpm to EAEC. No later than 220 days prior to start of plant operation, the project owner shall submit to the CPM evidence that a formal request for recycled water pursuant to Water Code section 13580.7 has been made. No later than 60 days prior to the start of plant operation, the project owner shall submit to the CPM any contract entered into detailing the rate and conditions for recycled water service established pursuant to Water Code section 13580.7, and a signed copy of a water supply arrangement with the water purveyor setting forth the rates and conditions for the fresh water supply.

For information concerning public participation at the Energy Commission Business Meeting, contact the Commission's Public Adviser, Roberta Mendonca, at 916-654-4489 or, toll free, at 1-800-822-6228; or e-mail: [\[pao@energy.state.ca.us\]](mailto:pao@energy.state.ca.us).

Information concerning the status of the project, as well as notices and other relevant documents, is also available on the Energy Commission's Internet home page at: [\[www.energy.ca.gov/sitingcases/eastaltamont/\]](http://www.energy.ca.gov/sitingcases/eastaltamont/)

Dated on June 16, 2003 at Sacramento, California.

WILLIAM J. KEESE, Chairman
Presiding Committee Member
EAEC AFC Committee

ROBERT PERNELL, Commissioner
Associate Committee Member
EAEC AFC Committee