

**BEFORE THE CALIFORNIA ENERGY COMMISSION
STATE OF CALIFORNIA**

IN THE MATTER OF:) **DOCKET No. 01-AFC-7C**
)
MODIFICATION OF THE CERTIFICATION)
FOR THE RUSSELL CITY ENERGY CENTER)
_____)

STAFF’S PRE-HEARING CONFERENCE STATEMENT

In an order dated June 28, 2007, the Energy Commission committee overseeing the Russell City Energy Center (“RCEC”) case directed parties to file a prehearing conference statement for the July 19, 2007, prehearing conference. Although the order required filing by July 16, 2007, Staff requested and received permission, with agreement from the other parties, to file its statement by 3:00 p.m. July 17, 2007. Hearing Officer Paul Kramer granted permission by e-mail on July 13, 2007.

1. Topic Areas that are Complete and Ready for Hearing

Staff believes that all areas are complete and ready to proceed to hearing. However, this conclusion is tentative inasmuch as Staff has only recently filed the Staff Assessment (“SA”), issues with the SA are still being identified, and Staff is still uncertain with regard to the resolution of such issues with Calpine or Intervenor Haavik.

2. Topic Areas that are Incomplete

None.

3. Topic Areas in Dispute

Staff believes that at least two topic areas are in dispute and require resolution: **Land Use and Traffic and Transportation.** The Land Use witness will be Shaelyn Stratten, whose testimony appears in the SA. She will testify that RCEC does not comply with laws, ordinances, regulations, and standards (“LORS”) that pertain to the safe operation of Hayward Municipal Airport.

The Transportation and Traffic witnesses are Jim Adams, Eric Knight, and William Walters, whose testimony appears in the SA. They will testify that, because of the unique constraints of the Hayward Municipal Airport and its proximity to the RCEC site, the thermal plume from the project would be a hazard to aviation and, therefore, a significant environmental effect in terms of the California Environmental Quality Act.

At a workshop held in Hayward on July 11, 2007, other issues regarding the SA were raised by Calpine. Although staff does not believe that the issues discussed in

these areas will require adjudication, they are not as of this date entirely resolved, so adjudication is possible. These areas include **Soil and Water** (Calpine expressed dissatisfaction with the four acre cap on domestic water use in **Condition of Certification Soil & Water -4**). If adjudication is required, the staff witness will be Richard Latteri, whose testimony is in the SA.

In addition, Calpine identified an issue that is as yet unresolved regarding **Visual Resources Condition VIS-10**, which requires Calpine to provide screening landscaping on land that is not owned by Calpine. Calpine has proposed to modify the condition to qualify that it is only required if the property owner consents. Although this is an otherwise “common sense” qualification, the landscape measures in question are necessary for Staff’s conclusion that the visual impact of the project is mitigated to a level that is less than significant. Calpine had previously, during the initial licensing of the project, obtained consent from the landowner, indicating that this condition is feasible. Staff is therefore unwilling to qualify the condition in the requested manner, absent some mitigation measure of similar effect which would reduce the project’s significant visual impacts. Staff is waiting either for Calpine to verify that the landowner still consents with the screening mitigation or for Calpine to propose alternative mitigation that would compensate for the absence of visual screening required by VIS-10. There may be other outstanding issues regarding mitigation conditions that Staff believes must carry over from the prior license. Staff expects these issues to be resolved, but is not certain that they are as of this date. If adjudication is required, the staff witness will be Eric Knight and/or Mark Hamlin; their testimony is part of the SA.

4. Staff’s Witnesses, their Topic Areas, Qualifications, and Time for Direct

The Staff witnesses for each topic area to be adjudicated are indicated above, and their witness qualifications are part of the SA. In addition to the areas to be adjudicated, Staff will provide witnesses in the areas of Air Quality (witness: Matthew Layton, the unit supervisor), Public Health (witness: Dr. Alvin Greenberg), and Hazardous Materials (witness: Dr. Alvin Greenberg). Since the hearing will be an informal hearing, there will be no direct examination, although the parties have agreed that each witness will have up to three minutes to summarize their testimony and conclusions at the outset of an issue discussion.

5. Topic Areas for Cross Examination, Summary of Cross, and Time Requested

The parties have agreed, by telephonic conference attended by the Hearing Officer, to conduct this hearing by Informal Hearing Procedure, consistent with California Code of Regulations, title 20, section 1217. Such a hearing is conducted in a structured “conference” format, and dispenses with formal direct and cross-examination.

6. Exhibits and Declarations

The Staff Exhibits are Exhibit 100 (the SA filed June 29) and Exhibit 101 (the Errata to the SA, not yet filed).

7. Proposal for Additional Hearings

No additional hearing dates are currently planned or expected. Assigned staff counsel leaves on vacation July 21. Briefing for staff will be by Staff Counsel Kevin W. Bell.

8. Changes to Proposed Conditions of Certification

Staff proposes the following changes, shown in underline and strikeout, to proposed condition **WASTE-10**. These changes result from a discussion of WASTE-10 with Steven Hill of the San Francisco Water Quality Control Board. The changes would be a clarification in that they would require the site cleanup plan to comply with the appropriate water basin plan. The Regional Board would have the role of advising the CPM as to whether the cleanup plan does or does not comply. Mr. Hill understands the Regional Board's input would receive due deference as to whether the site cleanup plan does or does not comply with the basin plan for the San Francisco Bay Region.

WASTE-10 The project owner shall ensure that the site is properly characterized and remediated. The project owner shall consult with the City of Hayward Fire Department and the San Francisco Bay Regional Water Quality Control Board in preparing a Site Cleanup Plan for soil and groundwater contamination present on the RCEC site in compliance with the Water Quality Control Plan for the San Francisco Bay Region prepared pursuant to the Porter-Cologne Water Quality Act, California Water Code section ~~4326713240~~. The project owner shall submit this plan to both the City of Hayward Fire Department and the San Francisco Bay Regional Water Quality Control Board for review and comment and to the CPM. [The rest of the condition would remain unchanged.]

Date: July 17, 2007

_____*Original signed by*_____
RICHARD C. RATLIFF
Staff Counsel IV