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

IN THE MATTER OF:

PETITION TO AMEND THE COMMISSION DECISION APPROVING THE APPLICATION FOR CERTIFICATION FOR THE RUSSELL CITY ENERGY CENTER

DOCKET NO. 01-AFC-7C

ERRATA AND REVISIONS TO THE PRESIDING MEMBER'S PROPOSED DECISION

Following the close of the public and party comments period on the Presiding Member's Proposed Decision (PMPD), dated August 23, 2007, and the taking of additional evidence and comments at a public meeting held on September 5, 2007, in Hayward, California, the Siting Committee considering the above amendment petition issues the following errata and revisions to the PMPD and recommends its adoption by the Energy Commission. The PMPD used underline and ~~strikeout~~ to show changes from the 2002 Decision's Conditions of Certification; to avoid confusion, changes made to the PMPD in this document will be shown by double underline and ~~double strikeout~~.

P. 1, Introduction, footnote 3:

> . . . September 11, 200~~6~~2 . . .

P. 2, Introduction, text:

> . . . For various reasons, the licensee was not able to construct the facility on the approved site. ~~It's~~ Its successor, Russell City Energy Company, LLC, now proposes to build the same facility, with minor modifications in layout and associated equipment . . .

P. 6, Introduction, Procedural History, text:

> On August 23, 2007, the Committee issued its Presiding Member's Proposed Decision (PMPD). Public and party comments on the PMPD were accepted during a 15-day comment period ending on September 7, 2007 and at a public hearing conducted in Hayward by the Committee, on September 5, 2007. On September 5, 2007, the evidentiary record was reopened and several additional exhibits received into the record. An Errata and Revisions to the PMPD were issued on September 10, 2007.

P. 6, Introduction, Response to Comments, text:

~~[This section is intentionally blank. It will be used to summarize and respond to comments about the Presiding Member's Proposed Decision that are made during its public review period.]~~

Public and party comments on the PMPD ranged from concerns about public health and safety to the details of implementing the fireplace/woodstove replacement and pilot notification programs.

Several people, including Carol Ford of the California Pilots Association and Andy Wilson, disagreed with the conclusion that the restriction of the airspace above the RCEC will not significantly affect pilots operating out of the Hayward Airport. Ms. Ford spoke to the local FAA office and Mr. Wilson to FAA headquarters in Washington, D.C., about the FAA letter in the record as part of Exhibit 103. They are trying to get the FAA to revisit its conclusions. Mr. Wilson requested that the September 12, 2007 Commission Business Meeting consideration of final adoption of the proposed decision be postponed in order to allow time for the FAA to review its position. The Committee indicated that it would not do so, finding it unlikely that the FAA would be able to conduct such a review in a timely manner. Mr. Wilson provided helpful suggestions about the methods of making pilots aware of the power plant, most of which are incorporated, along with suggestions from the Applicant and Staff, in condition **TRANS-10**, below.

Mr. Wilson also suggested that hazardous material response plans include appropriate warnings to pilots via the local control towers at the Hayward and Oakland airports. The mechanisms for doing so are best left to the Risk Management and Hazardous Materials Business Plans required under condition **HAZ-2**.

Regarding the fireplace/woodstove replacement program, several commenters questioned the value of replacing fireplaces and woodstoves that are not frequently used as well as why the emphasis is on winter time reductions in particulate matter emissions. Staff Air Quality witness Mathew Layton testified that Staff took into account the possibility that some fireplaces that are infrequently used would be replaced. He concluded that it would be unlikely that many fireplace owners would pay the significant unrebated costs to replace a fireplace they weren't using and in the rare instance that they did, the protection against future emissions would be of value. (RT, 75.) Mr. Layton also testified that there is a "strong nexus" between wood smoke and wintertime particulate matter exceedances. (RT, 40.)

Mr. Wilson commented that the full cost of fireplace replacements, not a portion, should be paid by the Applicant. We do not believe that would be wise, however, as it would encourage the replacement of infrequently used fireplaces. We believe that the program should remain as proposed,

with the amount of the rebate set by the Applicant with a mind to making the program a success. Recall that, should the emission reductions fall short of the stated goal, the Applicant must make up the shortfall with traditional ERCs. See Condition **AQ-SC 13**.

Ernest Pacheco and Audrey LePell commented that greater emphasis should be placed on solar and other renewable energy sources. These alternatives were evaluated in the 2002 Decision and determined to not be viable substitutes for the RCEC.

Audrey LePell expressed her concern about the additional traffic during project construction and its effects on already crowded local streets and highways. The construction traffic impacts are short term, however, and will be mitigated by condition **TRANS-1**, which requires a "construction traffic control and transportation demand implementation program that limits construction-period truck and commute traffic to off-peak periods in coordination with the City of Hayward and Caltrans."

Many of the commenters[1] expressed concerns about the health effects of the project. In response we reiterate that the project complies with all air quality regulations, which are health and safety based, and that the public health analysis shows an increased cancer risk of 4 in 1 million in a hypothetical worst case against a background cancer risk of approximately 250,000 in 1 million.

Jane Luckhardt filed comments on behalf of Eastshore Energy, LLC, to the effect that language in the Traffic and Transportation discussion in the PMPD may affect the consideration of its nearby project (06-AFC-6) which is undergoing Energy Commission review. She requests that any mention of potential cumulative impacts arising from the restriction of airspace around the two power plants be removed from the decision. Nothing in this decision is intended to affect the determination of Eastshore Energy's application. We cannot, however, ignore that the possibility of impacts—direct or cumulative—exists. We have clarified the text and finding to more clearly indicate our intention that Eastshore be judged on its own circumstances and record.

Pp. 7 - 9, Project Description:

References to Figures 1 and 2 in this section should be reversed.

Pp. 7 - 8, Project Description, text:

~~While t~~ The ~~approved~~ project ~~was~~ is designed to operate as a base load facility~~, the amended project will be designed to operate in load following mode~~. (~~Ex. 100, pp. 3-1-3.2~~ Ex. 1, p 3-4.) ~~Rather than operate for long~~

[1] Including Suzanne Barba, John Gilbertson, Francisco Abrantes, Marie Jackson, Wafaa Aborashed, Stephania Widger, Juanita Gutierrez, JoAnne Gross, Tom Kersten, P.L. Guernsey, and Holly Rogers.

~~periods at a constant output level (baseload), its output will vary according to the current power demand; it is likely to start up and shut down more frequently than if it were a base load generator~~. . .

P. 10, Project Description, text:

. . . The cooling and process water used at RCEC will be tertiary treated recycled water ~~continue to consist of secondary effluent (wastewater) supplied by the City of Hayward's Water Pollution Control Facility (WPCF) located across from the plant site~~. . .

P. 14, Project Description, Finding 2:

. . . in that the Applicant no longer is ~~available~~ able to purchase all of the original project site . . .

P. 28, General Conditions, condition **COMPLIANCE-9**:

Pursuant to the provisions of Section 25806(b) of the Public Resources Code, the project owner is required to pay an annual fee currently ~~sixteen thousand eight hundred and fifty dollars~~ seventeen thousand six hundred seventy six dollars ($17,676 ~~16,850~~), which will be adjusted annually on July 1. The initial payment is due on the date the Energy Commission adopts the final decision. All subsequent payments are due by July 1 of each year in which the facility retains its certification. . .

P. 39, Facility Design, text:

. . . Since the original Conditions of Certification were adopted, the California Building Code (CBC) has been revised; references to the CBC in the Conditions should now be to the ~~2001~~ 2007 version. Those revisions have been made to the Conditions of Certification, below. . . [The revisions to the conditions are not shown here in this Errata but will appear in the Final Decision.]

P. 42, Facility Design, Table 1:

~~Advanced Wastewater Treatment Plant Structure, Foundation, and Connections~~

P. 60, Transmission System Engineering, footnote 11:

~~While the Staff Assessment does not expressly say so, we presume that a Reconductoring Analysis was not conducted for the Eastshore to San Mateo 230 kV line because an appropriate analysis was already conducted as part of PG&E's planning for Project P02186 mentioned in the Assessment.~~ The Applicant conducted an Environmental Assessment of the Eastshore to San Mateo 230 kV reconductoring as part of the licensing proceeding in 2001. The Commission reviewed this Assessment in the 2002 Decision. This analysis was updated after additional

consultations with PG&E regarding their proposed methods of construction. (Ex. 1, p. 2-14.) ~~In the absence of any testimony to the contrary, w~~ We accept Staff's assertion that "the mitigation measures are acceptable." (Ex. 100, p. 5.5-8.)

P. 84, Air Quality, condition **AQ-SC7** verification:

Verification: As part of the quarterly and annual compliance reports as required by ~~AQ-SC19~~ **AQ-19,** the project owner shall include information on the date, time, and duration of any violation of this permit condition.

P. 84, Air Quality, condition **AQ-SC11**:

AQ-SC11 The project owner shall surrender 12.2 tons per year of SOx or SOx-equivalent emission reduction credits (ERCs) from certificate 989, 28.5 tons per year of POC ERCs, and 154.8 tons per year of NOx, or an equivalent combination of NOx and POC ERCs from certificates ~~815~~ 602, 687, 688, and 855, prior to start of construction of the project.

Pp. 84 – 85, Air Quality, condition **AQ-SC12**:

AQ-SC12 A fireplace retrofit/woodstove replacement program shall be made available to all Hayward residents on a first-come, first-serve basis to finance a voluntary woodstove replacement/fireplace retrofit. The program can also made available to all residents of the cities of Fremont, Newark, Union City, San Leandro, Oakland, Emeryville, Albany, Piedmont, Berkeley, Alameda and the unincorporated communities of San Lorenzo and Castro Valley ~~Alameda County residing west of the Oakland/East Bay Hills~~ after twelve (12) months from the start date of the fireplace retrofit/woodstove replacement program. The program shall provide a minimum of 43.4 tons of winter-time (Oct 1 to Mar 31) PM10 ERCs per year. Each resident participating in the retrofit/replacement program would agree to replace their existing woodstove or fireplace with a natural gas-fired unit, or to permanently close the fireplace or woodstove chimney and apply the rebate toward the improvement or replacement of their homes' existing central heating and air conditioning unit. Quarterly status reports on the program meeting the following milestones shall be submitted to the CPM:

a. achieving 6.5 tons per year of winter-time PM10 six (6) months after start of construction,
b. achieving 13.0 tons per year of winter-time PM10 nine (9) months after start of construction.
c. achieving 21.7 tons per year of winter-time PM10 twelve (12) months after start of construction.

d. achieving 34.7 tons per year of winter-time PM10 eighteen (18) months after start of construction.
e. achieving 43.4 tons per year of winter-time PM10 twenty four (24) months after start of construction.

Verification: At least ninety (90) days before start of construction, the project owner shall submit to the CPM a plan detailing the fireplace/woodstove replacement program for approval. The plan shall include, at the minimum, the description of the program, the amount of rebate, the person (or agency) who oversees the program implementation, the responsible person who reports to the CPM on the progress of the program implementation, the target milestones, and procedures to be followed if the target milestones have not been met. The project owner shall submit documentation to show compliance with this condition in the quarterly and annual reports as required in **AQ-20**.

P. 114, Hazardous Materials Management, condition **HAZ-3**, verification:

Verification: At least sixty (60) days prior to the delivery of ~~aqueous ammonia~~ any liquid hazardous material to the facility ~~to the aqueous ammonia storage tanks~~, the project owner shall provide a ~~Safety Management Plan~~ SMP as described above to the CPM for review and approval.

P. 148, Cultural Resources, Finding 3:

3. The ~~Biological~~ Cultural Resources aspects of the amended project do not create significant direct or cumulative environmental effects.

P. 167, Waste Management, condition **WASTE-1**, verification:

Verification: The project owner shall notify the CPM in writing within 10 days of ~~at least 120 days prior to any ground disturbance, which include those activities associated with site mobilization, or grading as defined in the General Conditions of Certification~~ becoming aware of an impending enforcement action. The CPM shall notify the project owner of any changes that will be required in the manner in which project-related wastes are managed.

P. 174, Land Use, text:

Staff recommends the adoption of Condition **LAND-2** to cause the merger and adjustment of parcel lines so that the project site consists of a single parcel. In its comments on the Presiding Member's Proposed Decision, the Applicant indicated that one of the four parcels that make up the project site will be leased rather than owned in fee and therefore cannot be merged with the other three parcels. At the September 5, 2007, reopened Evidentiary Hearing, the Applicant presented evidence consisting of a drawing showing the leased (Aladdin) parcel in relation to the plant facilities and equipment and a copy of the option and lease agreement providing for a 40-year initial term and two 10-year renewal

terms. (Exs. 33 and 34, 9-5-07 RT.) Although we share the Staff's strong preference that power plant projects be owned in fee, the lease provides sufficient assurance of site control in this case. Future developers are cautioned to take all reasonable steps to obtain fee property interests that can be combined to yield a single legal lot. Condition **LAND-2** has been modified to require merger of those lots to which the Applicant will hold fee title.

Pp. 175 – 176, Land Use, condition **LAND-2**:

LAND-2 The project owner shall adjust the boundaries of ~~lot lines between the two~~ all parcels to which the project owner holds fee title ~~or portions of parcels~~ that constitute the RCEC and Zero Liquid Discharge Facility project sites as necessary to merge all properties into a single parcel, under single ownership, within the City of Hayward jurisdiction, ~~in order to establish the RCEC and AWT project sites~~ in accordance with provisions and procedures set forth in the City of Hayward's ~~subdivision ordinance~~ Municipal Code, Chapter 10 - Article 3 (Subdivision Ordinance). Prior to the start of construction, the project owner shall provide a copy of its executed lease for the Aladdin parcel on the terms it described at the September 5, 2007, Evidentiary Hearing (40-year initial term with two 10-year extension options); the economic terms of the lease may be redacted at the project owner's option.

Verification: At least 30 days prior to construction of the ~~rcec~~ RCEC project, the project owner shall submit evidence to the E~~e~~nergy C~~c~~ommission C~~c~~ompliance P~~p~~roject M~~m~~anager (~~cpm~~ CPM), indicating approval of the ~~lot line adjustment~~ merger by the C~~c~~ity of H~~h~~ayward. T~~t~~he submittal to the ~~cpm~~ CPM shall include evidence of compliance with all conditions and requirements associated with the approval of the certificate of merger and/or notice of lot line adjustment by the city. I~~i~~f all parcels or portions of parcels are not owned by the project owner at the time of the merger, a separate deed shall be executed and recorded with the C~~c~~ounty R~~r~~ecorder~~, as required by municipal code §§10-3.290~~. A~~a~~ copy of the recorded deed shall be submitted to the ~~cpm~~ CPM, as part of the compliance package. A copy of the executed Aladdin parcel lease shall be provided to the CPM no later than 20 days prior to the start of construction.

P. 177, Noise, text:

. . . The predicted noise levels at the project site boundaries are 75 dBA or less . . .

P. 183, Socioeconomics, condition **SOCIO-1**:

> ~~**SOCIO-1** The project owner and its contractors and subcontractors shall recruit employees and procure materials and supplies within Alameda County unless:~~
>
> ~~• To do so will violate federal and/or state statutes;~~
> ~~• The materials and/or supplies are not available;~~
> ~~• Qualified employees for specific jobs or positions are not available; or~~
> ~~• There is a reasonable basis to hire someone for a specific position from outside the local area.~~
>
> ~~**Verification**: At least 60 days prior to the start of demolition, the project owner shall submit to the CPM copies of contractor, subcontractor, and vendor solicitations and guidelines stating hiring and procurement requirements and procedures. In addition, the project owner shall notify the CPM in each Monthly Compliance Report of the reasons for any planned procurement of materials or hiring outside the local regional area that will occur during the next two months.~~

P. 191, Traffic and Transportation, text:

> . . . On August 15, 2007, the ALUC adopted a resolution recommending that the project find an alternate site or, if approved at the proposed site, that a Condition like Staff's proposed **TRANS-10** be adopted.~~[23]~~ (Ex 108.)

P. 193, Traffic and Transportation, text:

> If the proposed Eastshore Energy Center is approved, it is possible that the navigable airspace above that facility would be similarly restricted. That project appears to be located just outside the Traffic Pattern Zone, approximately one-half mile closer than the RCEC. On the record before us, we can only note ~~do no more than identify a potential~~ ~~for~~ the possibility of cumulative effects from restricting the airspace above both projects. We also note~~, however,~~ that the Eastshore project is undergoing Energy Commission review; during that review the Commission can and should consider ~~the~~ whether there are any significant direct ~~and~~ or cumulative effects of any airspace restrictions over that project and impose proper mitigation~~,~~ or, if mitigation is not feasible, deny the project or override ~~any~~ unmitigated effects ~~that cannot be mitigated~~. We do not intend this Decision to determine in any way the conclusions or outcome of the Commission's review of the Eastshore Energy Center, which must be judged on its merits and the evidence presented in that proceeding.

P. 194, Traffic and Transportation, finding 3:

> 3. The Traffic and Transportation aspects of the amended project do not create significant direct or cumulative environmental effects. To the extent that a ~~potential~~ possible 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 possible cumulative impact in its consideration of the Eastshore project.

Pp. 197 – 198, Traffic and Transportation, condition **TRANS-10**:

TRANS-10 The project owner shall ensure that the following mitigation measures are implemented to discourage pilots from flying over or in the proximity to the RCEC. These would include:

- request that ~~have~~ the FAA issue a Notice to Airman (NOTAM), Category D, advising pilots to avoid overflight of the plant;

- request that ~~have~~ the FAA revise, as deemed necessary, any I~~i~~nstrument A~~a~~pproach Procedures for either the Hayward Executive Airport or the Metropolitan Oakland International Airport, that would be affected by the RCEC facility ~~that currently directs aircraft directly over the power plant at low elevation~~;

- request that the FAA insert a power plant depiction symbol at the RCEC site location on ~~revise~~ the San Francisco ~~Sectional~~ VFR Terminal Area Chart (scale: 1:250,000)~~ to include a marker showing where the plant is located and adding a recommendation about avoiding overflight~~; ~~and~~

- request that the FAA add a new remark to the A~~a~~irport S~~s~~urface O~~o~~bserving S~~s~~ystem (ASOS) equipment that advises pilots, as they approach or depart the airport in the southwest quadrant, to avoid direct overflight of the RCEC.~~;~~

- ~~request that the FAA add a marker and remark in the Airport Facility Directory and on the San Francisco Sectional Aeronautical Chart indicating the location of the RCEC;~~

- request that the Hayward Executive Airport submit aerodrome remarks describing the general location of the RCEC plant and advising against direct overflight of the RCEC plant to:

  A. the FAA National Aeronautical Charting Office (Airport/Facility Directory, Southwest United States);

  B. Jeppesen Sanderson Inc. (JeppGuide Airport Directory, Western Region); and

C. Airguide Publications (Flight Guide, Western States);

- modify the Hayward Executive Airport "fly friendly" pilot guides to include the RCEC site, at the project owner's expense;

- install air traffic hazard lighting at the top of each of the RCEC exhaust stacks and ~~non-elevated~~ lights at each corner of the facility fence line that would be visible to an aircraft in flight, to be operated 24 hours a day, 7 days a week; and

- advise the Hayward Executive Airport and the Metropolitan Oakland International Airport Air Traffic Control Towers ~~ATC tower~~, in writing, at least 10 days in advance of the first test or commissioning procedure that would produce a thermal plume and prior to the start of commercial operations.

Verification: Sixty days prior to the start of operation, the project owner shall provide copies of the new FAA ~~im~~approved and implemented NOTAM, instrument approach~~-~~(s), San Francisco ~~Sectional~~ VFR Terminal Area Chart, and a transcript of the ASOS recording to the City of Hayward for review, and the CPM for approval.

At least sixty days prior to the start of construction, the project owner shall submit to the CPM for approval final design plans for the power plant that depict the required air traffic hazard lighting. The lighting shall be inspected and declared operational by the CPM (or designate inspector) prior to the start of operations.

The project owner shall provide simultaneously to the CPM copies of all advisories sent to the Hayward and Oakland Air Traffic Control Towers.

Appendix A (Exhibit List) additions and modifications:

Exhibit 32 Letter dated May 30, 2007 from Barbara McBride, Calpine Corporation, to Brian Bateman, Bay Area Air Quality Management District regarding emission reduction credits swap. Sponsored by Applicant and received into evidence on September 5, 2007.

Exhibit 33 Figure 2.1-2—General Arrangement—with Aladdin parcel boundaries highlighted. Sponsored by Applicant and received into evidence on September 5, 2007.

Exhibit 34 Undated Option to Lease Agreement between Aladdin Depot Partnership and Anacapa Land Company, LLC. Sponsored by Applicant and received into evidence on September 5, 2007.

Exhibit 35 Letter dated July 18, 2007 from Acting Hayward City Manager Fran David to Eric Knight explaining the City's opinion that the "Wave" is no longer necessary. Sponsored by Applicant and received into evidence on September 5, 2007.

Exhibit 101A Declaration of Paul Richens dated July 27, 2007. Sponsored by Staff and received into evidence on September 5, 2007.

Exhibit 108 Alameda County Airport Land Use Commission Resolution 01-2007 dated August 16, 2007. Sponsored by Staff and received into evidence on September 5, 2007.

Dated September 10, 2007, at Sacramento, California.

_____

JOHN L. GEESMAN
Commissioner and Presiding Member
Energy Commission Siting Committee

_____

JEFFREY D. BYRON
Commissioner and Associate Member
Energy Commission Siting Committee