

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)
) Docket No. 01-AFC-7C
Amendment to the Application for Certification of)
the Russell City Energy Center Project)
_____)

**PROJECT OWNER'S COMMENTS
ON THE
PRESIDING MEMBER'S PROPOSED DECISION**

August 31, 2007

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**PROJECT OWNER’S COMMENTS ON THE
PRESIDING MEMBER’S PROPOSED DECISION**

Pursuant to the “Notice of Availability of the Presiding Members Proposed Decision”, the Russell City Energy Company, LLC (“Project Owner”) submits the following comments on the Presiding Member’s Proposed Decision (“Proposed Decision” or “PMPD”) issued on August 23, 2007.

The Proposed Decision represents the next to the last step in the Commission’s review of the Russell City Energy Center Amendment #1 – the culmination of an exhaustive and comprehensive review and analysis by the Commission Staff, myriad federal, state and local agencies and the general public. The Project Owner is pleased that the Proposed Decision recommends approval of the Amendment.

The Applicant thanks the Committee and the Hearing Officer for preparing a well-reasoned and comprehensive decision. The Proposed Decision contains more than 200 Conditions of Certification that add to or revise the conditions in the original license. The Applicant is in substantial agreement with each of the proposed conditions. Of course, as with any proposed document of this size and complexity, there are a few minor points which require correction or clarification. Set forth in Attachment 1 are the Applicant’s suggested corrections and clarifications. None of these changes are intended to substantively alter the findings or conditions of certification. We are hopeful that the Staff and intervenor will concur in these changes.

The Committee asked the parties to provide comments on the changes it made to Air Quality Condition AQ-SC12 limiting participation in the fireplace retrofit/woodstove replacement program to residents of Alameda County residing west of the Oakland/East Bay Hills and Traffic and Transportation Condition TRANS-10 adding additional pilot

awareness elements suggested by the Federal Aviation Administration and the Alameda County Airport Land Use Commission. The Project Owner accepts these changes. We propose slight grammatical revisions to TRANS-10.

We look forward to the opportunity to discuss these comments with the Committee on September 5, 2007.

Dated: August 31, 2007

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____/s/_____
Greggory L. Wheatland

Attorneys for Russell City Energy Company, LLC

ATTACHMENT 1

Russell City Energy Center Amendment No. 1

Comments on the Presiding Member's Proposed Decision

I. Project Description

Page 2, para 2, line 6 – “It’s successor, Russell City Energy Company, LLC...”

Comment: Typographical error.

Page 7, para 2, line 8 - “~~The~~ ~~While 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 3 1 3.2.).~~ (Amendment, Ex. 1, p. 3-4)”

Comment: The Project as originally licensed was designed to operate as a base load facility. The revised facility continues to be designed to operate as a baseload facility. The Staff Assessment is in error in characterizing the facility as designed to operate principally in a load following mode.

IV. Engineering Assessment

Facility Design

Page 39, para 1, line 8, “...references to the CBC in the Conditions should now be to the 2004~~7~~ version.”

Comment: The most current edition of the CBC is the 2007 edition. This should be changed throughout the engineering conditions that refer to the CBC.

Page 42, Condition GEN-2, Table 1, line 7, “Advanced Wastewater Treatment Plant Structure, Foundation, and Connections”

Comment: The Advanced Wastewater Treatment Plant is no longer part of the design. It has been replaced by the Title 22 Recycled Water Facility, which is listed in Table 1. This reference should be deleted from the table.

Transmission System Engineering

Page 60, 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 PO2186. The Project Owner 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, as reported in the Amendment petition (Amendment, Ex. 1, pp. 2-14)~~”

Comment: This revision reflects the update to the Environmental Analysis.

Page 61, para 1 – “Construction noise impacts to sensitive receptors, ~~including residences located as close as 300 feet from the transmission corridor,~~ can be mitigated by the imposition of conditions...”

Comment: This sentence refers generically to mitigation measures available for transmission line construction. We proposed deleting reference to residences as close as 300 feet because the nearest residence to the RCEC transmission corridor is approximately 2,900 feet away.

V. Public Health and Safety

Air Quality

Comment: In a letter to the Bay Area Air Quality Management District dated May 30, 2007, Russell City Energy Company, LLC requested permission to change some of the Emission Reduction Credits (ERCs) dedicated to the Russell City Energy Center. The purpose of the change is to use ERCs for the RCEC project that are from sources in Hayward, San Leandro and Oakland, rather than ERCs from more distant sources in the Bay Area. These changes were discussed at the Staff Assessment Workshop that was conducted on July 11, 2007. It is our understanding that these changes have been accepted by the District and are supported by all parties to the proceeding.

As set forth in the letter to the District, in order to apply these local ERCs to the RCEC, it is necessary for the Project Owner to exchange certain ERCs with the East Altamont Energy Center (EAEC). This exchange does not require an Amendment to the EAEC AFC because the Commission Decision approving the EAEC does not specify the ERCs assigned to that project.

By letter of July 30, 2007, the Project Owner submitted to the Committee a copy of the May 30, 2007 letter to the District and served this letter on all parties to this proceeding. In our July 30 letter to the Committee, we stated that if it is necessary to reopen the record to accept this revision, we respectfully request that the record be reopened for this purpose and that the Commission receive into evidence the May 30, 2007 letter to the District, as the Project Owner’s next exhibit in order.

The suggested rewording of Condition of Certification AQ-SC-11 is as follows:

AQ-SC11 The project owner shall surrender 12.2 tons per year of SO_x or SO_x-equivalent emission reduction credits (ERCs) from certificate 989, 28.5 tons per year of POC ERCs, and 154.8 tons per year of NO_x, or an equivalent combination of NO_x and POC ERCs from certificates 845, **602, 687, 688** and 855, prior to start of construction of the project.

Public Health

Page 109, para 1, line 6 – “The maximum cancer risk would be 1.4 in a million.

Comment: The Applicant’s analysis indicated the maximum cancer risk at the Maximum Impact Receptor location as 1.4 in a million (Amendment, Ex. 1, p. 3-122).

Hazardous Materials Management

Page 114, Condition HAZ-3, Verification, line 2, "...liquid hazardous material to the facility ~~to the aqueous ammonia storage tanks,...~~"

Comment: Typographical error.

VI. Environmental Assessment

Waste Management

Page 167, Condition WASTE-1, Verification, line 1, "The project owner shall notify the CPM in writing within 10 days of at least 120 days prior to any ground disturbance...becoming aware of any impending enforcement action..."

Comment: The additional text in the verification appears to be in error and was not a change that was suggested by the Project Owner or the Staff's FSA. The Project Owner suggests the following:

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.

VII. Local Impact Assessment

Land Use

Page 175, Condition LAND-2

Comment: The Project Owner proposes two changes to LAND-2.

First, we propose that the requirement to merge the parcels apply only to the parcels to which the Project Owner holds fee title. One of the four parcels which comprise the project site will not be held by the Project Owner in fee. Instead, this parcel – Aladdin (APN 43007000806) will be leased by the Project Owner pursuant to the terms of a long-term lease.

Second, we propose that the merger of the parcels held in fee by the Project Owner occur after the Project Owner acquires fee title to the City of Hayward parcel (APN 439009900200). Pursuant to the cooperation agreement between the City of Hayward and the Project Owner, the Project Owner will exchange the Runnels parcel for the City of Hayward Parcel after the Project Owner completes its use and occupancy of the Runnels parcel for construction laydown and parking. Therefore, the merger of the parcels held in fee by the Project Owner should occur after the Project Owner completes use of the Runnels parcel and executes the property exchange with the City of Hayward.

LAND-2 The Project Owner shall adjust the boundaries of all parcels to which the Project Owner holds fee title, of lot lines between the two all parcels 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).

Verification: Within 90 days after the Project Owner ceases use and occupancy of the Runnels parcel for laydown and parking. ~~At least 30 days prior to construction of the ree project,~~ the project owner shall submit evidence to the ~~Eenergy C~~ommission ~~C~~ompliance ~~P~~roject ~~M~~anager (~~CPM~~epm), indicating approval of the ~~lot line adjustment merger~~ by the Ceity of ~~H~~ayward. ~~T~~he submittal to the ~~CPM~~epm 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 Ceity. if all parcels or portions of parcels are not owned by the project owner at the time of the merger, a separate deed or lease shall be executed and recorded with the Ceounty Rrecorder, as required by municipal code §§10-3-290. Aa copy of the recorded deed or lease shall be submitted to the CPM epm, as part of the compliance package.

Noise

Page 177, para 2, line 4 - "The predicted noise level at the project site boundaries ~~are~~ is 75 dBA or less..."

Comment: Typographical error.

Page 180, Condition NOISE-6

Comment: The Project Owner proposes a slight clarification to Condition NOISE-6. Staff had proposed additional language to NOISE-6 that requires the construction of a sound wall along the southern edge of the project site. The Project Owner believes that it may be necessary to construct a sound wall to mitigate noise impacts and we will certainly do so if if necessary. However, our primary emphasis will be to mitigate noise emissions at the source. By reducing noise emissions at the source, we are able to reduce noise levels for the benefit of those working both within and outside the plant boundaries.

If noise emissions can be mitigated at the source such that noise limits are in compliance at the plant boundaries and monitoring sites without a sound wall, then it should not be necessary to build the wall. Therefore, we request that NOISE-6 be revised (as shown below) to require construction of the sound wall only if the noise survey shows that it is necessary to do so in order to mitigate the impacts at or below compliance levels.

NOISE-6 The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that the project will not cause resultant noise levels to exceed the noise standards of the City of Hayward Municipal Code or Noise Element. ~~Included shall be a sound wall along the southern edge of the project site.~~

No new pure tone components may be introduced. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints. Steam relief valves shall be adequately muffled to preclude noise that draws legitimate complaints.

Protocol: Within 30 days of the project first achieving a sustained output of 80 percent or greater of rated capacity, the project owner shall conduct short-term survey noise measurements at the eastern boundary of the project site, and at monitoring sites 4-, 2, 3, 4, and 5. The short-term noise measurements shall be conducted during both daytime (7 a.m. to 10 p.m.) and nighttime (10 p.m. to 7 a.m.) periods. The survey

during power plant operation shall also include measurement of one-third octave band sound pressure levels at each of the above locations to ensure that no new puretone noise components have been introduced. If the results from the survey indicate that the noise level due to the project at monitoring site 2 exceeds 44 dBA Leq, or that the noise standards of the Hayward Noise Element have been exceeded at the eastern boundary of the project site or at monitoring sites 4, 4, or 5, mitigation measures shall be implemented to the project to reduce noise to a level of compliance with these limits **including, but not limited to, construction of a sound wall along the southern edge of the project site.** If the post-construction noise survey indicates that pure tones have been introduced by plant operations, the project owner shall take any necessary corrective actions to eliminate the pure tones.

Socioeconomics

Page 183, Condition SOCIO-1

Comment: The entire condition (SOCIO-1) should be deleted, as indicated on page 182. On page 183, the bulleted items for SOCIO-1 should be indicated in strikethrough type, as is the rest of the condition text.

Traffic and Transportation

Pp 197-198, Condition TRANS-10, bullets 1, 2, 3, 4

Comment: For consistency, the Project Owner recommends minor revisions so that the bulleted items are all phrased in the same way, as follows:

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) advising pilots to avoid overflight of the plant;
- **request that** ~~have~~ the FAA revise any instrument approach that currently directs aircraft directly over the power plant at low elevation;
- **request that the FAA** revise the San Francisco Sectional Chart 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 airport surface observing system (ASOS) equipment that advises pilots, as they approach or depart the airport, 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;
- 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 that would be visible to an aircraft in flight, to be operated 24 hours a day, 7 days a week;
- advise the Hayward Executive Airport 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.

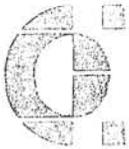
Verification: Sixty days prior to the start of operation, the project owner shall provide copies of the new FAA improved and implemented NOTAM, instrument approach(s), San Francisco Sectional Chart, and a transcript of the ASOS recording to the City of Hayward for review, and the CPM for approval.

Pp 197-198, Condition TRANS-10, bullet 6 "...install air traffic hazard lighting ... and non-elevated lights at each corner of the facility..."

Comment: Does this refer to the four major property corners, or to corners of the control and administration buildings, or the power plant equipment? Would "non-elevated lights" refer to lights mounted on fence posts but not above the fence top? The Project Owner suggests the following:

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

ATTACHMENT 2



CALPINE

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May 30, 2007

Brian Bateman
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Emission Reduction Credit Swap for the Russell City Energy Center

Dear Mr. Bateman:

Calpine Corporation would like to change some of the Emission Reduction Credits (ERCs) associated and dedicated to the Russell City Energy Center and East Altamont Energy Center. The ERCs are to be allocated as follows:

Cert. Number	Location	Current designation	New designation	NOx (Tons)	POC (tons)
#688	Hayward, White Cap, Inc	Calpine Corporation	Russell City Energy Center		52.3
#687	San Leandro James River Corp.	East Altamont Energy Center	Russell City Energy Center	0.6	43.8
#602	Oakland Delmonte Corp. Can Manufacturing Plant	East Altamont Energy Center	Russell City Energy Center	2.1	41
#855	San Francisco	Russell City Energy Center	Russell City Energy Center	43.5	
#855	San Francisco	Russell City Energy Center	Calpine Corporation	9.61	
#815	Hercules	Russell City Energy Center	East Altamont Energy Center		80.325
#815	Hercules	Russell City Energy Center	Calpine Corporation	49.864	

The ERCs for Russell City would be:

Valid Emission Reduction Credit	NOx	POC	Distance
Cert. # 688 (Hayward)		52.3	
Cert. # 687 (San Leandro)	0.6	43.8	~10 miles
Cert. #602 (Oakland)	2.1	41	~15 miles
Cert #855 (San Francisco)	43.5		
Total ERCs	46.2	137.1	
Offsets per BAAQMD Regulations	154.8	28.5	
Outstanding balance	-108.6	+108.6	

The NOx and POC ERCs for East Altamont would be:

Valid Emission Reduction Credit	NOx	POC
Cert. #645	107.9	
Cert. #662	73.6	
Cert. #716	11.7	0.2
Cert. #947	95.55	
Cert. #749	13.7	
Cert # 815		80.325
Cert # 661		4.23
Total ERCs	303.45	84.755
Offsets per BAAQMD Regulations	302.45	84.755

Please let me know if you have any questions or require some more information, please contact me at 925-0570-0849.

Sincerely,



Barbara McBride
Director, Environmental, Health and Safety
Calpine Corporation

CC Lance Shaw – CEC
City of Hayward

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)
) Docket No. 01-AFC-7C
Amendment to the Application for Certification of)
the Russell City Energy Center Project)
)
)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on August 31, 2007, I deposited copies of the attached *Project Owner's Comments on the Presiding Member's Proposed Decision* by email and in the United States mail in Sacramento, California, with first-class postage thereon fully prepaid and addressed to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.

_____/s/_____
Karen A. Mitchell

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01-AFC-7C

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