



**California Energy Commission  
May 31, 2023 Business Meeting  
Backup Materials for Agenda Item No 07:  
Russell City Energy Center (RCEC) Settlement Agreement (01-AFC-07C).**

The following backup materials for the above-referenced agenda item are available in this PDF packet as listed below:

1. Proposed Order Approving Settlement (attached below).
2. CEQA Exemption Memo, available at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=01-AFC-07C>
3. Settlement Agreement and Release (attached below).

STATE OF CALIFORNIA  
STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

***IN THE MATTER OF:***

**Russell City Energy Center**

**Russell City Energy Company, LLC**

**Docket No.: 01-AFC-07C**

**[PROPOSED] ORDER APPROVING  
SETTLEMENT**

**I. BACKGROUND**

Russell City Energy Company, LLC (RCEC) owns and operates the Russell City Energy Center (“facility”) licensed by the California Energy Commission (CEC) and located in Alameda County, California. The Final Commission Decision (Commission Decision) was issued on September 11, 2002, certifying the power project (Docket No. 01-AFC-07C). The Commission Decision governs the construction, operation, and decommissioning of the facility.

On May 27, 2021, the steam turbine and generator at the Russell City Energy Center incurred damage as a result of a mechanical failure due to an overspeed event (“May 27th Event” or “Event”).

Following the May 27th Event, RCEC worked with Energy Commission Staff to enable simple-cycle operations at the Russell City Energy Center to provide critically needed generation capacity and frequency and voltage support to serve local and system grid reliability needs for the State of California during the summer and fall of 2021. On June 3, 2021, RCEC filed a post-certification petition with the CEC to modify Russell City Energy Center’s license to allow the facility to temporarily operate in simple-cycle mode. On July 15, 2021, the Energy Commission voted to approve RCEC’s petition for modifications to allow the facility to temporarily operate in simple-cycle mode, subject to certain limitations in the Energy Commission’s Order No. 21-0715-3.

Immediately after the May 27th Event, RCEC retained Structural Integrity Associates (“SIA”) to conduct an independent failure investigation and to perform a root cause assessment. SIA determined that the May 27th Event was caused by a water induction event when pressurized, high temperature water condensed in the out-of-service HRSG #1.

From June 2021 through March 21, 2022, CEC and California Public Utilities Commission Staff conducted site visits and investigations at the Russell City Energy Center relating to the May 27th Event.

On April 22, 2022, the CEC staff filed its investigation report, titled Russell City Energy Center May 2021 Incident: Root Cause Gap Analysis (Staff's Investigation Report), to the RCEC compliance docket. Staff's Investigation Report determined that there were three causal factors to the incident. The factors included: deficiencies in maintenance for some critical equipment, deficiencies in control room operator interface and training, and inadequate protection from water induction. These factors led the investigation team to develop additional corrective actions to address the deficiencies that contributed to the incident, which are contained in Chapter 4 of the Staff's Investigation Report and supplemented the corrective actions recommended by SAI.

On April 26, 2022, the Energy Commission found that the corrective actions identified by SAI and the additional corrective actions contained in Chapter 4 of Staff's Investigation Report would be sufficient to enable RCEC to safely return to operations in combined cycle mode and issued Order No. 22-0426-3 authorizing the CEC's Executive Director to verify that all required repairs, testing, and corrective actions were completed before notifying Russell City Energy Center that it could return to combined-cycle operations.

By letter dated June 1, 2022, the Energy Commission Executive Director determined that the necessary corrective actions had been completed and notified Russell City Energy Center that it could restart in combined cycle mode and proceed with normal operations.

On October 11, 2022, CEC Staff sent RCEC a Notice of Violation letter alleging "instances of noncompliance with the General Conditions Including Compliance Monitoring Plan for the Russell City Energy Center".

RCEC cooperated with Energy Commission Staff throughout Staff's investigation and committed significant resources to review and audit the Russell City Energy Center following the May 27th Event, implement operational improvements recommended by Energy Commission Staff, and swiftly repair the Russell City Energy Center so that the facility was available to serve critical energy reliability needs of the State. RCEC has submitted all documents requested by Commission Staff, accommodated Commission Staff site visits, and provided access to documents, facility staff, and resources. Commission Staff and RCEC participated in numerous meetings and took action on many identified items.

RCEC's cooperation and other efforts to repair and improve the Russell City Energy Center have saved the Energy Commission time and resources in further investigation and adjudication of the alleged violations. Given RCEC's continuing and diligent cooperation, the Energy Commission Staff and RCEC believe that rather than engaging in formal adjudication, it would be more productive to enter into this settlement.

## **II. STAFF RECOMMENDATION**

In developing this settlement, Commission Staff considered the cooperation of RCEC; the facts developed by Energy Commission and California Public Utilities Commission staff, RCEC, and SIA during the course of the investigation; the successful efforts by RCEC to restore the Russell City Energy Center to simple-cycle operations to meet local and statewide reliability needs; and the continuing dedication of substantial time, money, and other resources by RCEC to further enhance the safety and reliability of the Russell City Energy Center. Commission Staff applied the relevant factors in Public Resources Code Section 25534.1(e) to determine that settlement, rather than formal adjudication, is a more appropriate use of the Commission's and RCEC's collective resources.

The legal requirements at issue, as well as Commission Staff's allegations, and RCEC's admissions and denials, are included in the Settlement Agreement, which provides for payments of \$1,250,000 by RCEC to the CEC for deposit in the General Fund and \$1,250,000 by RCEC to the City of Hayward to fund energy projects in the city.

Staff recommends that the CEC approve the Settlement Agreement and direct the Executive Director to execute the Settlement Agreement on behalf of the CEC.

## **III. ENERGY COMMISSION FINDINGS**

- 1) Public Resources Code section 25532 requires the CEC to establish a monitoring system to assure that any facility certified by the CEC is constructed and is operating in compliance with air and water quality, public health and safety, and other applicable regulations, guidelines, and conditions adopted or established by the CEC or specified in the written decision.
- 2) Public Resources Code section 25534 empowers the CEC to amend or revoke a license or impose administrative civil penalties.
- 3) Public Resources Code section 25534.1 sets forth factors to consider when determining the amount of an administrative civil penalty.
- 4) In reaching resolution, Staff has considered the factors identified in Public Resources Code section 25534.1, specifically the nature, circumstance, extent, and gravity of the alleged violations, the cost to the state in pursuing the enforcement action, efforts by RCEC to resolve issues, and its overall cooperation.
- 5) The agreed settlement is appropriate and reflects a fair resolution of the issues.
- 6) Approval of the settlement is exempt from the California Environmental Quality Act as set forth in California Code of Regulations, title 14, sections 15060(c)(2) & (3), 15061(b)(2) & (3), 15321, and 15378(a) & (b)(5).

## **IV. CONCLUSION AND ORDER**

The CEC hereby approves the Settlement Agreement and directs the Executive Director or their designee to execute the Settlement Agreement on behalf of the CEC, file a Notice

of Exemption with the Office of Planning and Research, and take any other steps necessary to execute the Settlement Agreement.

**IT IS SO ORDERED.**

**CERTIFICATION**

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on May 31, 2023.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated:

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Liza Lopez  
Secretariat

## SETTLEMENT AGREEMENT AND RELEASE

The California Energy Commission (“Energy Commission” or “Commission”) and the Russell City Energy Company, LLC (“RCEC”), individually “Party” and collectively the “Parties,” enter into this Settlement Agreement and Release (“Agreement”).

### I. RECITALS

1. On May 27, 2021, the steam turbine and generator at the Russell City Energy Center incurred damage as a result of a mechanical failure due to an overspeed event (“May 27<sup>th</sup> Event”).
2. RCEC acknowledges the seriousness of the steam turbine event and the concern it caused in the community. RCEC is deeply committed to the safety and well-being of the community, our employees, and the facility. The seriousness of the event resonated within the company at all levels.
3. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal powerplant with generating capacity of 50 megawatts or more and any facilities appurtenant thereto.” (Pub. Resources Code §§ 25110, 25120.)
4. RCEC owns and operates the Russell City Energy Center licensed by the Commission and located in the City of Hayward, California. Russell City Energy Center is a 600-megawatt gas-fired, wet-cooled, combined cycle electric generating facility, was first certified by the Energy Commission on September 11, 2002 (01-AFC-07, “Final Decision”) and began commercial operation on August 8, 2013. The Final Decision and subsequent amendments govern the construction and operation of the Russell City Energy Center.
5. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with conditions specified in the Commission’s Final Decision.
6. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (“LORS”).
7. Following the May 27<sup>th</sup> Event, RCEC worked with Energy Commission Staff to enable simple-cycle operations at the Russell City Energy Center to provide critically needed generation capacity and frequency and voltage support to serve local and system grid reliability needs for the State of California during the summer and fall of

2021. On June 3, 2021, RCEC filed a post-certification petition with the CEC to modify Russell City Energy Center's license to allow the facility to temporarily operate in simple-cycle mode. On July 15, 2021, the Energy Commission voted to approve RCEC's petition for modifications to allow the facility to temporarily operate in simple-cycle mode, subject to certain limitations in the Energy Commission's Order No. 21-0715-3.

8. From June 2021 through March 21, 2022, Energy Commission and California Public Utilities Commission Staff conducted site visits and investigations at the Russell City Energy Center relating to the May 27<sup>th</sup> Event.

9. RCEC cooperated with Energy Commission Staff throughout Energy Commission Staff's investigation and committed significant resources to review and audit the Russell City Energy Center following the May 27<sup>th</sup> Event, implement operational improvements recommended by Energy Commission Staff, and swiftly repair the Russell City Energy Center so that the facility was available to serve critical energy reliability needs of the State. RCEC has submitted all documents requested by Commission Staff, supported Commission Staff site visits, and provided access to documents and facility staff and resources. Commission Staff and RCEC participated in numerous meetings and took actions on any items identified.

10. Immediately after the May 27<sup>th</sup> Event, RCEC retained Structural Integrity Associates ("SIA") to conduct an independent failure investigation and to perform a root cause assessment. SIA determined that the May 27<sup>th</sup> Event was caused by a water induction event from pressurized, high temperature water condensed in the out-of-service HRSG #1.

11. SIA recommended four measures to restore the Russell City Energy Center to combined-cycle operations: (1) Implementation of controls logic to utilize existing HRSG reheated system drains to discharge water from the HRSG harps when offline; (2) Implementation of controls logic to utilize existing HRSG reheated system drains to alleviate undesirable pressure within the HRSG reheater system when offline; (3) reconfiguration of the CRH stop valve; and (4) installation of an electrically actuated HRH stop/check valve. All four measures were adopted by RCEC. RCEC also independently evaluated and implemented additional measures at the Russell City Energy Center to provide further protection against water induction events.

12. RCEC, Energy Commission Staff, and third-party experts, including a Delegate Chief Building Official ("DCBO") engaged in technical conversations and meetings with respect to the Russell City Energy Center. RCEC implemented all recommendations made by Energy Commission Staff, and California Public Utilities Commission staff, in addition to those recommended by SIA, with respect to the Russell City Energy Center.

13. By letter dated June 1, 2022, the Energy Commission Executive Director notified Russell City Energy Center that it could restart in combined cycle mode and proceed with normal operations returned to full, combined cycle operation.

14. On October 11, 2022, Energy Commission Staff sent a Notice of Violation and attachments (“the October 11, 2022 NOV”) letter to RCEC alleging “recent instances of noncompliance with the General Conditions Including Compliance Monitoring and Closure Plan for the Russell City Energy Center”.

15. In response, RCEC provided technical information and engaged in information exchanges with Energy Commission Staff to resolve alleged instances of noncompliance and demonstrate that the Russell City Energy Center was designed, constructed, and operated in compliance with all applicable LORS and Conditions of Certification.

16. The Parties share the common objective of ensuring that the Russell City Energy Center operates in a safe and reliable manner.

17. RCEC’s cooperation and other efforts to repair and improve the Russell City Energy Center have saved the Energy Commission time and resources in further investigation and adjudication of the alleged violations. Given RCEC’s continuing and diligent cooperation, the Energy Commission Staff and RCEC believe that rather than engaging in formal adjudication, it would be more productive to enter into this Agreement.

18. RCEC and representatives of the City of Hayward (“City”), including the Mayor, the City Manager, the Fire Chief, and the Fire Department Training Battalion Chief, met on at least ten (10) separate occasions regarding the May 27<sup>th</sup> Event. RCEC plans to continue its efforts to communicate, cooperate, and coordinate with the City and continues to take the concerns of the City and its relationship with the community very seriously and has committed to ensuring improved communication with the City going forward.

19. In light of this commitment, on February 13, 2023, RCEC and the City entered into the *Coordination, Resiliency, and Action Agreement* (“Coordination Agreement”) to set forth a summary of the understanding and agreement between RCEC and the City, regarding coordination, resiliency, and action following the May 27<sup>th</sup> Event. The Coordination Agreement included the following benefits for the City and the Hayward Fire Department: (1) specified cooperation, communication, and coordination efforts between the City, the Hayward Fire Department, and RCEC and (2) (i) a contribution of One Hundred and Fifty Thousand Dollars (\$150,000) by RCEC to the Hayward Fire Department in support of the development of a Hazardous Materials Unit and (ii) a contribution of Twenty Thousand Dollars (\$20,000) by RCEC to an appropriate cultural project to recognize the history of Russell City (together the “Paid Community Benefit”).

20. On April 10, 2023, Senator Wahab and Assembly Member Ortega, two members of the California Legislature who represent the City of Hayward community, submitted comments to the Energy Commission related to the May 27<sup>th</sup> Event and expressed the desire to have further community benefits to the City of Hayward. In response to Senator Wahab and Assembly Member Ortega's request, and with the support of the Energy Commission, RCEC and the City amended and restated the Coordination Agreement ("Amended and Restated Coordination Agreement"), which was approved by the City on May 16, 2023 and executed by RCEC and the City on May 18, 2023. In accordance with the terms of the Amended and Restated Coordination Agreement, RCEC will make an additional community benefit contribution of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) to the City to fund projects of the City's selection, limited to clean energy efficiency projects in the City to support grid resiliency, including microgrids, solar energy and/or battery storage installations. It is the Parties' understanding that the City will publicly report the progress of these projects on a quarterly basis. Once this additional payment is made, the total Paid Community Benefit as defined in the Amended and Restated Coordination Agreement to the City and the Hayward Fire Department, collectively, will be One Million Four Hundred Twenty Thousand Dollars (\$1,420,000).

21. In developing this Agreement, the Commission considered the cooperation of RCEC; the facts developed by the Energy Commission Staff, California Public Utilities Commission staff, RCEC, and SIA during the course of the investigation; the successful efforts by RCEC to restore the Russell City Energy Center to simple-cycle operations to meet local and statewide reliability needs; the Coordination Agreement with the City, as amended and restated as described above in Section I(20); the continuing dedication of substantial time, money, and other resources by RCEC to further enhance the safety and reliability of the Russell City Energy Center, including the Paid Community Benefit; and the relevant factors in the Public Resources Code Section 25534.1(e) to determine that settlement, rather than formal adjudication, is a more appropriate use of the Commission's and RCEC's collective resources.

## **II. TERMS AND RELEASE**

To resolve the above-described alleged violations and terminate and settle these matters, and in consideration of Energy Commission Staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise seeking legal redress against RCEC for the above-described alleged violations, the Energy Commission and RCEC agree as follows:

1. This Agreement settles all regulatory and legal matters for the Russell City Energy Center related to the May 27<sup>th</sup> Event, as of the Effective Date (as defined below in Section II(21)) regarding compliance with all applicable LORS and Conditions of Certification related to (1) the design and construction of the Russell City Energy Center; (2) the maintenance and operation of the Russell City Energy Center; (3) all federal, state, and local regulatory reporting requirements; and (4) the

on-site contingency plan. This Agreement also settles all regulatory and legal matters, known as of the Effective Date, related to investigations and inquiries into the design, construction, operation, and maintenance of the Russell City Energy Center.

2. RCEC shall execute the Agreement and provide a copy no later than thirty (30) days after approval of this Agreement by the Energy Commission at a publicly noticed Business Meeting to the attention of:

Elizabeth Huber  
Director, Siting Transmission and Environmental Protection Division  
California Energy Commission  
715 P Street  
Sacramento, CA 95814

3. To settle these matters as full accord and satisfaction, RCEC shall provide notice of the payment to the City specified in Section I(20) and submit to the Energy Commission a payment in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) for deposit in the General Fund within thirty (30) days of RCEC's receipt of written notification by the Energy Commission's Compliance Program Manager ("CPM") of the execution of the Settlement Agreement by the Executive Director. Payment shall be made by electronic transfer to the Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.

4. If the Energy Commission does not approve the Agreement as presented for approval, it shall become null and void. RCEC further agrees that if this matter comes before the Energy Commission in an administrative adjudication, members of the Energy Commission and the Executive Director shall not be disqualified from participation because of prior consideration of this Agreement.

5. This Agreement shall apply to and be binding upon RCEC and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary, affiliates, and parent corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

6. This Agreement shall constitute the full and final settlement of all matters related to the design, construction, maintenance, and operation of the Russell City Energy Center, as described in Section II(1), subject to RCEC's payment of the settlement amounts specified in Section II(3).

7. In consideration for RCEC's entry into this Agreement and for the settlement payments specified in the Terms and Release provisions of this Agreement, the Commission hereby releases RCEC and its principals, directors, officers, agents, employees, shareholders, subsidiaries, affiliates, parent corporations, and predecessors and successors from any and all claims for violations of the Warren-

Alquist Act, the Commission's Regulations, the Final Decision, as subsequently amended, and applicable codes for the matters described in Section II of this Agreement (the "Release").

8. RCEC does not admit, and this Agreement does not constitute an admission by RCEC, as to any of Energy Commission Staff's allegations in the October 11, 2022 NOV, including those related to the May 27<sup>th</sup> Event. This Agreement does not constitute an admission by RCEC of any violation of the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the Russell City Energy Center. Further, this Agreement is not evidence, and does not constitute an admission by RCEC, that the Russell City Energy Center is, or was, ever out of compliance with any applicable laws, ordinances, regulations, and standards. This Agreement represents a negotiated compromise on the part of all Parties and shall not constitute precedent for any future matters or proceedings before the Energy Commission or courts. RCEC reserves the right to contest the use of this Agreement in any other matter or proceeding, except in a proceeding to enforce the Agreement itself.

9. To the extent required by law, neither Party shall disclose any confidential information provided in support of this Agreement unless (a) written permission to do so has been provided by the Party providing the information, or (b) disclosure is required by law. To be confidential, information must be marked with wording such as "Confidential," "Proprietary," "Trade Secret," or other terms sufficient to provide notice of the confidential nature of such information. In connection with requests for disclosure under law to the extent allowed by law, the disclosing Party will use reasonable efforts to (i) notify the other Party prior to any disclosure of confidential information and (ii) reasonably cooperate with the other Party's efforts to prevent or limit such disclosure.

10. This Agreement constitutes the entire agreement and understanding between the Parties, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and RCEC.

11. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties to this Agreement.

12. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.

14. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.

15. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

16. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

17. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.

18. The Commission agrees to provide a copy to RCEC at least one business day prior to the Commission's issuance of any press release regarding this Agreement.

19. The undersigned represent that they have the authority to execute this Agreement.

20. This Agreement is effective immediately upon signature by both Parties (the "Effective Date").

21. The Parties agree that pdf and/or electronic signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

**California Energy Commission**

**Russell City Energy Company, LLC**

By: \_\_\_\_\_  
Name: Drew Bohan  
Title: Executive Director  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date: