

<b>DOCKET</b>	
01-AFC-7C	
<b>DATE</b>	JUL 16 2007
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STATE OF CALIFORNIA  
 Energy Resources Conservation  
 and Development Commission

In the Matter of: )  
 )  
 Amendment to the Application for Certification of ) Docket No. 01-AFC-7C  
 the Russell City Energy Center Project )  
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**PROJECT OWNER'S PREHEARING CONFERENCE STATEMENT**

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July 16, 2007

Attorneys for Russell City Energy  
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STATE OF CALIFORNIA

Energy Resources Conservation  
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In the Matter of: )  
 ) Docket No. 01-AFC-7C  
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**PROJECT OWNER’S PREHEARING CONFERENCE STATEMENT**

**I. INTRODUCTION**

Pursuant to the Notice of Prehearing Conference, dated June 27, 2007 (the “Notice”) Russell City Energy Company, LLC (“Project Owner”) hereby files this Prehearing Conference Statement.

As indicated below, the Applicant and Commission Staff (“Staff”) have successfully resolved almost all substantive issues regarding the certification of the proposed facility.

We respond below to the specific issues raised in the Notice.

**II. APPLICANTS RESPONSE TO THE NOTICE**

**A. The topic areas that are complete and ready to proceed to evidentiary hearings.**

All topic areas are complete and ready to proceed to evidentiary hearings.

**B. The topic areas that are not complete and not ready to proceed to evidentiary hearings and the reasons therefore.**

None.

All topic areas are complete and ready to proceed to evidentiary hearings.

**C. The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic.**

Following the Staff Assessment Workshop that was held on July 11, 2007 four topic areas remain potentially disputed and may require adjudication. As noted below, the Staff is reviewing its position regarding several of these issues. The Applicant is hopeful that when the errata to the Staff Assessment is issued, the number of disputed issues will be further reduced.

The following is a description of the precise nature of the dispute for each topic. A detailed discussion of each dispute is set forth in the Applicant's testimony for the specified topics.

### **1. Air Quality**

The Final Determination of Compliance ("FDOC") issued by the Bay Area Air Quality Management District ("District") adopts a precursor organic compounds ("POC") limit of 295 lbs/day. The Staff Assessment proposes in AQ-SC7, a POC limit of 157 lbs/day. For the reasons set forth in our Air Quality testimony, we urge the Commission to adopt the POC limit adopted by the District in the FDOC.

### **2. Land Use**

The Staff Assessment asserts that "The operation of the Russell City Energy Center (RCEC) would occasionally (approximately seven percent of the time) generate plumes that could be a substantial hazard to aircraft operations at the Hayward Executive Airport..." (SA, p.4.10-1) Based on this assertion, the Land Use Section of the Staff Assessment states that "it appears that the thermal plumes generated by the RCEC project have the potential to endanger the maneuverability of aircraft within the Hayward Airport Approach Zoning Plan boundaries; Hazard Protection Zone (HPZ); proposed Airport Influence Area (AIA), and transitional airspace for the Hayward Executive Airport. Therefore, siting of this project at the proposed location would be inconsistent with HMC §10-6.35, the current ALUPP, and proposed draft ALUCP."(SA, p.4.5-1)

The Project Owner strongly disagrees with the Staff Assessment assertions regarding aviation safety. As explained in our testimony, the FAA recently completed a risk analysis/assessment of thermal industrial plumes. As part of the risk analysis/assessment, the FAA team studied 30 years (1975-2004) of General Aviation aircraft accident data representing more than 849 million flight hours. During this time period not one single accident or incident could be contributed to overflight of a thermal industrial plume. The FAA Study found that current regulations and advisories as well as the present Notice to Airmen (NOTAM) flight restrictions should preclude prudent pilots from flying through or near plumes, thereby making the aviation risk essentially zero.

As set forth in our testimony, the Project Owner has commissioned an independent plume vertical velocity assessment for the Russell City Energy Center. This assessment confirms the FAA findings. Even in the unlikely event that aircraft were to fly over the RCEC project (due to pilot error or inadvertence), the risk that the aircraft would be endangered by thermal plumes is essentially zero.

However, to make a safe situation even safer, the Project Owner recommends that the Commission adopt a condition of certification requesting the issuance of a NOTAM for the RCEC project. Based on current FAA regulations and advisories and a newly issued NOTAM, the Commission should conclude that prudent pilots will not fly through or near plumes and that the project therefore poses no risk to aviation.

### **3. Soil and Water**

The Staff Assessment proposes three changes in Condition Soil & Water 4 as set forth in the current license. First, the Staff Assessment proposes to reduce the number of days per year the RCEC would be authorized to use potable water as a backup supply in the case of *unavoidable* interruption in the supply of recycled water from the City's WPCF or the RCEC's on-site Title 22 facility. Second, the Staff Assessment proposes to strike in its entirety the exemption for natural disasters. Third, the Staff Assessment proposes to impose the Project Owner's estimate of consumption of 4 AFY of potable water for sanitary and domestic purposes as a cap on consumption for these purposes.

The Project Owner opposes these changes to Soil & Water 4. Each of the conditions that the Staff Assessment proposes to change in the current license were carefully considered by the Commission in the original proceeding and were supported by substantial evidence. In contrast, the Staff has not offered any new evidence to support these proposed changes. Regarding the possible use of potable water in the event of emergency, Staff believes that the design and redundancy incorporated in the Title 22 RWF and the location of the WPCF justifies lowering the cap for the amount of potable water use for process and cooling purposes from 45 to 20 days in any one operating year. However, the issues of design and redundancy were considered in formation of the existing condition, and there has been no change in design or redundancy that would warrant cutting this contingency by more than half.

Whenever recycled water is available for cooling purposes, the RCEC will use recycled water. However, in the event of an emergency or natural disaster that makes the supply unavailable, it is in the public interest to permit the use of alternative supplies. The Staff's proposal, on the other hand, poses a serious and unnecessary threat to the reliability of California's energy system and to the public health and welfare.

Regarding the use of potable water for sanitary and domestic purposes. Staff concedes that "a LORS analysis of this relatively small amount of potable water consumption was not warranted." Yet, inexplicably where there is no standard or restriction on the use of potable water for domestic purposes, Staff proposes to arbitrarily impose its own standard.

Therefore, the Project Owner recommends that the Staff's proposed revisions to Soil & Water 4 be rejected.

### **4. Traffic and Transportation**

The question of aviation safety is addressed in both the Land Use and Traffic and Transportation Section of the Staff Assessment. Please see our description of the dispute under Land Use, above.

## 5. Other issues

The Project Owner has proposed a limited number of other revisions to the Conditions of Certification set forth in the Staff Assessment, as described more fully in our testimony. The Staff is reviewing these proposals and we hope and expect that they will agree to our suggestions. In the event that there is not agreement with the Staff, the Project Owner does not consider these issues to represent substantial points of conflict and we do not believe evidentiary hearings are necessary to resolve these issues.

- D. The identity of each witness sponsored by each party, the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness.**

The identity of each witness sponsored by the Applicant and the topic areas to be presented by each witness are set forth in Attachment 1. The qualifications of each witness are presented in the statement of qualifications and resumes included in each witness' testimony. A brief summary of the testimony to be offered by each witness is set forth at the beginning of each witness's testimony.

For the direct testimony of the Applicant's witnesses on the contested issues, we would recommend an informal hearing be conducted. An informal hearing, based on past practice, would consist of (1) the witnesses being sworn, (2) each witnesses making a brief oral summary of their testimony, (3) questions from the Committee to the witnesses, and (4) questions from the public. We would estimate 30 minutes each for air quality and water quality issues, and 60 minutes for aviation-related issues (land use and traffic and transportation).

- E. Topic areas upon which a party desires to cross-examine witness(es), a summary of the scope of such cross-examination, and the time desired for such cross-examination.**

If an informal hearing is held, we do not anticipate the need to conduct cross examination. We would reserve the opportunity to pose questions to the other witnesses in the course of an informal hearing.

- F. A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply.**

This list is set forth as Attachment 2.

- G. Proposals for hearing dates, briefing deadlines, vacation schedules, and other scheduling matters;**

A prehearing conference and evidentiary hearing has been set for July 19. The Project Owner is hopeful that the evidentiary hearings will be concluded on the 19<sup>th</sup>. If additional

hearings are necessary, the Project Owner is available for evidentiary hearings on any date to be set by the Committee.

If briefs are required, the Applicant requests that an expedited transcript be prepared on any issues to be briefed. We would recommend one round of concurrent briefs to be filed seven days after receipt of the transcript.

**H. For all topics, the parties shall review the proposed Conditions of Certification for enforceability, comprehension, and consistency with the evidence, and submit any proposed modifications.**

The Project Owner's proposed modifications are set forth in our testimony.

July 16, 2007

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By 

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Attorneys for Russell City Energy Company, LLC

# Attachment 1

## Project Owner's Witnesses and Sponsoring Testimony

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Sponsors	Topic or Exhibit
Mike Argentine	Engineering, Transmission Line Safety and Nuisance, Transmission System Engineering, Compliance
Gregory Darvin, Barbara McBride	Air Quality
Douglas Davy	Biological Resources
Douglas Davy	Cultural Resources
Douglas Davy	Geology and Paleontology
Sarah Madams	Hazardous Materials
Douglas Davy	Land Use
Douglas Davy	Noise
Gregory Darvin	Public Health
Douglas Davy	Socioeconomics
Douglas Davy, Barbara McBride	Soil and Water Resources
Loren Bloomberg, Douglas Davy, Christine Killip, Marshall W. Graves, Jr.	Traffic and Transportation
Thomas Priestley	Visual Resources
Sarah Madams	Waste Management
Sarah Madams	Worker Safety and Fire Protection

# Attachment 2

## Project Owner's List of Exhibits

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Exhibit	Document Name	Technical Area(s)
1	Amendment Petition No.1	All discipline areas
2	Engineering, Transmission System Engineering, Transmission Safety and Nuisance, Compliance Testimony	Engineering, Transmission System Engineering, Transmission Safety and Nuisance, Compliance
3	Air Quality Testimony	Air Quality
4	Biological Resources Testimony	Biological Resources
5	Cultural Resources Testimony	Cultural Resources
6	Geology and Paleontology Testimony	Geology and Paleontology
7	Hazardous Materials Testimony	Hazardous Materials Management
8	Land Use Testimony	Land Use
9	Noise Testimony	Noise
10	Public Health Testimony	Public Health
11	Socioeconomics Testimony	Socioeconomics
12	Soil and Water Resources Testimony	Soil and Water Resources
13	Traffic and Transportation Testimony	Traffic and Transportation
14	Visual Resources Testimony	Visual Resources
15	Waste Management Testimony	Waste Management
16	Worker Safety and Fire Protection Testimony	Worker Safety and Fire Protection Testimony
17	Applicant's Responses to CEC Staff data Requests 1-52 – January 17, 2007	Air Quality, Biology, Cultural Resources, Geology and Paleontology, Land Use, Soil and Water Resources, Transmission System Engineering, Waste Management
18	Applicant's Response to CEC Staff Data Request #28, Final Geotechnical Report – February 12, 2007	Geologic Hazards and Resources
19	Applicant's Response to CEC Staff Data Request #53 and #54 – March 2, 2007	Traffic and Transportation
20	Applicant's Responses to CEC Staff Data Requests 16 and 55 through 72 –	Air Quality, Alternatives, Cultural Resources, Land Use, Traffic and Transportation

<b>Exhibit</b>	<b>Document Name</b>	<b>Technical Area(s)</b>
	March 23, 2007	
21	LFR's Response to Department of Toxic Substances Control Letter – March 27, 2007	Waste Management
22	Responses to CEC Staff Data Requests 73 through 96 and Workshop Queries 1 through 3 – April 13, 2007	Air Quality, Cultural Resources, Traffic and Transportation, Reconductoring Project Impact Analysis
23	Applicant's Comments on Preliminary Staff Assessment, Part 1 – April 13, 2007	Biological Resources, Hazardous Materials Management, Soil and Water Resources, Transmission Line Safety and Nuisance, Transmission System Engineering, Worker Health and Safety, Facility Design
24	Report by Katestone Environmental, Toowong, Australia, titled "Plume Vertical Velocity Assessment of a Proposed Gas-Fired Power Station at Russell City Energy Center" – June 8, 2007	Land Use, Traffic and Transportation
25	Revised Report by Katestone Environmental, Toowong, Australia, titled "Plume Vertical Velocity Assessment of a Proposed Gas-Fired Power Station at Russell City Energy Center" – June 20, 2007	Land Use, Traffic and Transportation
26	Final Revised Report by Katestone Environmental, Toowong, Australia, titled "Plume Vertical Velocity Assessment of a Proposed Gas-Fired Power Station at Russell City Energy Center" – July 10, 2007	Land Use, Traffic and Transportation
27	Plume Vertical Velocity Assessment of a Proposed Gas-Fired Power Station at Russell City Energy Center ATMOSPHERIC DYNAMICS Addendum – July 10, 2007	Land Use, Traffic and Transportation
28	Testimony of RCEC, LLC Regarding Thermal Plumes and Aviation	Land Use, Traffic and Transportation
29	Plume Vertical Velocity Assessment of a Proposed Gas-Fired Power Station at Russell City Energy Center ATMOSPHERIC DYNAMICS Addendum 2 – July 13, 2007	Land Use, Traffic and Transportation
30	Declarations of Project Owner's Witnesses	All technical areas

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Docket No. 01-AFC-7C

**PROOF OF SERVICE**

I, Ron O'Connor, declare that on July 16, 2007, I deposited copies of the attached *Project Owner's Prehearing Conference Statement* via 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.

  
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Ron O'Connor

**SERVICE LIST**

**01-AFC-7C**

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