

**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 10/11/05

AGENDA ITEM 6

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Cooperation and Option Agreement Regarding Russell City Energy Center

**DOCKET**  
**01-AFC-7C**

**DATE** \_\_\_\_\_

**RECD.** JUN 04 2007

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution authorizing the City Manager to execute a cooperation and option agreement with RCEC-LLC in connection with the Russell City Energy Center.

**DISCUSSION:**

In 2001, the Calpine Corporation began the process to secure a license from the California Energy Commission (CEC) to construct the 600-megawatt Russell City Energy Center (RCEC). The RCEC was to be constructed on industrially-zoned property on Enterprise Avenue across the street from the City's wastewater treatment plant. This site was selected both because of the industrial character of the area, and because of the opportunity it presented to utilize effluent rather than potable water in the operation of the RCEC. Following an extensive review process, including public hearings held in Hayward, in September 2002 the CEC granted Calpine (technically, RCEC-LLC) a license to construct and operate the energy center. Owing to a change in economic circumstances, the RCEC has not been constructed, although the permit granted by the CEC remains valid.

Much has changed since 2002 with regard to how power plants are financed. At the start of the decade, it was possible to obtain needed financing in anticipation that a customer or customers for the energy would be identified subsequent to construction of the plant. Today, this is no longer the case. Now, power plant operators must demonstrate evidence that a long term power purchase contract is in place before financing will be provided. In this way, the contract serves as collateral to assure prospective investors there is sufficient revenue to meet debt service obligations.

Recently, Calpine has been participating in various bid processes initiated by business entities seeking the delivery of electricity on a long term basis. (Due to a confidentiality agreement, Calpine is not authorized to name the potential customer.) Calpine is proposing that the RCEC be the source of that power. For various reasons, the property on which Calpine planned to construct the RCEC is no longer available. As a result, Calpine has approached the City about utilizing a portion of City-owned property which houses the wastewater treatment plant to

construct the RCEC. In total, City-owned property represents about 12.2 acres. In exchange for this property, Calpine proposes to convey to the City approximately 10.2 acres of land abutting the plant to the north. Some of the less intense functions associated with the wastewater facility could be transferred to the new site without adversely impacting the overall operation of the treatment plant. Although the City property is slightly larger, the properties are comparable inasmuch as the City property is encumbered by a number of underground pipes and other utilities which effectively reduce the area in which structures can be constructed. (See exhibit A for delineation of the parcels in question.)

The actual exchange however would not occur until and if Calpine has secured both a contract to provide electricity to its prospective customer, and the necessary financing as well. For this reason, the transaction is structured as an option. The option would be valid through December 31, 2006. (If the option is not exercised the properties are not exchanged.) If the option is exercised, but construction of the RCEC does not commence within three years following conveyance of the property, the exchanged parcels will revert to each conveying party.

In order for the RCEC to be constructed at this new site, Calpine must process an amendment to its existing license with the CEC. A provision of the agreement calls for the City to express its support for such an amendment. The City supported the original application and staff believes it is appropriate to support the amendment as well. As can be seen in the exhibit, in substance the new location is virtually the same as the original site and arguably better in terms of some of the impacts discussed during the original application process. Because of its new location, Calpine requests that the architectural screen which was included in the original design no longer be required. Often referred to as the "wave", the screen was intended to soften the size and bulk of the plant. Staff supports Calpine's request for its deletion, particularly since the new location makes the RCEC less visible to motorists entering Hayward via Route 92, which was the main reason the screen was incorporated in the original design.

As the Council will recall, Calpine previously agreed to provide a number of community benefits, the most substantial of which was a contribution to the City of \$15 million for a new library. Other, significantly smaller, contributions were also to be provided to the Hayward Area Recreation and Park District, and the Hayward Education Fund. Due to changed economic conditions and a more competitive pricing environment, Calpine reports it can no longer provide the same level of support and still compete effectively in the open market. Consequently, it is no longer able to provide the planned benefits to the HARD and HEF. With respect to the library, after extensive discussions, staff has been successful in obtaining Calpine's commitment to help fund the library initiative—albeit at a lesser amount. Accordingly, Calpine now proposes to contribute \$10 million to the City, which amount is to be conveyed when concrete is poured for the foundation for the turbines that are integral to the plant. (Apparently, this typically occurs within the first six to nine months of project construction.)

In addition to the exchange of parcels and the other elements described above the recommended agreement includes the following important provisions:

- In siting the RCEC at its new location, nothing will be done which impairs the operation of the wastewater treatment plant.
- Each party will indemnify the other from responsibility for remediating toxic or hazardous material from the property to be conveyed, consistent with the standard applicable to reuse of the property in a commercial or industrial capacity. Said differently, each party bears the cost of cleaning up the site it is conveying to the other party.
- The City will provide, on a priority basis, 4.1 million gallons a day (MGD) of secondary treated effluent to the RCEC at no cost. The City is authorized to process as much as 16.5 MGD, so this represents only a small portion of the effluent generated by the plant.

With regard to next steps, it is expected that Calpine will know by next spring if it has been successful in entering into a long term power purchase agreement. Then, an amendment to the existing permit will be processed with the CEC. It is estimated that it will be about a year before a final decision is made on the amendment. Assuming a favorable outcome, construction could commence in the summer of 2007, with the RCEC operational two years later.

The energy crisis has not gone away, although it appears dormant and not in the public eye. Nonetheless, the long term viability of the California economy is dependent on addressing this critical issue. Construction and operation of the RCEC is helpful in this regard. Because of this and because of some of the benefits that will accrue to the Hayward community, staff recommends authorization to execute the agreement (a copy of which is on file with the City Clerk's office) with RCEC-LLC.

  
Jesús Armas, City Manager

Attachments: Exhibit A  
Draft Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 05-125

Introduced by Council Member Jimenez

RESOLUTION AUTHORIZING THE EXECUTION  
A COOPERATION AND OPTION AGREEMENT  
WITH THE RUSSELL CITY ENERGY CENTER, LLC

WHEREAS, the City and Russell City Energy Center, LLC ("RCEC") have previously entered into agreements for the development of RCEC in the City of Hayward; and

WHEREAS, the City Council has previously found that the development of a modern, clean source of reliable energy is a benefit to the public health, safety and welfare; and

WHEREAS, changing circumstances have necessitated consideration alternative sites for the location of the energy center; and

WHEREAS, RCEC has proposed to construct the energy center on parcels of land owned by the City in its propriety capacity and currently used in connection with the City's waste water treatment facility ("Treatment Facility Land"); and

WHEREAS, as part of its proposal, RCEC is offering to trade comparable parcels of land to the City in exchange for the Treatment Facility Land; and

WHEREAS, the City Council hereby finds that the land to be exchanged is contiguous to the Treatment Facility Land and has been determined to be of equal or greater value; and

WHEREAS, the Council further finds that the exchange of land will be beneficial to the public good and welfare in that it will enable the City to continue to efficiently operate its sewer treatment facility and also provide a site for the construction of an energy center that will provide much needed clean energy for use by the general public; and

WHEREAS, RCEC's proposals are contained in the Cooperation and Option Agreement ("Agreement") on file in the office of the City Clerk.

NOW THEREFORE, the City Council of the City of Hayward does hereby resolve and express its support for the development and construction of the Russell City Energy Center on the land described in the Agreement.

BE IT FURTHER resolved that the City Manager is hereby authorized and directed to execute the attached Agreement, and negotiate and execute any and all related agreements and documents necessary to carry out the purpose and intent of such Agreement in forms approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA October 11, 2005

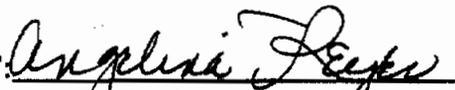
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Jimenez, Quirk, Halliday, Ward, Dowling, Henson  
MAYOR: Cooper

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:   
City Clerk of the City of Hayward

APPROVED AS TO FORM:

  
City Attorney of the City of Hayward