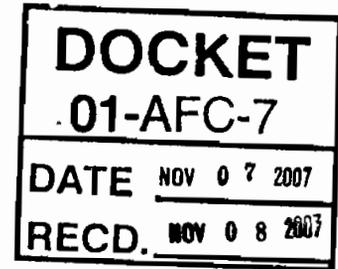


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STATE OF CALIFORNIA

STATE ENERGY RESOURCES

Conservation and Development Commission

In the Matter of:

Initially noticed as "Petition to Amend the  
Commission Decision Approving the Application  
for Certification for the Russell City Energy  
Center";

Later Noticed as "Modification of the Application  
for Certification for the Russell City Energy  
Center"

Docket No.: 01-AFC-7C

DECLARATION OF MICHAEL TOTH IN  
SUPPORT OF GROUP PETITIONERS'  
REPLY TO COMMISSION STAFF'S  
OPPOSITION TO PETITIONS TO  
INTERVENE, REOPEN THE  
ADMINISTRATIVE PROCEEDINGS,  
REOPEN THE EVIDENTIARY RECORD  
AND FOR RECONSIDERATION

Date: Nov. 7, 2007  
Time: 10 a.m.

I, Michael Toth, hereby declare:

1. I am a resident of the City of Hayward and a Software Architect by profession. I attended the joint work sessions conducted by the California Energy Commission during the late spring / early summer 2007 which initially examined the proposed project entitled "Eastshore," a 115 megawatt thermal power plant, together with the project known as the Russell City Energy Center, a 600 megawatt thermal power plant. I have personal knowledge of the facts set forth

below and if called as a witness in this matter, would and could testify competently to the following.

2. This is in response to the Commission staff's opposition to the petitioners petitions to intervene for the purpose of reconsideration and response to my declaration submitted in support of Group Petitioners' petition to intervene to become a party for the purpose of seeking reconsideration of the Final Decision effective September 26, 2007 of the Russell City Energy Center. The Commission staff implies on page 10 of their response to the Group Petition that I had an opportunity to raise issues presented in my petition during the evidentiary hearing or at the PMPD stage, and that raising these issues in a petition for reconsideration amounts to "sandbagging" the CEC. This is simply incorrect and as a resident who is directly impacted I object to such accusations.

3. First, I disagree that there was an adequate and reasonable opportunity to participate in an informed and timely manner, due in part to the following:

- a. Simultaneous consideration of two power plant sitings separated into two separate proceedings in my immediate local community;
- b. Statements by the applicant and by the CEC in project documentation that were misleading;
- c. The omission of information from the public record critical to formulating informed input;
- d. No notice received of the filing of the amendment for a 600 megawatt thermal facility 1.5 miles upwind; and
- e. No notice received of changes to the operating profile of the plant.

4. Public participation in power plant siting projects for me is an unfamiliar process requiring substantial effort, given that the health and safety of my family, my community and the several area schools are at stake. As presented by the Group Petitioners, the surrounding area has grown in population, if not doubled over the past five years. Though I have family and work commitments, I have contributed significant time to the Eastshore proceedings in the hope that

many substantial issues will be addressed within the public record and weighed by the Commission. I have taken care to research these issues, citing peer reviewed science and government documents, so as not to burden the commission or staff with redundant or unsubstantiated concerns.

5. The simultaneous separate proceedings effectively made full participation in both cases difficult. Both plants are “upwind” of my neighborhood, about 3500 feet and 8000 feet to the West. The division of personal and community effort between the two siting cases, each of which appears to follow different protocols, and the resulting confusion has disadvantaged the community in their ability to provide informed input in a manner that would carry an appropriate amount of weight with the Commission. If this behavior results in project approvals that overlook issues of significance due to the lack of effective public participation, it may set a precedent for project applicants to “sandbag” communities and the CEC with multiple siting cases by separating projects within a few thousand feet of one another which otherwise appear to be more appropriately considered as a “multi-facility” plant.

6. This situation required me to divide my time between the projects while also working at my own job and supporting my wife during her pregnancy. Not yet familiar with the process, I sought to gain a summary understanding of the each plant’s potential impact on my community. To this end I relied on statements by the applicant, CEC staff, various government agencies, and the anecdotal information from the press accounts that staff contends were sufficient notification (attachment 2, page 2 of CEC staff’s response to the Group Petition).

7. In this regard, the list of press articles that CEC staff cites in attachment 2 of their response, *to whom they do not attribute the compilation*, was compiled by my wife and myself and was copied from our web site, located at <http://edengardens.wordpress.com>. We hope that staff in the future will use of the information we have provided with respect to both projects productively in the public’s interest; but object to the Commission staff’s failure to identify where they obtained

this information. The article list consists of coverage of the Eastshore project with occasional mention of the Russell City project. Most of the coverage for Russell City consisted of a single line mentioning the project's existence, though sometimes Russell City was compared positively to Eastshore as the articles referring to Russell City stated that it would run all the time and thus would not start up frequently like the Eastshore peaker. Much of the press discussion regarding air quality centered on ERC trading and regional air quality issues.

8. I gained a summary understanding that the Russell City project is a baseload generation facility using well understood combined-cycle gas turbine technology, and is located 1.5 miles away from my house. I also learned that the Eastshore plant is a peaking facility using a relatively untested (for power generation) reciprocating natural gas engine product, and is located 0.7 miles from my house. Furthermore, I also concluded that while the Russell City project had allegedly been "approved by the City of Hayward and the CEC in 2001" the amendment was a modification of an "approved," project, while the Eastshore project was opposed by the City of Hayward and, *as a new project, all aspects* of the application were subject to consideration. Once CEC staff separated the Russell proceeding from Eastshore, I continued to follow the Eastshore project as the Russell City project was being "amended," as I understood that the "amendment" did not contain changes of a nature that would alter the public health impact. (See RCEC amendment pp. es-1-2, 3-3, 3-9, CEC FSA pp. 4.7-1)

9. I attended the Russell City evidentiary hearing as an observer, as I was not familiar with the significant details of the project. I posed a question to Dr. Greenberg (evidentiary hearing transcript, page 131, line 25), about the BAAQMD's ability to verify emissions of toxic air contaminants during startup. Dr. Greenberg claimed that "For this particular facility, the Russell City Energy Center, that will be verified in the Air District's rules and regulations for source testing." Mr. Nishimura, of the BAAQMD, stated that testing is only done in steady-state because it is "difficult" to do during startup, and conceded (evidentiary hearing transcript, page 134, line 7)

that there is no way of verifying what the toxic air contaminant emissions are during startups. Relying on the summary conclusions of the CEC FSA public health risk analysis that nothing of significance was subject to review, I was led to believe that there would be no further discussion of these issues as to Russell.

10. In the committee conference (transcript, page 152, line 25), hearing officer Kramer and presiding member Geesman corrected a member of the public (Tom Kersten) when he referred to the Russell City plant as a peaker facility. Hearing officer Kramer states that “this one is a baseload” facility. As late as the committee conference, it appears that the Commission was still under the impression that Russell City has a baseload operational profile. At this time, it was still my impression that even though Russell City may have wanted to start and stop the plant more frequently, baseload operation would be the norm.

11. After the decision, I learned anecdotally that the plant may be used as a load-following plant and will be permitted to start up and shut down almost twice per day. I verified this information via applicant's data response 4 and subsequent CEC documents outlining maximum number of startups and shutdowns. This would indicate that the plant was load-following or peaking, and not a baseload facility contrary to what the Commission was led to believe. The immediate concern associated with this significant change in operating profile is the *acute hazard index, driven by acrolein, down-wind from the plant during startup conditions*. I do not know whether a health risk analysis of the acute hazard index has been conducted using emission factors that represent startup conditions, because staff has **not documented** their health risk computation. All documented emission factors for toxic air contaminants in the public record for Russell City represent normal operation, not startup.

12. This issue is compounded by staff's erroneous assertion that Chabot is 3 miles from the project, and that “the air quality impacts (apart from very localized construction impacts) from this gas-fired facility are entirely cumulative in a CEQA context and not direct; the principal emissions

are NOx and volatile organic compounds that contribute to regional smog or particulates after transformation downwind from the point of emission” and that the impact on Chabot will be no different than the impact on Livermore or Gilroy (response to Group Petition, top of page 11). This response indicates that staff may be unfamiliar with the project setting, and thus the Commission's decision is based on inadequate evidence and/or **erroneous factual assumptions** for the following reasons:

- Chabot is only 1.5 miles to the East of the Russell project, *not* 3.
- Chabot is directly downwind. The prevailing wind is from the West.
- The BAAQMD (Russell City FDOC, page 63) indicates that the maximum 24 hour PM10 impact is approx. 1 mile to the East of the project, a conclusion which is based on air modeling.
- The most hazardous toxic air contaminant emission from this project is acrolein, because it is acutely toxic in extremely low concentrations.
- While Nox and VOCs, and quite possibly PM10 may be the “principal” emissions from a regional perspective, VOCs such as acrolein and formaldehyde generate **most** of the local hazard.
- While under normal operation, Chabot may only be impacted by higher particulate matter concentrations. However during the 6 hour cold start period or the 3 hour warm start period, or during periods of low load, emissions can increase by one or two orders of magnitude, potentially causing acute hazards.

13. This issue can be quickly addressed if staff provides documentation of their acute health risk computation for startup conditions. I and I suspect others would have brought this issue to the attention of the CEC and staff had I not been presented multiple projects which were then separated into different proceedings. This issue may have been already addressed if staff had documented the health risk computation, demonstrated the use of an emission factor appropriate for startup conditions, and the applicant had disclosed at the outset their intention to change the operational profile of the plant from baseload to peaker with a new application for this new plant in this different location.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this \_\_\_\_ day of November, 2007, in Hayward, California.

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Michael Toth