RICHARD E. WINNIE [68048]
County Counsel
Brian Washington [146807]
Assistant County Counsel
By: Andrew Massey [240995]
Associate County Counsel
Office of County Counsel, County of Alameda
1221 Oak Street, Suite 450
Oakland, California 94612
Telephone: (510) 272-6700
Attorneys for County of Alameda

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01-AFC-7
DATE OCT 23 2007
RECD. OCT 23 2007

STATE OF CALIFORNIA
State Energy Resources
Conservation And Development Commission

In the Matter of:

RUSSELL CITY ENERGY CENTER,

Docket No.: **01-AFC-7C**

PETITION FOR INTERVENTION
AS AN AGENCY OR INDIVIDUAL

DATED: October 23, 2007

RICHARD E. WINNIE, County Counsel in and for the County of Alameda, State of California

BRIAN E. WASHINGTON,
Assistant County Counsel

By
Andrew Massey
Associate County Counsel

Attorneys for County of Alameda

RICHARD E. WINNIE [68048]
County Counsel
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STATE OF CALIFORNIA
State Energy Resources
Conservation And Development Commission

In the Matter of:

RUSSELL CITY ENERGY CENTER,

Docket No.: **01-AFC-7C**

PETITION FOR INTERVENTION
AS AN AGENCY OR INDIVIDUAL

1. The following agency hereby petitions to intervene in the above-captioned proceeding:

County of Alameda

2. Petitioner will be represented in this proceeding by:

Brian E. Washington, Assistant County Counsel
Andrew J. Massey, Associate County Counsel
Office of the County Counsel, 1221 Oak St., Ste. 450, Oakland, CA 94612

3. Petitioner is not a member of a group or organization already a party to this proceeding.
4. Petitioner has an interest in this proceeding that is articulated in the attached Memorandum of Points and Authorities.
5. Petitioner understands that it will receive all relevant documents in this proceeding and that it will be responsible for supplying other parties with information and documents properly requested, as well as complying with Orders of the presiding Committee.
6. Petitioner certifies that it has served a copy of this Petition upon the Applicant's attorney-of record in this proceeding.

DATED: October 23, 2007

RICHARD E. WINNIE, County Counsel in and for the County of Alameda, State of California

BRIAN E. WASHINGTON,
Assistant County Counsel

By _____
Andrew Massey
Associate County Counsel

Attorneys for County of Alameda

☒ Check box if continuation pages are attached.
(Proof of Service Must be attached)

RICHARD E. WINNIE [68048]
County Counsel
Brian Washington [146807]
Assistant County Counsel
By: Andrew Massey [240995]
Associate County Counsel
Office of County Counsel, County of Alameda
1221 Oak Street, Suite 450
Oakland, California 94612
Telephone: (510) 272-6700
Attorneys for County of Alameda

STATE OF CALIFORNIA
State Energy Resources
Conservation And Development Commission

In the Matter of:	Docket No.: **01-AFC-7C**
	PETITION FOR INTERVENTION
RUSSELL CITY ENERGY CENTER,	Memorandum of Points and Authorities

PETITION TO INTERVENE BY COUNTY OF ALAMEDA

Memorandum of Points and Authorities

Pursuant to sections 1207 and 1712 of Title 20 of the California Code of Regulations, the County of Alameda ("the County") petitions to intervene in this proceeding. The County seeks to intervene in this proceeding to file the accompanying Petition to (1) Re-Open the Administrative Proceedings; (2) Re-Open the Evidentiary Record; (3) for Reconsideration of the California Energy Commission's ("the Commission") decision approving the proposed amendment to the Russell City Energy Center ("RCEC") site plan; and (4) Request for Stay (hereinafter "Petition for Reconsideration").

I. Standard for Petition to Intervene

Section 1207(a) provides that "[a]ny person may file . . . a petition to intervene in any proceeding" provided said petition sets forth "the grounds for the intervention, the position and

interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner." Pursuant to § 1207(c), "[t]he presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline . . . only upon a showing of good cause by the petitioner."

The County acknowledges that its petition to intervene is filed after the initial deadline established in § 1207(b), as the Commission issued its final decision approving an amendment to the RCEC site plan on September 26, 2007. Final Commission Decision, CEC-800-2007-003-CMF(October 2007) ("Final Decision"). Therefore the County must make a showing of "good cause."

II. The County May Intervene Solely for the Purpose of Filing a Petition for Reconsideration

Section 1720 provides that within 30 days after a decision or order is final, any party may petition for reconsideration. Section 1720 does not require the party seeking reconsideration to have been admitted as a party to the proceedings prior to the issuance of the decision or order. Furthermore, neither § 1207 nor § 1712 prohibit the filing of a petition to intervene during the 30 day period for filing a petition for reconsideration. Moreover, the Commission's issuance of its Final Decision does not bear on the County's petition to intervene, as the proceedings remain open for 30 days, or unless and until a party files a petition for reconsideration, whichever comes first. Thus the Commission must consider the County's petition to intervene on the merits, and may not summarily dismiss it as untimely.

III. The County Has Good Cause to Intervene at this Time

a. The Commission Was Obligated to Provide the County with Notice of the RCEC Amendment Proceedings

The Commission's own regulations obligated it to provide the County with notice as a local agency that would have had jurisdiction "but for the commission's exclusive authority to certify sites." 20 CCR § 1714(c). As the Commission's Final Decision acknowledges, at the

time RCEC, LLC[1] filed its amendment application in November, 2006, the proposed new site was within the unincorporated area of Alameda County, and thus squarely within the County's jurisdiction. Final Commission Decision, at 10 n.9. Although in March, 2007, the City of Hayward annexed that portion of the land in the amended site plan located in the unincorporated area of Alameda County, the site nevertheless remained within the jurisdiction of the Mt. Eden Sub Area of the Redevelopment Agency's Eden Redevelopment Plan.

Thus at a minimum, the Commission should have noticed the County Board of Supervisors, Redevelopment Agency, Community Development Agency, Airport Land Use Commission and the Planning Department. Such notice has been provided in the past on similar Commission energy facility application proceedings in Alameda County, including the East Altamont Energy Center (Docket No. 01-AFC-4) and the Tesla Power Plant (Docket No. 01-AFC-21).

b. The Commission's Findings are Fundamentally Flawed Because It Did Not Follow Its Own Regulatory Process to Receive Comment from the County

Section 1714(c) not only obligates the Commission to provide notice to local agencies with jurisdiction, but in addition to "request analyses, comments, and recommendations thereon." This provision undoubtedly serves the purpose of allowing the Commission to obtain the information necessary to make required findings under the Warren-Alquist Act (Cal. Pub. Resources Code § 25500 *et seq.*) that the proposed site plan conforms with applicable local standards, ordinances or laws, or that the public benefit of the project outweighs any noncompliance. See Cal. Pub. Resources Code §§ 25523(d)(1), 25525. In its Final Decision on the RCEC, the Commission made findings that the amended site plan conformed with all applicable laws, ordinances, regulations and standards. See Final Decision, at 42, 63, 72, 80, 112, 115, 125, 129, 136, 144, 154, 161, 168, 171-72, 176, 188, 197. These Commission findings are fundamentally flawed because the Commission did not follow its own regulatory

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[1] At the time the RCEC amendment application was filed, Calpine Corporation was the corporate owner/operator of the site. The Commission approved transfer of ownership to RCEC, LLC in an August 1, 2007 order.

procedures requiring it to seek analyses, comments and recommendations from the County and its agencies.

c. By Failing to Notice the County, the Commission Did Not Consider the Concerns of the County and its Residents

Beyond legal compliance, however, the § 1714(c) requirement that the Commission solicit analyses, comments and recommendations from local governments ensures that the Commission takes into account the concerns of local government agencies and the people they represent when it evaluates proposed site plans. The County and its agencies have recently become aware of community concern over the RCEC site plan's potential health and safety risks. The Commission's procedural errors have prevented the County from having enough notice and time to sufficiently examine these concerns.

By leaving the County out of the RCEC amendment proceedings, the Commission did not hear those concerns, and has crafted a Final Decision that cannot possibly reflect all of the information and analysis necessary to its findings and conclusions. To suggest otherwise renders § 1714(c) devoid of any meaning, as that regulation is premised upon the importance of local governments' contributions to the siting proceedings.

IV. The County's Seeks to Participate by Filing a Petition for Reconsideration to Re-Open the Administrative Proceedings and Evidentiary Record.

For these reasons, the County seeks to intervene in the amendment proceedings so that it may file the attached Petition for Reconsideration of the Final Decision pursuant to § 1720 of the Commission's regulations. Through the attached Petition for Reconsideration, the County seeks to re-open the administrative proceedings and the evidentiary record to allow the Commission to receive the evidence the County would have provided had it not been left out of the RCEC amendment proceedings. The County is mindful that § 1720(a) allows only 30 days to file such a petition, and that the time to do so begins to run the date a decision or order is final. Therefore, the County respectfully requests that the Commission expedite its decision on the instant Petition to Intervene to ensure timely consideration of the Petition for Reconsideration.

DATED: October 23, 2007

RICHARD E. WINNIE, County Counsel in and for the County of Alameda, State of California

BRIAN E. WASHINGTON,
Assistant County Counsel

By
Andrew Massey
Associate County Counsel

Attorneys for County of Alameda

RICHARD E. WINNIE [68048]
County Counsel
Brian Washington [1468071
Assistant County Counsel
By: Andrew Massey [240995]
Associate County Counsel
Office of County Counsel, County of Alameda
1221 Oak Street, Suite 450
Oakland, California 94612
Telephone: (510) 272-6700
Attorneys for County of Alameda

STATE OF CALIFORNIA
State Energy Resources
Conservation And Development Commission

In the Matter of:	Docket No.: **01-AFC-7C**
	PROOF OF SERVICE
RUSSELL CITY ENERGY CENTER,	

DECLARATION OF SERVICE

I am employed in the Office of the County Counsel, County of Alameda, over the age of eighteen and not a party to the within cause. My business address is 1221 Oak Street, Suite 450, Oakland, California 94612-4296 I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence would be deposited with the United States Postal Service the same day in the ordinary course of business. On this date, I served the foregoing:

1. Petition for Intervention and attached Memorandum of Points and Authorities
2. Petition for Reconsideration and attached Memorandum of Points and Authorities
3. Declaration of James Sorensen
4. Proof of Service

by placing a true and correct copy of said documents in envelopes in a place for collection and mailing on this date following ordinary business practices and addressed to the persons listed in the attached Proof of Service List.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Oakland, California on October 23, 2007.

Dalia Liang

Dalia Liang

☒ **Check box if continuation pages are attached.**

Proof of Service List

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 01-AFC-7C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

Bill Chamberlain
Chief Counsel, California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Alex Ameri, P.E.
Deputy Director of Public Works
777 B Street
Hayward, CA 94541-5007
Alex.Ameri@hayward-ca.gov

Larry Tobias
CA. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Bob Nishimura
Bay Area AQMD.
939 Ellis Street
San Francisco, CA 94109
bnishimura@baaqmd.gov

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

CURE c/o Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com

Paul N. Haavik
25087 Eden Avenue
Hayward, CA 94545
lindampaulh@msn.com

Parker Ventures, LLC
c/o Reneon & Roberts
Ten Almaden Boulevard, Suite 550
San Jose , CA 95113

Mark Taylor, Field Supervisor
East Bay Regional Park District
3050 West Winton Avenue.
Hayward, CA 94545
hayward@ebparks.org

Weyman Lee, PE
Bay Area AQMD
939 Ellis Street
San Francisco, CA 94109
weyman@baaqmd.gov

Michael A. Argentine, PE
Director, Project Development
Calpine Corporation
104 Woodmere Road
Folsom, CA 95630
margentine@calpine.com

Marianna Isaacs,
Administrative Manager
Calpine Corporation
3875 Hopyard Road, Ste. 345
Pleasanton, CA 94588
misaacs@calpine.com

Gregg L. Wheatland, Esq.
Ellison, Schneider & Harris L.L.P.
2015 H Street
Sacramento, CA 95814-3109
glw@eslawfirm.com

Doug Davy, Senior Project Manager
CH2M HILL
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833
ddavy@ch2m.com

Larry Tong
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605-0381
Ltong@ebparks.org