

**DOCKET**  
01-AFC-7

**DATE** OCT 18 2007  
**RECD.** OCT 26 2007

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4

Attorney for Group Petitioners California  
5 Pilots Association, Citizens for Alternative  
Transportation Systems, San Lorenzo Homeowners Association,  
6 Skywest Townhouse Homeowners Association and Hayward  
Democratic Club, and Hayward Area Planning Association  
7

8 STATE OF CALIFORNIA

9 STATE ENERGY RESOURCES

10 Conservation and Development Commission

11 In the Matter of:

Docket No.: 01-AFC-7C

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

DECLARATION OF JEWELL J.  
HARGLEROAD IN SUPPORT OF GROUP  
PETITIONERS' PETITION TO INTERVENE,  
REOPEN THE ADMINISTRATIVE  
PROCEEDINGS, REOPEN THE  
EVIDENTIARY RECORD AND FOR  
RECONSIDERATION

15 Later Noticed as "Modification of the Application  
16 for Certification for the Russell City Energy  
Center"  
17

Date: TBD  
Location: TBD  
Time: TBD

18  
19  
20  
21 I, Jewell J. Hargleroad, hereby declare:

22 1. I am an attorney admitted to practice before all courts of the State of California and  
23 principal of the Law Office of Jewell J. Hargleroad. counsel for group petitioners California Pilots  
24 Association, Citizens for Alternative Transportation Systems, San Lorenzo Homeowners  
25 Association, Skywest Townhouse Homeowners Association, Hayward Democratic Club, and  
26 Hayward Area Planning Association ("Group Petioners"). I was not retained by Group Petioners  
27

28 Decl. of Hargleroad in support of Group petitioners CEC 01-AFC-7C

1 until after this Commission's hearing and Final Decision effective September 26, 2007. I have  
2 personal knowledge of the facts set forth below and would and could testify competently to the  
3 following if called as a witness in this matter.

4 2. Attached as Exhibit 1 is a true and correct copy of the City of Hayward's February 5,  
5 2001 Agenda Report for "Direction to Staff Regarding Preparation Of Agreement Between City of  
6 Hayward and Calpine/Bechtel for Proposed Russell City Energy Center."

7 3. Attached as Exhibit 2 is a true and correct copy of the City of Hayward's July 10, 2001  
8 Agenda Report for "Determination that the Proposed Power Plant (Russell City Energy Center) at  
9 3636 Enterprise Avenue is consistent with the General Plan and the Industrial Zoning District  
10 Designation.

11 4. Attached as Exhibit 3 is a true and correct copy of the City of Hayward's October 11,  
12 2005 Agenda Report for "Cooperation and Option Agreement Regarding Russell City Energy  
13 Center."

14 5. Attached as Exhibit 4 is a true and correct copy of the City of Hayward's May 23, 2006  
15 Agenda Report for "First Amendment to Cooperation and Option Agreement with Russell City  
16 Energy Center-LLC."

17 6. Attached as Exhibit 5 is a true and correct copy of Paul C. Richins, CEC Manager of  
18 Environmental Office March 16, 2007 letter to City of Hayward's Planning Manager David Rizk.

19 7. Attached as Exhibit 6 is a true and correct copy of City of Hayward's Planning  
20 Manager David Rizk's letter dated April 19, 2007, responding to Mr. Richins March 16, 2007  
21 correspondence.

22 8. Attached as Exhibit 7 is a true and correct copy of portions of the Calpine Corporation's  
23 Fourth Amended disclosure Statement for Debtors' Fourth Amended Joint Plan of Reorganization  
24 pursuant to Chapter 11 of the United States Bankruptcy Code filed in In re Calpine Corporation, et  
25 al., United States Bankruptcy Court Southern District of New York, No. 05-60200 (BRL).  
26  
27  
28



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

AGENDA DATE 02/06/01  
AGENDA ITEM 10  
WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council  
**FROM:** City Manager  
**SUBJECT:** Direction to Staff Regarding Preparation of Agreement Between City of Hayward and Calpine/Bechtel for Proposed Russell City Energy Center

**RECOMMENDATION:**

It is recommended that the City Council provide direction to staff regarding the preparation of a contract between the Calpine Corporation and the City setting forth mutual obligations and commitments in connection with the proposed Russell City Energy Center.

**INTRODUCTION:**

As has been evident in recent weeks, the state faces a critical issue with regard to meeting the energy needs of residents and businesses. While the extent and source of the problem is under debate, it is clear that a long-term solution is needed. However, in light of the current fragmented regulatory structure, crafting an effective solution will take time. As noted by the Governor in his State of the State address, part of the solution will necessarily entail increasing the supply of energy.

Recently, a joint venture comprising the Calpine Corporation, headquartered in San Jose, and the Bechtel Corporation, headquartered in San Francisco, expressed interest in locating a 600 megawatt energy facility in the industrial area of Hayward. (For ease of reference, the joint venture will be referred to as Calpine throughout the balance of this report.)

Calling it the Russell City Energy Center (RCEC) in recognition of Hayward's rich history, Calpine proposes to site its facility on a 15-acre, industrially zoned parcel, located across the street from the City's wastewater (sewer) treatment plant on Enterprise Avenue (See attachment A). This site has been selected both because of the industrial character of the area, and its proximity to the treatment plant, as Calpine proposes to utilize recycled water as part of its operation.

According to Calpine, the proposed RCEC will rely on natural gas as its major fuel source, thereby generating electricity in a more efficient and cleaner fashion. The RCEC is similar to the facility proposed for San Jose, which is currently the subject of hearings before the California Energy Commission. For background information, attachment B is a copy of a June

*Exhibit 1*

8, 1999 San Jose Mercury News newspaper article. Although the article focuses on the San Jose facility, it also provides a good overview regarding the operation of such facilities.

#### **PROCESSING CALPINE'S APPLICATION:**

Recently, City staff met with California Energy Commission staff to understand the process followed by the state when it considers an application for siting a power plant in a community. This session was extremely helpful in understanding not only the overall process, but also in gaining an understanding the role the general public and the City can play during the review process. Attachment C is a document provided by CEC staff. According to CEC staff, although the State has complete authority in licensing power plants, local governments play a critical and important role in the process. Furthermore, even though the final decision with regard to licensing an energy facility rests with the State, it is apparent that a favorable decision is dependent on satisfactorily addressing local issues and concerns. Moreover, given the costs associated with processing a licensing application, it appears unlikely that an applicant will proceed in the face of an unfavorable position on the part of a local jurisdiction. Finally, according to CEC staff, with one exception, the State has never overridden a local jurisdiction's objection to the siting of a plant in its community. The one exception occurred some twenty years ago and involved the location of a transmission line in a rural county.

Throughout the process, the State wants to work cooperatively with the City and the community, according to CEC staff. To this end, the State will hold workshops and formal hearing in the community to make it more convenient for Hayward residents and the general public to participate in the process. Although not governed by the California Environmental Quality Act (CEQA), the CEC is required to prepare a comprehensive document that addresses noise, traffic, air quality, and other related issues. In many respects, the CEC process exceeds the requirements of CEQA.

According to CEC staff, its licensing process typically takes from twelve to eighteen months from start to finish. When reviewing and acting upon an energy siting application, the CEC will hold evidentiary hearings prior to rendering a decision. An evidentiary hearing is more formal than the public hearings conducted by the City and includes submittal of sworn testimony.

Early in the permitting process, the City will be asked to formally indicate if the proposed RCEC is consistent with the local land use regulations. As applications for power generating plants are not commonly filed with the City, Hayward's zoning ordinance does not expressly enumerate this use. Consequently, Calpine will be submitting an application in support of its contention that the proposed RCEC is consistent with the character of the Industrial District, particularly given the surrounding uses at the suggested location on Enterprise Avenue.

This evening, the Council is not being asked to determine if the proposed use is appropriate for the referenced location. Rather, such a determination will be processed in the normal fashion, meaning that following a staff evaluation a recommendation will be submitted to both the

Planning Commission and City Council. In keeping with normal practice, public hearings will be scheduled to provide the community an opportunity to comment. Only following the public hearings, will the Commission and Council be asked to render their decision.

### **COMMUNITY BENEFITS:**

Calpine represents that by improving the supply of energy, especially from the standpoint of reliability and stability, the proposed Russell City Energy Center will provide much needed power to Alameda and San Mateo counties. Moreover, by increasing the supply of energy, this will presumably have a positive effect on the price of energy as well.

In addition to addressing critical energy needs, Calpine is also prepared to provide other community benefits. In particular, Calpine proposes to:

1. Contribute \$15 million and work with the community to establish a foundation to raise an additional \$5 million to build a new main library;
2. Contribute \$100,000 per year for five years to the Hayward Education Foundation;
3. Contribute \$100,000 per year for five years to the Hayward Area Recreation and Park District (HARD) Foundation for youth programs;
4. Work cooperatively with the East Bay Regional Park District and HARD to improve the Bay Trail from the Interpretative Center to San Leandro, a distance of about 4.5 miles;
5. Fund specified improvements at the Wastewater Treatment Plant to provide tertiary recycled water;
6. Provide the equivalent of wholesale power at a discounted rate to the City;
7. Work with the City to establish a pilot project to generate electricity via a renewable resource.

### **CONTRACT BETWEEN CALPINE AND THE CITY:**

The list of community benefits is substantial. Staff believes it is prudent to develop an appropriate contract between the City and Calpine to assure that the noted benefits will indeed be realized. Accordingly, staff seeks Council direction with regard to the preparation of such agreement. In addition, if there are additional elements or issues the Council would like addressed in the context of such agreement, these should be noted as well.

Based on the Council's direction, staff will prepare a draft agreement for consideration at a future meeting. Once an agreement has been developed, staff recommends that a public hearing be scheduled to afford the public an opportunity to comment on it prior to any Council action.

  
Jesús Armas, City Manager

Attachments: Exhibit A - Aerial Map  
Exhibit B - San Jose Mercury News Article  
Exhibit C - California Energy Commission Document



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

AGENDA DATE 07/10/01  
AGENDA ITEM 2  
WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Determination that the Proposed Power Plant (Russell City Energy Center) at 3636 Enterprise Avenue is consistent with the General Plan and the Industrial Zoning District Designation

**RECOMMENDATION:**

The Planning Commission (6:0) and staff recommend that the City Council find that the proposed Russell City Energy Center power plant use is consistent with the provisions of the General Plan and the Industrial District Designation.

**DISCUSSION:**

The authority to license power plants rests with the California Energy Commission. Local government, however, plays a significant role in providing input on local concerns and issues to the process. Consequently, the City has the opportunity to make some determinations as to its conformity with City regulations, which will be forwarded to the California Energy Commission. This public hearing affords this opportunity to the City Council.

The issue that requires a formal determination relative to conformity is whether the proposed Russell City Energy Center (RCEC) is consistent with the General Plan and the uses allowed in the Zoning Ordinance. The RCEC is proposed for a site on Enterprise Avenue, across the street from the City's Wastewater Treatment Plant. This area is classified as "Industrial Corridor" in the General Plan and the site is zoned Industrial. Recognizing the nature of the operation involving the manufacture of power, staff believes that the project is in conformity with the General Plan "Industrial Corridor" designation. As detailed plans for the facility are not available, the City cannot at this time evaluate the proposal in terms of meeting the City's "Minimum Design and Performance Standards," particularly as they relate to the "Architectural Design Principles" and landscaping. The RCEC will be an entry statement to those entering Hayward from the Hayward-San Mateo Bridge, will be visible from those visiting the shoreline area, and will be extremely close to a major industrial arterial once Whitesell Street is widened and extended to State Route 92. It will be essential that serious consideration be given during the review process to the visual impacts of the RCEC and that those impacts be as minimal as possible. This approval is therefore a preliminary approval regarding land use approvals related to consistency with the General Plan and zoning designation.

*Exhibit 2*

### Conformity of Use

With regard to conformity with the Zoning Ordinance, in staff's opinion and with the concurrence of the Planning Commission, the RCEC fits under the primary use classification in the Industrial District zone of "Manufacturing" in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing. The RCEC will be a 600-megawatt, natural gas-fired combined-cycle electrical generating facility, with a 230-kilovolt switchyard. A new 230 kV double-circuit transmission line will exit the RCEC switchyard eastward toward PG&E's existing transmission corridor, and then follow the existing transmission corridor. The City will supply water to the RCEC site for domestic use and for fire fighting. Storm water collected on the RCEC site will be discharged into the Alameda County Flood Control District's drainage canal less than 100 feet south of the proposed site. Storm water collected on the new wastewater treatment plan will be discharged to the storm water system of the City water pollution control facility. Although a power plant is not specifically listed as a permitted use in the Industrial District, staff believes and the Planning Commission concurs that it is similar to other permitted manufacturing uses and consistent with the intent and purpose of the district.

At this point in the review process, the City is being asked to review and discuss whether the RCEC power plant use is consistent with the Industrial District of the Zoning Ordinance and the General Plan. This report is not meant to review the merits of the project, nor any of its potential environmental impacts. There is a separate, distinct, and elaborate review process, with ample opportunity for public input under the auspices of the California Energy Commission.

According to the State Law, power plant projects are not subject to the California Environmental Quality Act. Instead, they are subject to a similar process performed by the California Energy Commission (CEC). The CEC reviews every aspect of the project, conducts numerous hearings, and determines what the various potential impacts of the project may be. The review areas include, but are not limited to: Environmental Information, Air Quality, Water Supply, Gas Supply, Biological Resources, Cultural Resources, Geological Hazards and Resources, Hazardous Materials Handling, Land Use, Noise, Paleontological Resources, Public Health, Socio-economics, Soils and Agriculture, Traffic and Transportation, Visual resources, Waste Management, Water Resources, Engineering, Projects Alternatives, and Workers Health and Safety. As part of the review process, there will be public hearings and community meetings to receive public input.

Calpine/Bechtel Joint Enterprises has submitted an application to the California Energy Commission, and the California Energy Commission is in the process of reviewing it to make a finding on data adequacy.

During the Planning Commission hearing on the matter, individuals expressed concerns about the potential environmental impacts associated with the power plant, which are issues that will be addressed by the California Energy Commission. Representatives of the Hayward Chamber of Commerce, the Trades Council, the Electricians' Union appeared in support of the project.

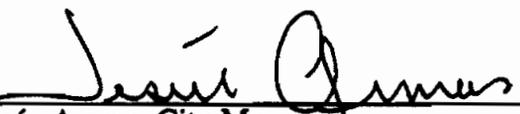
Prepared by:

  
Dyana Anderly, AICP  
Planning Manager

Recommended by:

  
Sylvia Ehrenthal  
Director of Community and Economic Development

Approved by:

  
Jesús Armas, City Manager

Attachments:

Draft Resolution(s)

7/10/01

**DRAFT**

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

**RESOLUTION FINDING THE RUSSELL CITY ENERGY  
CENTER POWER PLANT USE IS CONSISTENT WITH THE  
GENERAL PLAN AND ZONING ORDINANCE**

WHEREAS, Calpine/Bechtel has made a request that the City of Hayward make a determination that a power plant (Russell City Energy Center) use at 366 Enterprise Avenue is consistent with the General Plan and is a use similar to a primary use permitted in the Industrial District; and

WHEREAS, the Russell City Energy Center (RCEC) is proposed for an area on Enterprise Avenue classified as "Industrial Corridor" in the General Plan and is zoned Industrial. Staff believes that the project is in conformity with the General Plan "Industrial Corridor" designation; and

WHEREAS, City Council finds that the RCEC fits under the primary use classification in the Industrial District zone of "Manufacturing", is consistent with the intent and purpose of the district, and conforms with the Zoning Ordinance.

WHEREAS, the power plant use is similar to other existing uses in the Industrial District, such as the production of chemicals at the Rohm & Haas, Inc., plant.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines that the Russell City Energy Center power plant use is consistent with the provisions of the General Plan and the use is similar to the primary use of Manufacturing in the Industrial District required by the Zoning Ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:



**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

**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

*Exhibit 3*

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

**DUE TO THE LENGTH OR COLOR  
OF THE ATTACHMENT, IT HAS  
BEEN INCLUDED AS A SEPARATE  
LINK**

**DRAFT**



HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

**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** \_\_\_\_\_, 2005

**ADOPTED BY THE FOLLOWING VOTE:**

**AYES: COUNCIL MEMBERS:**

**MAYOR:**

**NOES: COUNCIL MEMBERS:**

**ABSTAIN: COUNCIL MEMBERS:**

**ABSENT: COUNCIL MEMBERS:**

**ATTEST:** \_\_\_\_\_  
City Clerk of the City of Hayward

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney of the City of Hayward



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

AGENDA DATE 05/23/06

AGENDA ITEM 13

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

**TO:** Mayor and City Council  
**FROM:** City Manager  
**SUBJECT:** First Amendment to Cooperation and Option Agreement with  
Russell City Energy Center-LLC

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution authorizing the City Manager to execute the First Amendment to the referenced Agreement with Russell City Energy Center-LLC

**DISCUSSION:**

Last October, the City Council authorized execution of a Cooperation and Option Agreement with Russell City Energy Center-LLC in connection with the power plant to be constructed adjacent to the City's wastewater treatment plant on Enterprise Avenue. In conjunction with the agreement, the City agreed to exchange 12.2 acres of City property for 10.2 acres of land abutting the plant to the north owned by Calpine. Exhibit A to this report, which was presented to the Council last October, shows the properties that were to be exchanged.

Since the Council's approval action, Calpine has reached agreement with PG&E to enter into a long-term power purchase agreement, pursuant to which Calpine is to provide electricity to PG&E commencing the summer of 2010. To meet this deadline, construction of the RCEC must commence no later than the summer of 2008. As a result, Calpine will be processing an amendment to the license granted to it by the California Energy Commission. In preparation for such submittal, Calpine has evaluated the layout of the RCEC.

As the Council will recall, the RCEC was to be constructed with an east-west orientation, wholly contained within the property Calpine was to obtain from the City. As reported last October, a portion of the land to be conveyed to Calpine by the City is encumbered by a number of underground pipes and utilities. Closer study of the underground facilities resulted in a determination by Calpine to change the orientation of the RCEC to more of a north-south orientation. Due to this new configuration (see Exhibit B), Calpine proposes to site the plant partially on property it owns, and partially on the property to be conveyed to it by the City. The impact to the City is to reduce the amount of land to be conveyed to Calpine, from the 12.2 acres agreed to in October, to 5 acres today. Because Calpine will be utilizing its property to the north of the plant, Calpine is unable to convey this property to the City, as previously proposed.

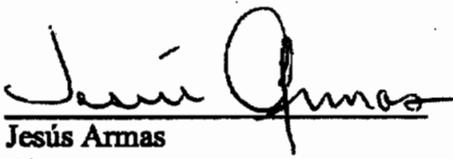
*Exhibit 4*

Fortunately, Calpine owns a 3.5-acre parcel nearby that is surplus to its needs. The property, which is rectangular in shape (identified as Rennel in Exhibit C), has frontage on both Enterprise and Whitesell. Because of its location, this parcel lends itself to being developed in the future, likely in an industrial or manufacturing capacity, and is deemed more valuable than the City-owned property adjacent to the wastewater plant. Consequently, Calpine proposes to exchange this 3.5-acre parcel with the City for the aforementioned 5-acre parcel. Staff concurs with this proposal and recommends its approval.

The new layout of the RCEC will result in a portion of the energy center being constructed on land currently within the jurisdiction of Alameda County, although intended to be annexed into Hayward in the near future. Even after it is annexed into the City, it will remain in the redevelopment area of the County. This results in a portion of the property taxes that would normally accrue to the City, instead accruing to the County redevelopment agency. Calpine was informed that this potential loss of property tax revenue is of concern to the City. To address this concern, Calpine has agreed to make up or "backfill" this loss. Accordingly, Calpine has agreed to provide an additional payment to the City so that when it is combined with the property tax revenue received by the City, it will equal the full amount the City would have realized if the RCEC were located entirely in the City and not in a County redevelopment area.

To reflect the new parcels to be exchanged between Calpine and the City, and to formalize Calpine's obligation to backfill the loss in property tax revenue, the Cooperation and Option Agreement approved in October is proposed to be amended. Labeled the First Amendment, a copy of which is on file in the City Clerk's office, the document consists of the substantive changes mentioned above, as well as other revisions intended to delete provisions which are obsolete and no longer applicable.

Staff recommends approval of the attached resolution authorizing execution of the First Amendment.



Jesús Armas  
City Manager

Attachments: Exhibit A  
Exhibit B  
Exhibit C  
Resolution

**DUE TO THE COLOR OF THE  
ATTACHMENTS, THEY HAVE BEEN  
INCLUDED AS SEPARATE LINKS**

**DRAFT**

HAYWARD CITY COUNCIL

RESOLUTION NO. 06

Introduced by Council Member \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY MANAGER TO  
EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT  
WITH RUSSELL CITY ENERGY CENTER-LLC**

WHEREAS, in October 2005 the City Council authorized execution of a Cooperation and Option Agreement with Russell City Energy Center -LLC (RCEC) in connection with the power plant to be constructed on Enterprise Avenue; and

WHEREAS, subsequent changes to the construction configuration require substantive changes and revisions to the Agreement with RCEC.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to negotiate and execute the First Amendment to the Cooperation and Option Agreement with Russell City Energy Center-LLC on file in the Office of the City Clerk, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

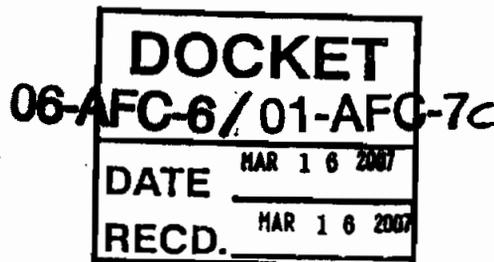
**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



March 16, 2007

David Rizk, AICP  
Planning Manager  
City of Hayward  
777 B Street  
Hayward, California 94541



RE: Land Use Issues  
Russell City Energy Center and Eastshore Energy Center

Dear Mr. Rizk:

As you are aware, the California Energy Commission is conducting a review of an amendment, filed by the Russell City Energy Company, LLC, to relocate the Russell City Energy Center project, certified in September 2002, to four parcels fronting Depot Road. We are also reviewing an Application for Certification (AFC), filed by Eastshore Energy, LLC, to construct and operate the Eastshore Energy Facility on Clawiter Road, approximately 3,000 feet east of the Russell City site.

Energy Commission staff are in the discovery portion of their review for these projects, which includes detailed analyses in compliance with the California Environmental Quality Act (CEQA). Although the Energy Commission has exclusive jurisdiction to license (approve the siting, construction, and operation) of thermal power plants in California that have a generating capacity of 50 megawatts or more, and is the Lead Agency under CEQA, we are also under an explicit statutory mandate to determine whether a project can be constructed and operated in a manner consistent with the requirements a city or county would typically impose. A license generally would not be issued for a project that did not conform with local laws, ordinances, regulations, or statutes (LORS) unless it was judged to be required for the public convenience and necessity, and more prudent and feasible means of achieving that convenience and necessity were not available.

**General Plan and Zoning Consistency**

The Eastshore Energy Center would be a nominal 115.5-megawatt, natural gas-fired facility that would operate up to 4,000 hours per year and would have 14 stacks, each approximately 70 feet tall. The proposed site for the project is at 25101 Clawiter Road, within the boundaries of the Industrial Corridor, as defined in the 2002 Hayward General Plan, and the Industrial Zoning District (HMC §10-1.1600). The Eastshore project site is also located in a portion of Hayward that has a land use designation of Industrial Corridor, and the 2002 Hayward General Plan appears to express an intent by the City to diversify Industrial Corridor development away from heavy industrial and manufacturing uses (HGP Land Use, pp. 12-21). This observation is reinforced by reports from the Planning staff to the Planning Commission and City Council on the

*Exhibit 5*

Eastshore project, which recommended that the project be considered inconsistent with both the General Plan and Industrial Zoning Code. Although power plants are not specifically called out in the Industrial Zoning code as a permitted use, power plant operation has been previously identified by the Hayward City Council as similar to manufacturing uses currently existing within the Industrial Corridor and consistent with the intent and purpose of the Industrial Zoning district (Resolution #01-104). However, on March 13, 2007, the City Council adopted Resolution #07-028, which declared the siting of the Eastshore project at 25101 Clawiter Road to be inconsistent with the Hayward 2002 General Plan policies. It also determined the power plant to be inconsistent with the Hayward Industrial Zoning District provisions (HMC §10-1.1600).

The Russell City Energy Center would be a base-load, 600 megawatt, natural gas-fired, combined-cycle facility, with nine cooling towers (64 feet tall) and two 145-foot-tall Heat Recovery Steam Generator (HRSG) stacks. The project was originally certified for construction at 3636 Enterprise Avenue in Hayward on September 11, 2002. As part of the original certification process, the Hayward City Council adopted Resolution #01-104 on July 10, 2001, which determined that the siting of the Russell City Energy Center at 3636 Enterprise Avenue was consistent with the General Plan, conformed with the Industrial Corridor land use designation, was a use similar to a permitted use (manufacturing) in the Industrial Zoning district, and was similar to other uses existing within the Industrial District at that time. On October 11, 2005, when relocation of the project was under initial discussion, the Hayward City Council adopted Resolution #05-125, supporting a proposed exchange of property between the Applicant and the City and construction of the Russell City Energy Center on the new site. The Hayward General Plan was significantly revised in 2002 and now specifically addresses development within the Industrial Corridor. The original Russell City project site was not evaluated under these provisions, but the new site is subject to the requirements of the revised document. The City Council did not address consistency of the new site with the 2002 General Plan or current Municipal Code as part of the 2005 resolution and did not amend the original site-specific #01-104 resolution.

Despite the City Council's determination on Eastshore (referenced above), Hayward Planning staff have indicated orally that they consider the new Russell City location consistent with both the Zoning Code and General Plan. Energy Commission staff have not been able to reconcile this conclusion as both locations are within the Industrial Corridor and Industrial Zoning District, are similar in design and operation, use the same hazardous materials and transportation route, and are only about 3,000 feet apart. Additionally, although the Eastshore facility would be somewhat closer to nearby residential areas, the Russell City facility would be nearly as visible, given the additional stack height, generally level topography of the area, and types of intervening structures. As expressed in the Planning staff's report to the City Council in 2001, power plant operation fits under the primary use classification of "manufacturing" in the Industrial Zone, in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing. This description would apply to both facilities. Finally, although the General Plan recommends consideration be given to division of the

Industrial Corridor into multiple use-specific districts, we know of no formal action that has been taken to exclude the areas surrounding the Russell City or Eastshore locations from the "manufacturing" uses previously identified. Based on current LORS, it would appear that both the Russell City and Eastshore sites should receive similar consistency determinations.

### Aviation Impacts

Both the Russell City and Eastshore facilities are gas-fired power plants that would create thermal plumes above a series of stacks and cooling towers. Energy Commission staff have determined that thermal plumes may disturb atmospheric stability to more than 1,000 feet above ground level (agl). According to HMC §10-6.35, "no use may be made of land within any airport approach zone, airport turning zone, or airport transition zone in such a manner as to...endanger the landing, takeoff, or maneuvering of aircraft." Both project sites are located within the boundaries of the Airport Approach Zoning Plan for Hayward Executive Airport. Aircraft regularly fly over both project sites during normal airport operations at altitudes below 1,000 feet agl. Recently adopted southern noise abatement departure and arrival patterns for helicopters further increase the potential for low level overflight of these plumes. Small single and two-engine aircraft, rotor craft (such as helicopters), and ultra-light or experimental aircraft are particularly susceptible to low level turbulence and constitute a major portion of aircraft operations at the Hayward airport.

Information included in Appendix 3.1B of the Russell City Amendment Application and Table 8.1-11 of the Eastshore AFC indicate plume velocities in excess of those previously identified in aviation safety studies as potentially hazardous to aircraft. A 2004 safety advisory circular [AC 139-05(0)], prepared by the Australian Government Civil Aviation Authority (AGCAA), noted that "aviation authorities have established that an exhaust plume with a vertical velocity in excess of 4.3 meters (14 feet) per second may cause damage to an aircraft airframe or upset an aircraft when flying at low levels". FAA safety analysts have accepted the information contained in this advisory as a valid representation of hazardous exhaust velocities. The Heat Recovery Steam Generator (HRSG) stacks for the Russell City project would generate plumes with a vertical exit velocity of 71 to 74 feet per second (21.6 to 22.6 meters per second) at stack height during full load operation. The cooling tower plumes are estimated at exit velocities of 34 feet (10.3 meters) per second at stack height during full load operation for each cell. For the Eastshore project, there will be no visible plumes or cooling towers, but the thermal plume from each of the 14 stacks would be similar to those from the Russell City HRSG stacks, with an exit velocity of approximately 72 feet (22 meters) per second.

Plume integrity and velocities at higher altitudes and the extent of turbulence that could be created are still being determined. However, Energy Commission experience with a power plant in the City of Blythe confirms that thermal plumes can impact aircraft flying over the stacks at low altitudes. Additionally, plumes are thermally buoyant during colder weather and more likely to maintain their vertical velocity at higher altitudes

under calm, cool conditions. Although a plume-abated tower, as proposed for the Russell City facility, reduces the visual plume, it strengthens the plume's thermal buoyancy, increasing the potential for turbulence at low altitudes.

Plume behavior and characteristics are still being modeled by the project applicants and these results will be submitted to the Federal Aviation Administration, Alameda County Airport Land Use Commission, City of Hayward Public Works Department, and other interested parties for review and comment. However, based on information received to date, it appears that both the Russell City and Eastshore projects may have the potential to pose a hazard to aircraft within the Airport Approach Zoning Plan boundaries and would, therefore, be inconsistent with HMC §10-6.35 and §10-1.140 (Exclusionary Zoning Ordinance), which indicates that uses that are not specifically listed as "Uses Permitted" within a Zoning District are prohibited unless it can be determined the use is "...not more objectionable or intensive than the uses listed."

As noted above, the Planning staff recommendations to the Planning Commission and City Council regarding the Eastshore project conformity with current codified City of Hayward LORS, and recent City Council action on this issue, have raised issues regarding both the Russell City and Eastshore projects. The potential for impacts to aviation safety within the Airport Approach Zoning Plan area should also be considered. Your comments and any additional information you could provide that would assist Energy Commission staff in determining the significance and applicability of these and any other potential land use issues or impacts would be greatly appreciated.

We are interested in receiving your input on the following matters:

- Any land use-related actions the City of Hayward would normally require of an applicant prior to issuance of any permit for projects similar to the proposed Russell City and Eastshore projects. Please identify the type of permit(s), related LORS, and any determinations that might be necessary as part of the approval process.
- Planning staff's interpretation of the consistency of the project sites and operations, for both the Russell City and Eastshore Energy Centers, with the Hayward 2002 General Plan policies, Industrial Zoning District requirements, use restrictions contained in the Airport Approach Zoning Regulations (HMC §10-6.35) and the Exclusionary Zoning Ordinance (HMC §10-1.140), and any other applicable City of Hayward LORS. Please address the specific differences between the Russell City and Eastshore projects that supports the Planning staff's conclusion that Eastshore is inconsistent and the Russell City project consistent with City LORS. Include specific LORS, citations, and references supporting the Planning staff's interpretation.
- Actions proposed by the Planning staff, Planning Commission, or City Council to formally consider the consistency of the new Russell City site, with regards to the Eastshore decision, 2002 General Plan policies, and/or Municipal Code requirements.

- Recommendations for conditions or mitigations to reduce the significance of any identified potential issue or impact that the City of Hayward would normally consider adequate to resolve the issue or lessen the impact.

Energy Commission staff's preliminary assessment of these projects will be completed by early summer and we would like to incorporate your comments and address any concerns you may have regarding either project in these evaluations. Once the preliminary staff assessment is complete, it will be released for public review, allowing you the opportunity to comment once again on the discussion of LORS conformity and environmental issues. Energy Commission staff are also available to meet with you or your staff to discuss the Energy Commission's licensing process and specific issues related to these projects. It would be helpful if we could receive your input no later than April 13, 2007. Please contact Shaelyn Strattan at (916) 651-0966 if you have any questions. If you will need additional time, please let us know when you will be able to respond.

Thank you for your assistance.

Sincerely,



Paul C. Richins, Manager  
Environmental Office  
Energy Facilities Siting Division

cc: Docket  
Russell City Energy Center (01-AFC-7 Amendment 1)  
Eastshore Energy Center (06-AFC-6)  
Proof of Service lists for Russell City and Eastshore Energy Centers  
Alameda County Airport Land Use Commission  
City of Hayward Public Works Department  
Manager, Hayward Executive Airport  
FAA, Environmental Planning and Compliance Section (ATTN: Joe Rodriguez)



<b>DOCKET</b>	
<b>06-AFC-6</b>	
DATE	APR 19 2007
RECD.	APR 23 2007

April 19, 2007

Paul C. Richins  
Manager, Environmental Office  
Energy Facilities Siting Division  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814-5512

Re: Land Use Issues  
Russell City Energy Center and Eastshore Energy Center

Dear Mr. Richins:

Below is information in response to your March 16, 2007 letter to me. In summary, and typical with local agencies, Hayward's laws, ordinances, regulations and statutes entail discretion and judgment. As explained in the following paragraphs, it is the City's position that the Russell City Energy Center is sited in an appropriate location and therefore is determined to be consistent with Hayward's Zoning Ordinance and General Plan and the Eastshore Energy Center, although proposed as a smaller plant, is not.

City of Hayward Land Use Permitting Process

In response to your inquiry, following is a summary of the process that would be required if these plants were processed through the Hayward land use permitting process. As indicated in the City's Industrial Zoning District provisions and since the operation of both plants would exceed stated thresholds for Class "B" hazardous materials as defined in the Hayward Ordinance, they would both be considered uses requiring at least administrative use permits. Additionally, if either plant involved Class "A" hazardous materials (e.g., reactive materials, poisonous or toxic materials, etc.), they would require conditional use permits. So, even though the City determined in 2001 that the Russell City Energy Center was considered a permitted primary use of "Manufacturing" in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing, because of the hazardous materials associated with its proposed operation, both it and the Eastshore Energy Center would be considered either administrative or conditional uses that would require certain findings to be made if the City were processing such projects.

*Exhibit 6*

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DEVELOPMENT REVIEW SERVICES

777 B STREET, HAYWARD, CA 94541-5007

PROOF OF SERVICE (REVISED 3/12/07) FILED WITH

ORIGINAL MAILED FROM SACRAMENTO ON 4/23/07

The findings required to be made to approve an administrative use are the same as those required to approve a conditional use. Due to the potential for negative impacts, administrative and conditional uses entail consideration of impacts and typically entail conditional approval. In fact, the Hayward Zoning Ordinance indicates that the purpose for requiring administrative or conditional use permit approvals are "to assure certain specified uses are permitted where there is community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies." Although administrative uses are typically processed and approved at a staff level, the Planning Director would likely determine that Site Plan Review would also be required and would refer the proposed power plant projects to the Planning Commission for consideration, as allowed by the Hayward Zoning Ordinance. Any determination by the Planning Commission could be called up by a Council member or appealed to the City Council by any interested party.

In order to approve either plant if they were processed by the City, the approving authority in Hayward would be required to make all of the four findings below, which are required to be made in order to approve an administrative or conditional use. Staff's analyses to those four findings for each plant are provided in the proceeding paragraphs.

**a. The proposed use is desirable for the public convenience or welfare;**

The Eastshore plant would be used in periods of high energy demand to supplement power in the San Francisco Bay area. However, as communicated by Hayward residents, City Council members and Planning Commissioners, it is not evident from analysis provided by the Energy Commission staff or information supplied by the applicant that the Eastshore plant is needed at the proposed location to provide the benefits that would otherwise be achieved via location at another site in the south or east Bay near other PG&E substations in the vicinity. The City feels that the process in selecting the proposed Eastshore site, though not under the auspices of the California Energy Commission, was not a public process that entailed adequate public notification and opportunity for input. In summary, the proposed Eastshore plant at the site is not desirable, because the public convenience or welfare to Hayward could be realized via another location in the vicinity.

**b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;**

The key words in this finding are "surrounding area." The heights of the stacks at each plant would be significant; though the Russell City Energy Center plant stacks would be in an area that already contains a stack of significant height at the Rohm and Haas chemical plant to the southeast and that is further away from areas visible from residential and public areas.

**c. The proposed use will not be detrimental to the public health, safety, or general welfare; and**

Although the Energy Commission staff is addressing local air quality impacts and it may be possible to mitigate air quality impacts to federal and state standards enforced by the Bay Area Air Quality Management District, including utilizing emission reduction credits on a region-wide basis that would not likely lessen impacts locally, both plants would emit pollutants in a region that is designated as a non-attainment area for state ambient air quality standards for particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>) and designated as a marginal -attainment area of the national 8-hour ozone standard. Also, staff is concerned with the cumulative air quality impacts of both plants, given the non-attainment status of certain pollutants in this area. The difference between the two plants in staff's opinion, however, is in the location and proximity of the plants to residential areas and sensitive receptors. Aviation impacts, as you indicate, may also be a concern and are addressed later in this letter. For reasons primarily associated with air quality impacts related to proximity of residential areas, the City would not find that the Eastshore Center would be consistent with this finding.

**d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.**

The purpose of the Industrial (I) Zoning District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. Also, the purpose of the Hayward Zoning Ordinance is to "promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner." In furtherance of this purpose, the City desires to "achieve a pattern and distribution of land uses which generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities, allow for the infill and reuse of areas at their prevailing scale and character, ...provide a diversity of areas characterized by differing land use activity, scale and intensity and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses."

The Hayward General Plan contains discussion and policies that encourage the transformation of the Industrial Corridor from a manufacturing and distribution emphasis to more research and development oriented businesses. However, the General Plan also contains discussion that recognizes the importance of separation of potentially-impacting industrial land uses from residential areas:

*On the one hand, many of the businesses that use hazardous materials are located in the Industrial Corridor. For example, high-tech businesses such as computer chip manufacturers and, to a lesser extent, some biotech industries, use highly toxic or corrosive gases. These particular classes of*

*hazardous materials, if not properly stored, handled, and monitored, can pose a threat to the community. The separation of these industrial uses from adjacent residential uses [emphasis added] makes it easier for emergency responders to mitigate and evacuate a hazardous situation. On the other hand, as portions of the Industrial Corridor are developed with more intensive uses, the increase in employee densities may result in a need for child-care facilities in closer proximity to the workforce. Such uses currently are prohibited in the Industrial District due to concerns about safety and land use compatibility. Perhaps there are portions of the Industrial Corridor, such as the newer business parks, where these facilities could be located and pose little or no safety risks.*

Furthermore, the General Plan contains the following relevant policy and strategy:

7. *Promote the transition from a manufacturing-based economy to an information-based economy in the industrial areas.*
  1. *Consider adoption of multiple zoning districts that provide for concentration of similar types of uses such as manufacturing, warehouse/distribution, or research and development/office uses.*

While multiple zoning districts have not yet been adopted for the Industrial Corridor as encouraged by the General Plan, the City seeks to concentrate similar types of uses. The City is of the opinion that heavier, potentially more-impacting industrial uses are more appropriate away from residential areas, such as at the end of Enterprise Avenue near the City's wastewater treatment facility, where the Russell City Energy Center is proposed. Also, automobile wrecking yards at the end of Depot Road are adjacent to the Russell City Center site, and the Rohm and Haas chemical plant is located in the area to the southeast of that proposed plant. Conversely, the Eastshore Energy Center site is situated in the eastern portion of the City's Industrial Corridor approximately 1,200 feet away from the nearest residence in an area that contains Life Chiropractic College, a bank (located adjacent and to the south) and a restaurant/café (located adjacent and to the north). The enclosed aerial image shows the vicinity where the two power plants are proposed. Also, your letter indicates that the two power plant sites were "only about 3,000 feet apart." Given that the entire width of the Industrial Zoning District in this area is about 6,500 feet, it is City staff's opinion that 3,000 feet is significant. In summary, due to the proximity of residential areas and location of existing heavy industrial uses, it is staff's opinion that this finding would not be made for the Eastshore Energy Center and would be made for the Russell City Energy Center.

#### Aviation Impacts

Regarding issues associated with aviation impacts, both energy center sites do fall within the boundaries of the Hayward Airport Airspace Drawing, as shown in the Hayward Executive Airport Master Plan, but neither is in direct alignment of any major approach

routes. Neither do the highest elevations of the stacks exceed the obstacle-free zone height limitations established by the FAA and referred to in Hayward's ordinance. Regarding the issue of exhaust plumes, City staff understands that this is a new issue being addressed by FAA and that the FAA will address this question as part of their FAA Form 7460-1 review, which is appropriate. It is City staff's understanding of the Blythe Airport circumstances that the Blythe plant was in direct line of a runway approach and takeoff zone. Staff believes the orientation and relation of the two plants to the Hayward Executive Airport's approach and takeoff areas are different than is the case in Blythe, but look forward to the FAA's analysis and comment. City staff would expect as noted in the FAA's safety evaluation that there will be recommendations regarding proper notification to pilots and potentially the need to modify the City's broad helicopter approach path from the west. We would also expect that the applicants will be required to fund any bulletins or other processes needed to meet FAA requirements.

#### Proposed Further Actions Regarding Consistency Determination

As stated previously, staff does not consider the proposed new site for the Russell City Energy Center significantly different than the previously proposed site to warrant further action. (See enclosed aerial). In support of this statement is the fact that on October 11, 2005, the Hayward City Council voted unanimously to enter into an agreement with RCEC-LLC authorizing construction of the Energy Center at the currently proposed location. Such action would not have taken place without a determination that the new location was consistent with local land use regulations. Moreover, I draw your attention to Resolution 05-125, a copy of which is attached, particularly to the final two paragraphs. In the second to the last paragraph, the Council is on record as expressing support for the development and construction of the RCEC at its new location. In the final paragraph, the City Council authorizes the City Manager to take appropriate steps to implement the decision of the City Council.

#### Conditions and Mitigations Regarding Land Use Impacts

I assume your request for conditions or mitigations to reduce the significance of any potential issues or impacts relates to land use issues only. For the reasons stated in this letter, we do not believe issues associated with inappropriate land use can be reduced or mitigated for the Eastshore Energy Center at the currently proposed site and that only relocation to a more appropriate site further from residential areas, including outside Hayward, would be acceptable. Other land use issues that are of concern relate to aesthetics/visual impacts and noise impacts. We would request that both plants comply with noise limits identified in the Hayward General Plan's *Noise Guidelines for Review of New Development*. To reduce visual and aesthetic impacts, landscape screening, which could include landscaping with a berm and/or wall, should be provided at each site, especially for the Eastshore site, which is closer to residential areas. The use of a perimeter wall to screen lower level plant facilities at both sites would also be appropriate. We do not feel that the stacks at each site can be mitigated to an insignificant level, though their impacts could be mitigated somewhat if they were more of a neutral color that would blend with the background. Finally, lighting provided should meet the City's

Security Ordinance standards, with light sources shielded so as not to shine or glare off-site.

In summary, it is the City's position that the Eastshore Energy Center is not sited in an appropriate location and would represent a second power plant in the City of Hayward, which has raised great concerns by the local residents and City decision-makers. It is City staff's opinion that the California Utility Commission process in determining the Eastshore site as a possible location for an additional plant in Hayward was not a process that clearly identified the Eastshore site, which would have involved appropriate local public input and participation earlier in the siting process.

Please let me know if you have any questions or need further clarification.

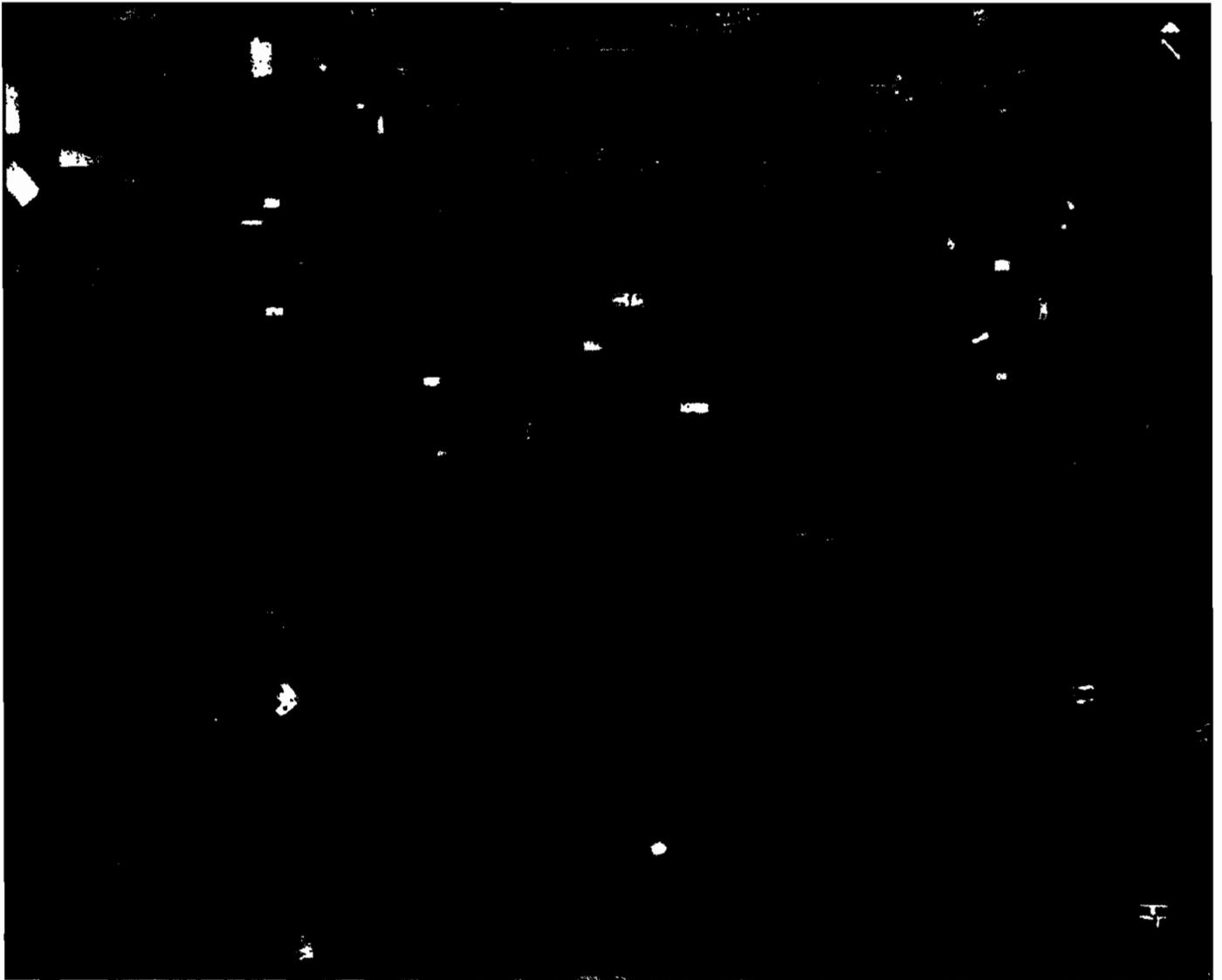
Sincerely,



David Rizk, AICP  
Hayward Planning Manager

cc: Jesús Armas, City Manager  
Susan J. Daluddung, Director of Community and Economic Development Department  
Robert Bauman, Director of Public Works Department  
Michael O'Toole, City Attorney

Enclosure



**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 *Angela Lopez*  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

*M. O. [Signature]*  
City Attorney of the City of Hayward

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION  
FOR THE EASTSHORE ENERGY CENTER  
IN HAYWARD  
BY TIERRA ENERGY OF TEXAS

Docket No. 06-AFC-6

PROOF OF SERVICE  
(Revised 3/12/07)

**INSTRUCTIONS:** All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 06-AFC-6  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**APPLICANT**

Greg Trewitt, Vice President  
Tierra Energy  
710 S. Pearl Street, Suite A  
Denver, CO 80209  
[greg.trewitt@tierraenergy.com](mailto:greg.trewitt@tierraenergy.com)

Harry Rubin, Executive Vice President  
RAMCO Generating Two  
1769 Orvletto Drive  
Roseville, CA 95661  
[hmrenergy@msn.com](mailto:hmrenergy@msn.com)

**APPLICANT'S CONSULTANTS**

David A. Stein, PE  
Vice President  
CH2M HILL  
155 Grand Avenue, Suite 1000  
Oakland, CA 94612  
[dstein@ch2m.com](mailto:dstein@ch2m.com)

**COUNSEL FOR APPLICANT**

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Vice President and General Counsel  
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Austin, Texas 78731  
[theodore.matula@tierraenergy.com](mailto:theodore.matula@tierraenergy.com)

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Santa Barbara, CA 93101  
[jscholl@ch2m.com](mailto:jscholl@ch2m.com)

Jane Luckhardt, Esq.  
Downey Brand Law Firm  
555 Capitol Mall, 10th Floor  
Sacramento, California 95814  
[jluckhardt@downeybrand.com](mailto:jluckhardt@downeybrand.com)

**INTERESTED AGENCIES**

Larry Tobias  
CA Independent System Operator  
151 Blue Ravine Road  
Folsom, CA 95630  
[ltobias@caiso.com](mailto:ltobias@caiso.com)

Electricity Oversight Board  
770 L Street, Suite 1250  
Sacramento, CA 95814  
[esaltmarsh@eob.ca.gov](mailto:esaltmarsh@eob.ca.gov)

Jesus Amas, City Manager  
City of Hayward  
777 B Street  
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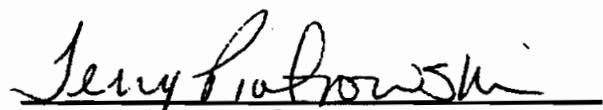
**DECLARATION OF SERVICE**

I, Terry Piotrowski, declare that on April 23, 2007, I deposited copies of the attached Letter from the City of Hayward on Land Use Issues/Russell City Energy Center and Eastshore Energy Center in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

**OR**

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

  
[signature]

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Counsel for the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Calpine Corporation, et al.,

Debtors.

)  
) Chapter 11  
)

) Case No. 05-60200 (BRL)

) Jointly Administered  
)  
)

**FOURTH AMENDED DISCLOSURE STATEMENT FOR DEBTORS'  
FOURTH AMENDED JOINT PLAN OF REORGANIZATION PURSUANT  
TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

- Record Date: September 27, 2007
- Voting Deadline: November 30, 2007, at 4:00 p.m. prevailing Pacific time
- Date by which objections to Confirmation of the Plan must be filed and served: November 30, 2007, at 4:00 p.m. prevailing Eastern time
- Hearing on Confirmation of the Plan: December 18, 2007, at 10:00 a.m. prevailing Eastern time

*Exhibit 7*

Calpine Corporation and the other debtors in the above-captioned chapter 11 cases (collectively, the "Debtors") submit the following fourth amended disclosure statement (the "Disclosure Statement") pursuant to section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") for purposes of soliciting votes to accept or reject the Debtors' fourth amended joint plan of reorganization (the "Plan"), a copy of which is attached to the Disclosure Statement as Exhibit A. Capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meanings ascribed to such terms in Article I.A of the Plan. The Disclosure Statement describes certain aspects of the Plan, including the treatment of Holders of Claims and Interests, and also describes certain aspects of the Debtors' operations, financial projections, and other related matters. On and after the Effective Date, the Debtors shall be referred to collectively as the "Reorganized Debtors" and each individually as a "Reorganized Debtor."

\* \* \* \* \*

THE DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE DEBTORS' PLAN AND CERTAIN OTHER DOCUMENTS AND FINANCIAL INFORMATION. THE INFORMATION INCLUDED IN THE DISCLOSURE STATEMENT IS PROVIDED FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN AND SHOULD NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER AND HOW TO VOTE ON THE PLAN. THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE. THE SUMMARIES OF THE FINANCIAL INFORMATION AND THE DOCUMENTS WHICH ARE ATTACHED TO, OR INCORPORATED BY REFERENCE IN, THE DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO SUCH INFORMATION AND DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN, OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION INCORPORATED IN THE DISCLOSURE STATEMENT BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION, AS THE CASE MAY BE, SHALL GOVERN FOR ALL PURPOSES.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT HAVE BEEN MADE AS OF THE DATE OF THE DISCLOSURE STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH IN THE DISCLOSURE STATEMENT SINCE THE DATE OF THE DISCLOSURE STATEMENT. EACH HOLDER OF A CLAIM OR INTEREST ENTITLED TO VOTE ON THE PLAN SHOULD CAREFULLY REVIEW THE PLAN, THE DISCLOSURE STATEMENT, AND THE PLAN SUPPLEMENT IN THEIR ENTIRETY BEFORE CASTING A BALLOT. THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY ENTITIES DESIRING ANY SUCH ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.

NO ONE IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THE DISCLOSURE STATEMENT. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THE DISCLOSURE STATEMENT AND THE DOCUMENTS ATTACHED TO THE DISCLOSURE STATEMENT. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE PLAN WHICH ARE OTHER THAN AS SET FORTH, OR INCONSISTENT WITH, THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT,

THE DOCUMENTS ATTACHED TO THE DISCLOSURE STATEMENT, AND THE PLAN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST.

WITH RESPECT TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING, THREATENED, OR POTENTIAL LITIGATION OR OTHER ACTIONS, THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN THE CONTEXT OF SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE.

THE SECURITIES DESCRIBED IN THE DISCLOSURE STATEMENT WILL BE ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT, AS AMENDED, OR ANY SIMILAR FEDERAL, STATE, OR LOCAL LAW, GENERALLY IN RELIANCE ON THE EXEMPTIONS SET FORTH IN SECTION 1145 OF THE BANKRUPTCY CODE.

THE DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT.

ALTHOUGH THE DEBTORS HAVE USED THEIR BEST EFFORTS TO ENSURE THE ACCURACY OF THE FINANCIAL INFORMATION PROVIDED IN THE DISCLOSURE STATEMENT, THE FINANCIAL INFORMATION CONTAINED IN OR INCORPORATED BY REFERENCE INTO THE DISCLOSURE STATEMENT HAS NOT BEEN AUDITED, EXCEPT AS SPECIFICALLY INDICATED OTHERWISE.

THE PROJECTIONS PROVIDED IN THE DISCLOSURE STATEMENT HAVE BEEN PREPARED BY THE DEBTORS' MANAGEMENT TOGETHER WITH ITS ADVISORS. THE PROJECTIONS, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE NECESSARILY BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS WHICH, THOUGH CONSIDERED REASONABLE BY MANAGEMENT AND THEIR ADVISORS, MAY NOT BE REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET, AND FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE BEYOND THE DEBTORS' CONTROL. THE DEBTORS CAUTION THAT NO REPRESENTATIONS CAN BE MADE AS TO THE ACCURACY OF THESE PROJECTIONS OR TO THE ABILITY TO ACHIEVE THE PROJECTED RESULTS. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE. FURTHER, EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THESE PROJECTIONS WERE PREPARED MAY BE DIFFERENT FROM THOSE ASSUMED OR, ALTERNATIVELY, MAY HAVE BEEN UNANTICIPATED, AND, THUS, THE OCCURRENCE OF THESE EVENTS MAY AFFECT FINANCIAL RESULTS IN A MATERIALLY ADVERSE OR MATERIALLY BENEFICIAL MANNER. THEREFORE, THESE PROJECTIONS MAY NOT BE RELIED UPON AS A GUARANTY OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR.

NOTWITHSTANDING ANYTHING CONTAINED IN THE DISCLOSURE STATEMENT TO THE CONTRARY, AS SET FORTH IN THE PLAN, ACTUAL DISTRIBUTIONS UNDER THE PLAN TO CREDITORS AND, IF APPLICABLE, EQUITY SECURITY HOLDERS WILL BE PREDICATED ON THE NEW CALPINE TOTAL ENTERPRISE VALUE AS DETERMINED BY THE BANKRUPTCY COURT. NEITHER A VOTE TO ACCEPT THE PLAN BY A CREDITOR OR EQUITY SECURITY HOLDER, NOR THE ACCEPTANCE OF THE PLAN BY ANY CLASS OF

Group and its predecessor firm, Hagler Bailly Risk Advisors, since 1999. Mr. Germeroth's expertise was within Energy Strategy and Risk Management, where he directed a variety of commercial strategy, enterprise risk management and corporate restructuring engagements. Prior to joining PA Consulting Group in 1999, Mr. Germeroth held controllership, risk control, and treasury positions at various entities in his 26 year energy career, including: QST Energy, Inc., a subsidiary of CILCO, Inc., Aquila Energy Corporation, and Reliance Pipeline Company, a subsidiary of NICOR, Inc. Mr. Germeroth holds a BSBA in Finance from the University of Denver.

### **ARTICLE III. THE CHAPTER 11 CASES**

Beginning on December 20, 2005, the Debtors Filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to conduct their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The following is a general summary of the Chapter 11 Cases, including certain events preceding the Chapter 11 Cases, the stabilization of the Debtors' operations, and the Debtors' restructuring initiatives implemented since the Petition Date.

#### **A. Events Leading to the Chapter 11 Cases and Related Postpetition Events**

Calpine was established in 1984 as an energy services provider to the newly emerging independent power industry. By 2001, Calpine had developed or acquired a portfolio of nearly 10,000 MW of clean and reliable power plants in North America and was undergoing further expansion through both construction and acquisitions. Between 2001 and 2004, this expansion effort led Calpine to more than double its installed power generation capacity. By December 2006, Calpine owned 24,839 MW of operating generation capacity, making it one of the largest independent power producers in the United States.

This rapid expansion was funded primarily by incurring corporate debt and project financing. Consequently, Calpine's consolidated funded debt exceeded \$17.0 billion as of December 31, 2004. Of this, approximately \$7.0 billion was non-recourse, project-level financing. The cost of servicing this debt was significant, and, by the end of 2005, debt-service, together with other events, including certain market factors, precipitated a liquidity crisis culminating in Calpine's eventual need to commence the Chapter 11 Cases.

First, between 2002 and 2005, the cost of natural gas, which is needed to fuel Calpine's fleet of mostly natural gas-fired combustion plants, rose to a historically high level while the cost of alternate fuels for power generation such as coal remained relatively much lower. This persisting imbalance placed Calpine at a severe disadvantage compared to competitors operating coal-fired facilities. The higher natural gas prices also led to increased working capital requirements for Calpine, as its declining corporate credit rating often required it to prepay for fuel.

Second, while Calpine selectively benefited from higher natural gas prices in its key markets because of the efficiency of its fleet, many of Calpine's legacy contracts, which required it to sell power at fixed prices, were unprofitable in the commodity price market that prevailed in the period leading up to the filing of the Chapter 11 Cases. This problem was exacerbated in July 2005, following the sale of Calpine's natural gas business, Calpine Natural Gas, L.P. ("CNG"), to Rosetta Resources, Inc. ("Rosetta"). The sale of those assets eliminated one of Calpine's significant hedges against natural gas price volatility impairing its ability to mitigate exposure under the fixed-price power contracts.

1,096 employees, resulting in an annualized cost savings of approximately \$180 million. The Debtors' workforce now consists of approximately 2,200 employees.

d. Market Drivers

There are four key market "drivers" affecting Calpine's financial performance: the regional supply and demand environment for electricity; regional generation technology and fuel mix; natural gas prices; and environmental regulations.

(i) Regional Supply and Demand

Regional supply and demand affect the pricing for electricity that results from wholesale market competition, and, consequently, are key drivers of Calpine's financial performance. For much of the 1990s, utilities invested relatively sparingly in new generation capacity. As a result, by the late 1990s, many regional markets were in need of new capacity to meet growing electricity demand. Prices rose due to capacity shortages, and the emerging merchant power industry responded by constructing significant amounts of new capacity. Between 2000 and 2003, more than 175,000 MW of new generating capacity came "on line" in the United States. In most regions, these new capacity additions far outpaced the growth of demand, resulting in "overbuilt" markets, *i.e.*, markets with excess capacity. In the West, for example, approximately 24,000 MW of new generation capacity was added between 2000 and 2003, while demand only increased by approximately 8,000 MW.

The significant increase in generation capacity relative to demand has contributed to the financial distress encountered by Calpine and other merchant generators in the past several years. For example, most of this new generation capacity consisted of gas-fired combined-cycle plants which use a gas turbine to create electricity, then capture, or recycle, the waste heat to create steam, which is then used to create additional electricity through a steam turbine. Natural gas-fired combined-cycle units tend to have higher variable costs in the current natural gas price climate and generally cannot compete effectively with nuclear- and coal-fired units, which can more efficiently produce power at lower costs.

This surge of generation investment has subsided since 2003. During 2005, for example, only 17,000 MW of new supply was added nationwide. As a result, growing demand for electricity has begun to reduce the level of excess supply, leading to the current predictions of decreasing "reserve margins" for many regional markets through the end of the decade. "Reserve margins" are a measure of the balance between supply and demand in a regional electricity market. For example, a reserve margin of 15% indicates that supply exceeds expected peak electricity demand by 15%. Holding other factors constant, lower reserve margins typically lead to higher power prices, because the less efficient (more expensive) capacity in the region is needed to satisfy electricity demand. Currently, supply exceeds demand in most regional markets.

(ii) Regional Generation Technology and Fuel Mix

In a competitive market, the price of electricity typically is related to the operating costs of the marginal, or price-setting, generator. Assuming economic behavior by market participants, generating units generally are dispatched in order of their variable costs. In other words, units with lower costs are dispatched first and higher-cost units are dispatched as demand (sometimes referred to as "load") grows. Accordingly, the variable costs of the last (or marginal) unit needed to satisfy demand typically drives the regional power price. This market dynamic makes regional generation technology and fuel mix the second key driver of Calpine's financial performance.

In addition to those environmental laws and regulations described in further detail below, Calpine's regional markets are, or will be, affected by several current and pending environmental regulations, including:

- Regulation of sulfur dioxide ("SO<sub>2</sub>") and nitrogen oxides ("NO<sub>x</sub>") emissions under the Clean Air Interstate Rule ("CAIR"). When they become effective, CAIR regulations will affect Calpine's Texas, Southeast, and Northeast assets. CAIR will cap NO<sub>x</sub> and SO<sub>2</sub> emissions in twenty-nine of the easternmost states starting in 2009. With the exception of the Oneta facility in the Southwest Power Pool region of the Southeast, all Calpine Southeast and Northeast plants will be subject to CAIR. Calpine's assets in California, Oregon, Arizona, and Colorado will not be regulated under the CAIR program.
- Regulation of mercury emissions under the Clean Air Mercury Rule ("CAMR"). CAMR regulations primarily penalize coal-fired generators. CAMR will tighten mercury emissions limits in 2010 and again in 2018, ultimately requiring the reduction of coal plant mercury emissions by almost 70%. CAMR could benefit Calpine by reducing the attractiveness of coal generation investments, and outdated existing coal-fired plants may ultimately be forced to make costly capital improvements or retire. When they become effective, CAMR regulations likely will affect Calpine's assets in the Midwest and eastern United States. Calpine's assets in Texas, California, Oregon, and Arizona are not expected to be affected by CAMR regulations because, as discussed below, natural gas tends to be "on the margin" in these regions.
- Renewable Portfolio Standards. Renewable Portfolio Standards ("RPS") mandate that utilities and other load-serving entities ("LSEs") purchase a portion of their electricity from renewable sources. This creates a premium for power sold from The Geysers.
- Carbon (greenhouse gas) regulations. Carbon regulations are still pending in the United States and may come into effect in the Northeast in 2009 and California in 2012. The United States Supreme Court recently issued a decision holding that the Federal Clear Air Act of 1970 requires the Environmental Protection Agency to regulate greenhouse gases from new motor vehicle once it concludes that such emissions contribute to climate change. Calpine believes the Supreme Court's ruling could effectively determine the Environmental Protection Agency's authority to regulate air pollution associated with climate change from all sources, including power plants. In addition, carbon regulation could affect all fossil-fired generators depending on the means by which carbon emissions allowance credits are allocated. Several national carbon regulation programs have been proposed, and the approaches to allowance allocations vary widely. California recently passed legislation to reduce carbon emissions levels.

Third, although the overall consumption rate of electricity grew in the period leading up to the filing of the Chapter 11 Cases, between 2000 and 2003 more than 175,000 MW of new generating capacity came on line in the United States. This new capacity far outpaced the growth of demand in most markets. Excess capacity caused power prices to drop and resulted in low utilization levels for power generators. During 2005, Calpine operated at an average baseload “capacity factor” of less than 50%, resulting in a negative impact on Calpine’s revenues. A plant’s “capacity factor” reflects the actual amount of energy generated during a given period of time as a percentage of the total amount of energy that could have been generated had the plant run continuously over the period at the plant’s full capacity rating.

Together, these market factors, among others, severely constrained Calpine’s ability to operate profitably and service its debt. Additionally, many of Calpine’s debt agreements contained restrictive covenants that limited its ability to respond to its liquidity crisis. Among other things, these debt covenant restrictions limited Calpine’s ability to incur additional debt, retire high interest rate debt, shut down underperforming facilities, and use the proceeds from certain asset sales without constraint, including the proceeds from its divestiture of CNG.

Calpine’s liquidity crisis culminated after an adverse decision from the Delaware Chancery Court regarding Calpine’s use of approximately \$308.2 million in sale proceeds from its July 2005 sale of CNG to purchase fuel contracts. The trustees representing the Holders of the First Lien Debt and the Second Lien Debt alleged that Calpine’s use of sale proceeds violated the terms of the relevant indentures. On December 5, 2005, the Delaware Chancery Court ruled that Calpine’s fuel purchases violated the First Lien Indenture and ordered Calpine to repay the funds plus interest into a collateral account by January 22, 2006. Calpine appealed this decision, but on December 16, 2005, the Delaware Supreme Court affirmed the decision of the Chancery Court.

The Court’s ruling, coupled with other challenges the company faced, Calpine’s already-sizable debt obligations and the prevailing adverse market conditions led to the determination that it was necessary for Calpine to commence the Chapter 11 Cases. Accordingly, beginning on December 20, 2005, the Debtors Filed petitions for relief under chapter 11 of the Bankruptcy Code.

#### B. Stabilization of Operations

Upon commencing the Chapter 11 Cases, the Debtors sought and obtained a number of orders from the Bankruptcy Court to minimize disruption to their operations and facilitate the administration of the Chapter 11 Cases. Several of these orders are briefly summarized below.

##### 1. Motion for Authority to Obtain Postpetition Financing

To address their immediate liquidity issues and ensure a seamless transition into chapter 11, the Debtors negotiated term sheets and commitment letters for a debtor-in-possession credit agreement for up to \$2.0 billion in postpetition financing just prior to the Petition Date. The Bankruptcy Court authorized the Debtors’ entry into this debtor-in-possession credit facility, in the form of revolving and term loans up to an aggregate principal amount of \$2.0 billion from Credit Suisse First Boston, Deutsche Bank Securities, Inc., and a syndicate of lenders (collectively, the “Original DIP Lenders”) on an interim basis on December 21, 2005 and on a final basis on January 26, 2006 (as further amended, supplemented, or otherwise modified, the “Original DIP Facility”). As discussed in further detail in Article III.D.3, the Original DIP Facility was replaced by a replacement debtor-in-possession credit facility (the “Replacement DIP Facility”) in March 2007.

**ARTICLE X.  
RECOMMENDATION**

The Debtors recommend the Plan because it provides for greater distributions to the Holders of Claims and Interests than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than Confirmation could result in extensive delays and increased administrative expenses resulting in smaller distributions to the Holders of Claims and Interests. **Accordingly, the Debtors recommend that Holders of Claims and Interests entitled to vote on the Plan support Confirmation and vote to accept the Plan.**

New York, New York  
Dated: September 27, 2007

Respectfully submitted,

CALPINE CORPORATION (for itself and all other Debtors)

By: /s/ Gregory L. Doody  
Name: Gregory L. Doody  
Title: Executive Vice President, General Counsel, and Secretary