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STATE OF CALIFORNIA

STATE ENERGY RESOURCES

Conservation and Development Commission

In the Matter of: Initially noticed as "Petition to Amend the Commission Decision Approving the Application for Certification for the Russell City Energy Center"; Later Noticed as "Modification of the Application for Certification for the Russell City Energy Center"	Docket No.: 01-AFC-7C DECLARATION OF TOM KERSTON IN SUPPORT OF GROUP PETITIONERS' PETITION TO INTERVENE, REOPEN THE ADMINISTRATIVE PROCEEDINGS, REOPEN THE EVIDENTIARY RECORD AND FOR RECONSIDERATION Date: TBD Location.: TBD Time: TBD

I, Tom Kersten, hereby declare:

1. I am a resident of the City of Hayward, and President of the Hayward Democratic Club. I have personal knowledge of the facts set forth below and if called as a witness in this matter, would and could testify competently to the following.

2. Earlier this year the Hayward Demos' Executive Board met and reviewed the proposal of the Russell City Energy Center, a 600-megawatt thermal power plant.

3. Although I live only a few miles of the proposed site and have been President of the Demos since 1/7/07, I never received any notification from either the City of Hayward, County of Alameda or from the CEC relating to any power plant despite the Demos long record of activity in Hayward. Based on our information and belief and as discussed in our September 6, 2007 letter, the CEC has not received adequate input or meaningful approval from the local jurisdictions.

5. After our review of the staff documents, I sent a letter for the Demos setting forth our resolutions, in good faith and on time, to the CEC. Attached is a true and correct copy of my letter dated September 6, 2007 that I directed to the Commission members and CEC hearing officer Paul Kramer. I believed the letter constituted valid testimony on the Russell City proposal. I was never informed before or after by the CEC that my letter did not constitute admissible evidence upon which the CEC could rely to support a denial of the project. Based on the Demos experience reviewing proposals involving CEQA proceedings, I was surprised to find out that the Demos comments are not entitled to any weight unless offered "by a party" and offered under penalty of perjury consistent with the hearsay rules admitted into the evidentiary record.

6. In petitioning to intervene, reopen the administrative and evidentiary records and for reconsideration, the Demos offer as testimony the opinions and observations stated in our September 6, 2007 letter together with the accompanying declarations of this Group Petition. As our letter states, we disagree that this project "will not have a significant effect on the environment," and we assert that this project is not mitigated, particularly the health hazards presented by the almost 1.3 million pounds of emissions, including 86.4 tons of particulate matter, as discussed in our attached letter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24 day of October 2007, in Hayward, California.

TOM KERSTEN

TO: CALIFORNIA ENERGY COMMISSION BOARD - Paul Kramer, Hearing Officer (Jackalyne Pfannenstiel - Chair, James Boyd - Vice Chair, John Geesman, Arthur Rosenfeld, Jeffrey Byron).

From: Tom Kersten, President of the Hayward Demos Democratic Club, Hayward City resident

RE: RUSSELL CITY ENERGY CENTER amended application (Docket no. 01-AFC-7C) - proposed construction of a power plant in Hayward, CA

CC: Hayward City Council, CA State Senator Ellen Corbett, Assemblymember Mary Hayashi, Dale Edwards (CEC, Environmental Justice)

September 6, 2007

The Executive Board of the *Hayward Demos Democratic Club* has voted to oppose this project and the grounds that it does not appear to be environmentally just to the citizens of Hayward and that the applicant has refused to accept CEC staff initial recommendations to reduce air pollution emissions from the plant without adequate justification. Lastly, given the size and scope of this project, public participation from the city has been generally inadequate.

1. Inadequate Remedy for Particulate Matter (PM 10)

According to the *Preliminary Document of Compliance,*(PDOC), by the *Bay Area Air Quality Management District* (BAAQMD), this proposed project will produce up to 86.4 tons per year of particulate matter, (PM10), which will remain within the city and diminish our air quality. In order to satisfy the air quality requirements of the *BAAQM*, Russell City Energy, (the applicant), has obtained *Emission Reduction Credits*, (ERCs), from various locations including San Leandro and Oakland, (ref. *Project Owner's Comments on the Presiding Member's Proposed Decision,* 8-31-07, Attachment #2, letter to Brian Bateman, *BAAQMD*). Out of the 86.4 projected tons of particulate matter, only 52.3 tons is being offset within the city of Hayward - the difference being offset with credits in the other cities. In effect, the applicant in this case appears to be trading away Hayward's 'clean' air in order to satisfy the requirements of the *BAAQMD*.

In order to mitigate this apparent 'injustice', the applicant has further voluntarily agreed to reduce the amount of particulate matter by 43.4 tons during the winter months by providing incentives for a stove/fireplace replacement project. Citizens of Hayward will have up to 12 months to participate in this project which is purely voluntary. After 12 months the project will be opened up to home owners outside the city. According to the CEC staff's assessment, the results of such programs in the past have been 'uneven' and they recommended additional ERCs to make up the difference.

> "Due to "uneven" results from similar past programs, Staff recommends that the program results be monitored and, if it fails to meet specified milestones and to ultimately provide the target reduction of 43.4 tons, the Applicant supply additional ERCs to make up the difference. See Conditions AQ-SC12 and AQ-SC13. (Ex. 100, p. 4.1-12 – 4.1-13.) " <*Presiding Member's Proposed Decision* (PMPD), p.76>

However, there are currently no such ERCs available within Hayward or the Alameda county so even if the applicant purchases additional ERCs in the future it is not likely to improve Hayward's air quality with respect to particulate matter (PM 10). While the requirements of the *BAAQMD* may be ultimately satisfied on paper, the citizens of Hayward will in all likelihood suffer a loss of air quality if this project is completed as currently proposed.

2. Refusal of Applicant to Accept Staff Remedies to Reduce Emissions

CEC staff for this project recommended that different engines be used in order to significantly reduce emissions from start-up events.
However, the applicant declined this remedy due to 'economic reasons'. If better technology exists that would significantly reduce emissions for this particular project, then it should be required barring any severe economic hardships. This plant will be operational for at least 30 years so it would seem reasonable to assume that any additional costs of this kind would be relatively small. The applicant has failed to establish a major economic hardship it would suffer as a result of these minor changes.

> "Staff proposed technological solutions (Siemens-Westinghouse Fast-Start and General Electric OpFlex) which it believes would significantly reduce emissions from start-up events, but they were rejected by the Applicant for economic reasons. (Ex. 100, pp. 4.1-8 – 4.1-9.)12 To address Staff's concern, the Applicant has agreed to limit NOx emissions to 1,225 lbs per day during the June 1 through September 30 ozone season, with additional ERCs provided to make up the difference between 1,225 lbs and the already committed 848 lbs of mitigation and a general limitation on turbine hot or warm start-up NOx emissions to 125 lbs per event. (Ex. 100, pp. 4.1-7 – 4.1-8.) Those requirements are contained in Conditions AQ-SC7 and AQ-SC8, below.
>
> Due to the significant start-up emissions, Staff recommends that the prohibition of simultaneous start-up of both turbines (Condition AQ-22 in the 2002 Decision, now AQ-SC9) be retained (unless fast start technology is incorporated into the project) because of the potential for the large ozone precursor emissions during a cold start-up (960 lbs of NOx and 192 lbs of POC) to contribute to violations of the 1 and 8-hour ozone air quality standards. (Ex. 100, p. 4.1-11.) " <PPMD, p.75>

3. Public Participation and General Dissatisfaction

While we praise the CEC for holding the last two hearings on the Russell City project in the City of Hayward at our City Hall allowing the public to make final comments, we are generally disappointed that the CEC and the city didn't make a more intense effort to reach out to the public earlier in the process. This project was originally approved way back in 2002. I have lived in Hayward since 2001, and the first time I heard about Russell City was a couple of months ago just before the previous hearing last July. This plant will be located within a couple of miles from my home. There were only 1 or 2 other board members who seemed to know anything about the plan, and these are people who are very active politically. This theme of being 'unprepared' and taken 'off guard', seemed to be repeated over and over at the final Sept 5th local hearing last night. Several Hayward residents complained that they had signed up on the a CEC managed list to be notified about the project, but never received any notification. Some were surprised that the meeting took place right after a major holiday and found out about the hearing at the last minute.

While we appreciate the fact that both the applicant and the CEC has been working closely with the staff and city manager of Hayward on this project, that is not an indication that the citizens who are ultimately going to be effected by this project have had a chance to fully participate in the process. Based on many comments from the general public last night, I sensed a strong feeling of dissatisfaction with the process. When people find out about a project of this size at the 11th hour and well after the project has already been approved, it leads to a lot of public frustration and cynicism about city and state government in general. It discourages people from fully participating in the political process which ultimately weakens our democratic traditions and its institutions. We strongly urge the CEC along with the City of Hayward to take a very hard look at how they approach public outreach on public projects of this magnitude in the future.

Best Regards,

Tom Kersten

President, Hayward Demos Democratic Club