

**DOCKET**

**01-AFC-7C**

**DATE** OCT 25 2007

**RECD.** OCT 26 2007

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7 Attorneys for Group Petitioners California  
8 Pilots Association, Citizens for Alternative Transportation  
9 Systems, San Lorenzo Homeowners Association,  
10 Skywest Townhouse Homeowners Association,  
11 Hayward Democratic Club and Hayward Area Planning  
12 Association

13 STATE OF CALIFORNIA

14 STATE ENERGY RESOURCES

15 Conservation and Development Commission

16 In the Matter of:

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

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

Docket No.: 01-AFC-7C

GROUP PETITIONERS' PETITION TO  
INTERVENE AS A GROUP TO REOPEN  
THE ADMINISTRATIVE PROCEEDINGS,  
REOPEN THE EVIDENTIARY RECORD  
AND FOR RECONSIDERATION; and

PETITION RE FINANCIAL HARDSHIP

Date: TBD

Location.: TBD

Time: TBD

Accompanying documents: Supporting  
declarations of Jay White, Tom Kerston,  
Sherman Lewis , Gary Cathey, Michael Toth,  
Andrew Wilson III, and Jewell Hargleroad

1           1. Petitioner is a group collectively referred to as "Group Petitioners" consisting of the  
2 following non-profit corporations based in California:

- 3           a. California Pilots Association ("Calpilots")  
4           b. Citizens for Alternative Transportation Systems ("CATs")  
5           c. San Lorenzo Homeowners Association  
6           d. Skywest Townhouse Homeowners Association  
7           e. Hayward Democratic Club ("Demos")  
8           f. Hayward Area Planning Association ("Hapa")

9           The purpose of this petition to intervene is to urge the California Energy Commission to  
10 reconsider its Final Decision concerning the Russell City Energy Center Project docketed on  
11 October 2, 2007 entitled "Amendment No. 1 (01-AFC-7C) Alameda County." Group Petitioners  
12 seek to become a party to submit evidence in support of their positions to support and enable the  
13 Commission to make a determination in favor of Group Petitioners supported by the evidentiary  
14 record.

15           2. Group petitioners will be represented by attorney Jewell J. Hargleroad whose address is  
16 1090 B Street, No. 104, Hayward, California 94541, and certifies that she will act as spokesperson  
17 in these proceedings for members of the group. Counsel reserves the right and entitlement,  
18 however, of designating any person or entity to assist counsel in these proceedings. Group  
19 Petitioners further agree to notify the Applicant and Commission of additions or deletions to the  
20 Group list within ten days of when such changes occur. Counsel certifies that she has served the  
21 applicant's attorney of record in this proceeding with this petition.

22           3. Group Petitioners represent the concerns of aviators and community organizations who  
23 use the Hayward Airport and are concerned about the recent trend of attempting to locate large  
24 thermal power plants near community local airports, such as was established near the Blythe  
25 Airport in Blythe, California. Calpilots and the community organizations share a common interest  
26 in assuring that aviators may safely and fully utilize the Hayward Airport without facing  
27 hazardous conditions posed by "thermal plumes" reaching one thousand feet or one hundred  
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1 stories high resulting in the restriction of airspace and thereby forcing aviators to invade airspace  
2 otherwise restricted by noise regulations rendering this Russell City Energy Center inconsistent  
3 with the community's land use designations, ordinances and regulations.

4 4. Group Petitioners share the interest in assuring that school children and college students  
5 are provided education in a healthy and safe environment. This project is located within a few  
6 miles of several public and private elementary and high schools located in the San Lorenzo and  
7 Hayward School Districts and the Chabot Junior College, a campus of the Chabot-Las Positas  
8 Community College District. Based on Group Petitioners information and belief, the student  
9 population of Chabot College alone exceeds 15,000 students, the population of San Lorenzo  
10 School District has grown over the past five years and the Hayward School District maintains and  
11 operates several elementary, middle and high schools, not including the student population of  
12 several local parochial and private elementary and high schools. Based on Group Petitioners  
13 information and belief, the population surrounding this project has substantially increased if not  
14 doubled since 2001 based on the information provided in the Hayward Area Recreational  
15 District's 2006 Master Plan.

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18 5. CATs is a community organization organized to promote alternative transportation  
19 systems and has an interest in this project's detrimental impact on Interstates 888 and Highways  
20 92, highways that are known to operate at level "F." CATs shares the opinions with the other  
21 members that The Final Decision's Transportation Section is inadequate, fails to seek and  
22 incorporate meaningful input from the County and the Alameda Congestion Transportation  
23 Agency, that this project is not mitigated and that the impact of accidental hazardous materials will  
24 have a substantial detrimental impact on traffic circulation that is not addressed by the Final  
25 Decision docketed on October 3, 2007.

26  
27 6. The San Lorenzo Homeowners Association is a homeowners association of over 5,600  
28 residences established in 1945 in unincorporated County of Alameda, located in the

1 unincorporated the San Lorenzo District, adjacent to the City of San Leandro and the  
2 unincorporated communities of the County of Alameda known as Cherryland and Ashland.  
3 Adjacent or near to San Lorenzo's southern border is the Russell City Energy Proposal, which at  
4 the time of this application for an "amendment" in November 2006 fell within the jurisdiction of  
5 unincorporated Mount Eden. San Lorenzo residents and members of the Association share an  
6 interest in the San Francisco Bay shoreline, the preservation of the Hayward San Lorenzo Bay  
7 Trail and its viewshed and air quality, and assuring that the air quality and health and safety of its  
8 residents and neighbors are fully protected. San Lorenzo further shares an interest in assuring that  
9 aviators of the Hayward Airport are not presented hazardous conditions or that airspace which  
10 presently is not subject to noise ordinances is protected to enable aviators to avoid airspace  
11 protected by noise ordinances and regulations which San Lorenzo residents have an interest in  
12 protecting.  
13

14 7. The Skywest Townhouse Homeowners Association is a homeowners association  
15 consisting of 140 residences located near the Hayward Airport and the shoreline, located in the  
16 City of Hayward. Like other members of the group, Skywest Homeowners have an interest in  
17 protecting their properties, residents' health and safety, the San Francisco Bay shoreline, the  
18 preservation of the Hayward San Lorenzo Bay Trail, and assuring that the air quality and health  
19 and safety of its residents and neighbors are fully protected, including assuring that aviators of the  
20 Hayward Airport are not presented hazardous conditions or that airspace which presently is  
21 subject to noise ordinances is protected to enable aviators to avoid airspace protected by noise  
22 ordinances and regulation.  
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24 8. The Hayward Democratic Club ("Demos") was formed in 1967 by citizens from  
25 Hayward, San Leandro, San Lorenzo and Castro Valley to influence local government and politics  
26 with almost 200 active members and is a member of the California Democratic Council. The  
27 Demos is a local grassroots volunteer organization that has an interest in assuring there are  
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1 progressive solutions to today's problems and works to support those progressive ideas. These  
2 include sustainability of energy resources, prevention of global warming and emissions of  
3 pollutants damaging communities' health and safety. The Demos have an interest in assuring that  
4 the community's opinions and concerns over the environment and residents' health and safety is  
5 fully legislatively considered and provided sufficient weight to support an affirmative finding in  
6 their favor by the CEC. The Demos interest is to assure that the legislators of the local  
7 jurisdictions review the merits of this project with the public and direct that staff, which is suppose  
8 to be working for the public interest, to address issues raised by the public and fully analyze the  
9 impacts of this project to provide adequate and meaningful analysis to the CEC and its staff as  
10 well as other applicable agencies, such as Bay Area Air Quality Management Agency.

12 9. The Hayward Area Planning Association (HAPA) was formed in 1978 by citizens from  
13 in the Hayward area (in addition to residents in the City of Hayward, adjacent unincorporated  
14 Alameda County districts, such as Fairview and Castro Valley) to research, educate, and promote  
15 better planning for open space, transit, smart growth, and sustainability. HAPA has about fifty-  
16 five members, mostly local residents of the City of Hayward and unincorporated County. HAPA's  
17 interests include advocating and promoting reduced greenhouse gases, sustainable energy resources,  
18 and less pollution. HAPA has participated in local civic education, media relations, advocacy to  
19 the Hayward City Council and other agencies, including litigation involving the California  
20 Environmental Quality Act.  
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23 10. All members of the group share an interest in having their views and members' views,  
24 opinions and positions fully considered and weighed by the California Energy Commission.  
25 Group Petitioners and members relied on the representations of the public notices that these  
26 proceedings are the same or consistent with the provisions of the California Environmental  
27 Quality Act ("CEQA"). However, CEQA does not require petitions to "intervene" to offer  
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1 evidentiary support which also requires that offer of proof be made by a “party.” Nor do CEQA  
2 proceedings adopt the Rules of Evidence and limit the applicable reviewing authority, here the  
3 CEC, to an “evidentiary record” governed by the Rules of Evidence to support affirmative  
4 determinations in the Group Petitioners’ favor. So that Group Petitioners, their members and the  
5 communities’ opinions, views, arguments and offers of proof may be admitted as evidence and  
6 properly weighed by the CEC, Group Petitioners seek leave to intervene to become a party to  
7 make their offers of proof and to pose their exceptions to these present “amendment” or  
8 “modification” proceedings.  
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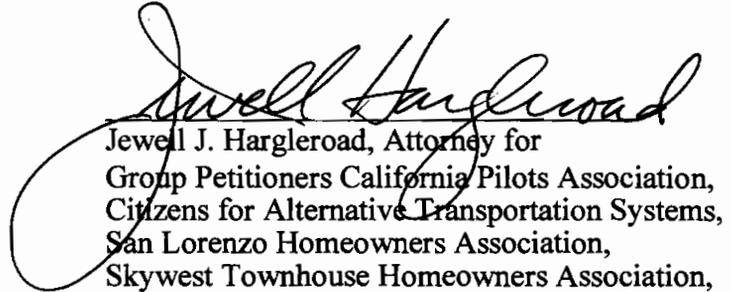
10 11. Group Petitioners have an interest in assuring that this project’s application is properly  
11 processed consistent with procedural due process. Based on Group Petitioners information and  
12 belief, changed circumstances require that this application be processed as a new project, not an  
13 “amendment” or “modification” of an approved project. Likewise, Group Petitioners traditionally  
14 have relied on the staff and experts of their local jurisdictions to investigate and analyze impacts  
15 of proposals, but assert that, to date, these proceedings have deprived them of those fundamental  
16 privileges and entitlements.  
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18 12. Group Petitioners further petition to be excused from filing twelve copies with the  
19 Commission Docket Unit of all filings and serving papers on all other parties of record. The basis  
20 for this request is that compliance with such requirements creates an undue financial hardship and  
21 burden. Group Petitioners are non-profit organizations that traditionally do not have to retain  
22 counsel to have their opinions accepted and weighed. Group petitioners did not retain counsel  
23 until after September 26, 2007. These evidentiary proceedings in themselves, even granting this  
24 hardship petition, constitute a hardship. Further, counsel who represents Group Petitioners  
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1 is a sole practitioner, and such administrative burdens would unduly detrimentally impact  
2 counsel's ability to address the important and substantial legal issues presented by these  
3 proceedings.

4 Dated: October 25, 2007

Respectfully Submitted,

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7 Jewell J. Hargleroad, Attorney for  
8 Group Petitioners California Pilots Association,  
9 Citizens for Alternative Transportation Systems,  
10 San Lorenzo Homeowners Association,  
11 Skywest Townhouse Homeowners Association,  
12 Hayward Democratic Club and Hayward Area  
13 Planning Association  
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