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October 26, 2007

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VIA FIRST CLASS U.S. MAIL

CALIFORNIA ENERGY COMMISSION  
Attention Docket Unit  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

<b>DOCKET</b>	
<b>01-AFC-7C</b>	
DATE	OCT 26 2007
RECD.	OCT 26 2007

Re: *Russell City Energy Center*  
*Client-Matter: CH030-001*

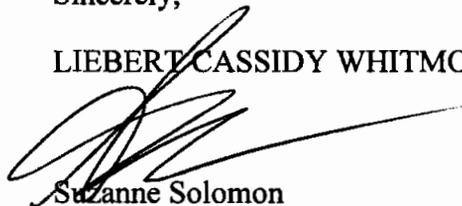
Greetings:

Laura Schulkind of this office represents the Chabot-Las Positas Community College District, which is filing the enclosed Petition to Intervene and Petition for Reconsideration in the matter of the proposed Russell City Energy Center site, before the California Energy Commission, Docket No. 01-AFC-7C.

Pursuant to my conversation with Sabrina in the Docket Unit today, we are enclosing the originals and twelve (12) copies of the District's Petition to Intervene, Petition for Reconsideration and Stay, the Declaration of Joel L. Kinnamon, and our Proof of Service. We are also filing the documents electronically.

Sincerely,

LIEBERT CASSIDY WHITMORE



Suzanne Solomon

SXS/lg

Enclosures

49115.1 CH030-001

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College District

9 STATE OF CALIFORNIA  
State Energy Resources  
10 Conservation and Development Commission

11 In the Matter of:

Docket No. 01-AFC-7C

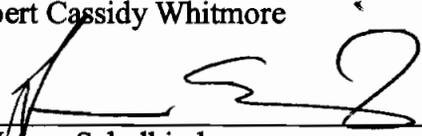
12 **CHABOT-LAS POSITAS COMMUNITY**  
13 **COLLEGE DISTRICT'S PETITION:**

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15  
16 RUSSELL CITY ENERGY CENTER

- 17 (1) TO RE-OPEN THE ADMINISTRATIVE  
18 PROCEEDINGS;  
19 (2) TO RE-OPEN THE EVIDENTIARY  
20 RECORD;  
21 (3) FOR RECONSIDERATION OF  
22 ENERGY COMMISSION DECISION;  
23 AND  
24 (4) FOR STAY OF FINAL DECISION

25 Dated: October 26, 2007

Liebert Cassidy Whitmore

26 By: 

Laura Schulkind  
Attorneys for Chabot-Las Positas Community  
College District

27  
28 49110.1 CH030-001

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9 STATE OF CALIFORNIA  
State Energy Resources  
10 Conservation and Development Commission

11 In the Matter of:

Docket No. 01-AFC-7C

**PETITION:**

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14 **(1) TO RE-OPEN THE ADMINISTRATIVE  
PROCEEDINGS;**  
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16 **(2) TO RE-OPEN THE EVIDENTIARY  
RECORD;**  
17 **(3) FOR RECONSIDERATION OF  
ENERGY COMMISSION DECISION;  
AND**  
18  
19 **(4) FOR STAY OF FINAL DECISION**

16 RUSSELL CITY ENERGY CENTER  
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23 **Intervenor Chabot-Las Positas Community College District** hereby petitions the  
24 Commission for a stay and reconsideration of the Commission's Final Decision of September 26,  
25 2007, in the above-referenced matter, and reopening of the administrative proceedings and  
26 evidentiary record.

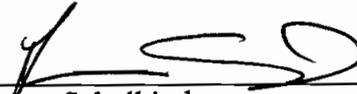
27 This petition is made on the grounds set out in the attached Memorandum of Points and  
28

Continuation Pages Are Attached

1 Authorities, the declaration of Joel L. Kinnamon, and on the pleadings and records on file in this  
2 proceeding.

3 Dated: October 26, 2007

Liebert Cassidy Whitmore,

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5 By:   
6 Laura Schulkind  
7 Attorneys for Chabot-Las Positas Community  
8 College District  
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9 STATE OF CALIFORNIA  
State Energy Resources  
10 Conservation And Development Commission

11 In the Matter of:

Docket No. 01-AFC-7C

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14 **RUSSELL CITY ENERGY CENTER**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
INTERVENOR CHABOT-LAS POSITAS  
COMMUNITY COLLEGE DISTRICT'S  
PETITION:**

- 15 (1) **TO RE-OPEN THE ADMINISTRATIVE  
16 PROCEEDINGS;**  
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18 (2) **TO RE-OPEN THE EVIDENTIARY  
RECORD;**  
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20 (3) **FOR RECONSIDERATION OF  
ENERGY COMMISSION DECISION;  
AND**  
21 (4) **FOR STAY OF FINAL DECISION**

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24 **Intervenor Chabot-Las Positas Community College District** ("District") is a public  
25 entity that governs Chabot College, located within 3 miles of the Russell City Energy Center  
26 ("RCEC") site plan. The District hereby petitions for reconsideration and stay of the California  
27 Energy Commission's ("Commission") Final Decision of September 26, 2007, approving the  
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1 proposed amendment to the RCEC site plan. Pursuant to Title 20, California Code of  
2 Regulations, § 1720, the District also seeks to re-open the administrative proceedings and re-open  
3 the evidentiary record in this matter. This petition for reconsideration is supported by the  
4 attached Declaration of Joel L. Kinnamon. (This petition is filed concurrently with the District's  
5 Petition to Intervene and the Memorandum of Points and Authorities supporting that petition.)

6 **I. Standards for Petition for Reconsideration**

7 Any party may petition for reconsideration of a final decision of the Commission within  
8 30 days after a decision or order is final. Title 20, California Code of Regulations, § 1720(a).  
9 The petition for reconsideration must either present new evidence or specify an error in fact or  
10 change or error of law, and must explain "why the matters set forth could not have been  
11 considered during the evidentiary hearings, and their effects upon a substantive element of the  
12 decision." *Id.*

13 Although the District is not a party, the District is filing a petition to intervene  
14 concurrently with this petition for reconsideration. Upon grant of the petition to intervene, the  
15 District will have standing to petition for reconsideration.

16 This petition for reconsideration is timely, because the Commission issued its final  
17 decision approving an amendment to the RCEC site plan on September 26, 2007. Final  
18 Commission Decision, CEC-800-2007-003-CMF (October 2007) ("Final Decision"). The  
19 effective date of a decision is the "the day when the decision or order is docketed, unless the order  
20 states otherwise." Title 20, California Code of Regulations, § 1720.4. The Final Order in this  
21 case provides that it is effective September 26, 2007.

22 **II. Bases for Request for Reconsideration of Final Decision and Request to Reopen**  
23 **Proceedings**

24 **A. The District Has an Interest in the Proposed RCEC Site**

25 The District governs two community colleges in Alameda County--Las Positas College  
26 located in Livermore, and Chabot College located at 2555 Hesperian Boulevard, in Hayward,  
27 which is located less than 3 miles from the RCEC site. Declaration of Chancellor Joel L.  
28 Kinnamon in Support of District's Motion to Intervene and Motion for Reconsideration

1 (“Kinnamon Decl.”), ¶ 2.

2 The District has been serving the Bay Area for almost 50 years and has a deep interest in  
3 the community and its well being. Kinnamon Decl., ¶ 2. Chabot is a public, comprehensive  
4 community college that prepares students to succeed in their education, progress in the  
5 workplace, and engage in the civic and cultural life of the global community. Kinnamon Decl., ¶  
6 6; California Education Code § 66700. Chabot furthers student learning and responds to the  
7 educational needs of the local population and economy. Kinnamon Decl., ¶ 6. Chabot serves as  
8 an educational leader, contributing its resources to the intellectual, cultural, physical, and  
9 economic vitality of the region. *Id.*

10 The Chabot campus serves thousands of community residents on a daily basis. The  
11 Chabot student population, alone, is approximately 15,000 students. Kinnamon Decl., ¶ 5.  
12 Chabot also has approximately 600 employees. *Id.* In particular, the District notes that it is  
13 required by law to recruit, accommodate, and create a safe environment for disabled students and  
14 staff. 29 U.S.C. §700 *et seq.*; 34 C.F.R. §100 *et seq.*; California Government Code, § 12940 *et*  
15 *seq.*; Title 5 California Code of Regulations, § 53025(a). Consistent with these duties, the college  
16 provides on the Chabot site both a Disabled Student Resource Center, and a Health Center. See  
17 Chabot College Master Plan at 93. Thus, the District is particularly concerned that it has not had  
18 the opportunity to analyze the potential health impacts on the large number of disabled  
19 individuals that Chabot proudly counts among its students and staff, and who are entitled to  
20 participate in campus life on an equal footing with nondisabled students and staff.

21 Chabot College operates on a 94-acre campus which includes multiple buildings for  
22 classrooms, laboratories, a cafeteria, administrative and student services offices, a bookstore, a  
23 Learning Resource Center, a 1,432-seat Performing Arts Center, a television studio, a radio  
24 station, planetarium, art gallery, and gymnasium. Kinnamon Decl., ¶ 3. The college also uses a  
25 significant amount of outdoor space including walkways, open spaces, parks, playground areas  
26 and athletic fields. *Id.* Further, many Campus facilities serve not only students, but the  
27 community at large. For example, the Performing Arts Center hosts both student and community  
28 presentations; local teams use the athletic fields and sports facilities, and the Children’s Center

1 provides day care services to infants and toddlers. *Id.* Additionally, the community colleges of  
2 California are each mandated to create and maintain a “civic center” where: “the citizens, Camp  
3 Fire Girls, Boy Scout troops, farmers’ organizations, school-community advisory councils, senior  
4 citizens’ organizations, clubs, and associations” may meet. California Education Code § 82537.  
5 In short, Chabot is an open campus that attracts thousands of community members to its site.

6 Further, as set out more fully in the accompanying Petition to Intervene, one of Chabot  
7 College’s lead duties and core values is the creation and maintenance of a safe college campus.  
8 Therefore it has a significant interest in local projects with the potential to create adverse health  
9 effects on the campus. Kinnamon Decl., ¶ 4. Consistent with that core value, the College and  
10 District have signed onto the American College and Universities Presidents’ commitment to  
11 developing the internal infrastructure and planning to become climate neutral as soon as possible.

12 *Id.*

13 For all of these reasons, the District has a clear interest in the RCEC site plan.

14 **B. The Commission Did Not Notify the District of RCEC’s Application**

15 The Commission was required to provide notice of RCEC’s application to any “...state,  
16 regional, or local agency which has been identified as having a potential interest in the proposed  
17 site and related facility, and shall require analyses, comments, and recommendations thereon.”  
18 Title 20, California Code of Regulations § 1714(c). Given the District’s key role in the  
19 community, its responsibility for approximately 15,000 students and 600 employees on a campus  
20 less than 3 miles from the proposed site, the District was clearly entitled to notice.

21 Nevertheless, the Commission provided no notice whatsoever to the District of RCEC’s  
22 amendment application, depriving it of a meaningful and timely opportunity to be heard.

23 Kinnamon Decl., ¶ 8.

24 **C. The Commission Did Not Solicit the District’s Input on RCEC’s Application**

25 Equally disturbing as the failure to provide notice, the Commission failed to solicit  
26 analyses, comments and recommendations from the District, as required pursuant to Title 20,  
27 California Code of Regulations § 1714(c). Kinnamon Decl., ¶ 8. The requirement to notify and  
28 solicit input from affected agencies ensures that the Commission takes into account the concerns

1 of local agencies and the people they represent when it evaluates proposed site plans.

2 The failure to notify and solicit input from the District is particularly troubling considering  
3 that community colleges generally—and Chabot College specifically—serve historically  
4 disenfranchised populations. Chabot’s student body is “majority-minority,” with 75% of the  
5 students from race-ethnicity groups other than non-Hispanic single-race whites. Kinnamon Decl.,  
6 ¶ 9. The student population is 14% African American, 18% Asian American, 9% Filipino, 22%  
7 Latino, and 25% white, with the remaining population either unknown or comprised of other  
8 heritage groups. *Id.* Over one third of the students are in the first generation of their family to  
9 attend college. *Id.* Further, students attending Chabot struggle financially, with 57% of students  
10 reporting low, or very low, household income levels based on federal poverty rate guidelines. *Id.*  
11 Given these demographics, failure to give proper notice to the District of these proceedings has  
12 not only deprived the District—as a local governmental agency—the right and opportunity to be  
13 heard; it has deprived a largely non-white and impoverished community an important voice in  
14 these proceedings—through their local community college district.

15 The District has concerns regarding the RCEC site plan’s potential environmental, health  
16 and safety risks. The Commission’s procedural errors have prevented the District from having  
17 enough notice and time to sufficiently examine these concerns, which include: the impact of air  
18 pollution from the RCEC on Chabot students and employees, given that Chabot College is in the  
19 area identified as most highly impacted by the proposed site; the site’s effect on Chabot College’s  
20 staff and student recruitment; and the potential impact on the District’s master plan. Kinnamon  
21 Decl., ¶ 10.

22 Because of the Commission’s failure to solicit the District’s comments, analyses and  
23 recommendations regarding the site plan, the Commission’s findings were fundamentally flawed.  
24 While some of the District’s concerns may overlap with those that were presented by other  
25 agencies, the concerns are not identical, because Chabot College is so close to the proposed site  
26 and plays such a unique and significant educational and economic role in the community. The  
27 Commission cannot possibly anticipate what commentary and analysis the District would have  
28 offered to the proceedings. The District has not had an adequate amount of time to consider these

1 issues in full. The District deserves no less than a full appraisal of these issues and the confidence  
2 that the Commission's approval of a new energy facility was made after a thorough evaluation of  
3 all possible evidence and analysis.

4 **D. The Commission's Failure to Notify the District or Seek the District's Input Is  
5 An Error of Law Justifying Reconsideration**

6 The failure to notify the District of RCEC's amendment application and the resulting  
7 flaws in the findings supporting the Commission's Final Decision constitute an "error of law"  
8 requiring the Commission to re-open the administrative proceedings and evidentiary record to  
9 consider additional comments, analyses and recommendations from the District.

10 In addition, the Commission committed other legal errors as outlined in the Petition for  
11 Reconsideration recently filed by Intervenor the County of Alameda. The District hereby  
12 incorporates those portions of the County's petition articulating those legal errors (from page 6,  
13 line 25 through page 11, line 20).

14 For these reasons, the District requests that the Commission reopen the administrative  
15 proceedings and the evidentiary record and then reconsider RCEC's amendment application  
16 based on a review of a complete evidentiary record.

17 **III. The Commission Must Stay Its Final Decision to Allow the District Additional Time  
18 to Prepare for a Re-Opened Administrative Proceeding**

19 The District also requests that the Commission stay its Final Decision, in order to allow  
20 the District to prepare comments, analyses and recommendations for a re-opened administrative  
21 proceeding and evidentiary record. Failing to stay the Final Decision would once again deny the  
22 District the necessary time to prepare the comments, analyses and recommendations. The District  
23 requests that the length of the stay should, at a minimum, equal the amount of time afforded to  
24 other public agencies that received notice in this proceeding.

25 **IV. Conclusion**

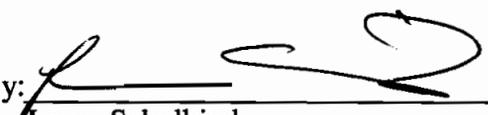
26 For the reasons stated above, the Chabot-Las Positas Community College District  
27 respectfully requests that the Commission stay its Final Decision regarding the proposed RCEC  
28 site, re-open the administrative proceedings and the evidentiary record, allow the District to  
present its analyses, comments and recommendations, and then reconsider the RCEC application

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on a complete record.

Dated: October 26, 2007

Liebert Cassidy Whitmore

By:   
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Laura Schulkind  
Attorneys for Chabot-Las Positas Community  
College District

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