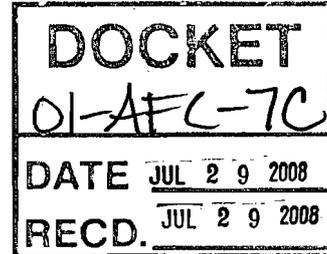


1 RICHARD E. WINNIE [68048]
County Counsel
2 Brian Washington [146807]
Assistant County Counsel
3 Andrew Massey [240995]
By: Lindsey Stern [233201]
4 Associate County Counsels
Office of County Counsel, County of Alameda
5 1221 Oak Street, Suite 450
Oakland, California 94612
6 Telephone: (510) 272-6700
Attorneys for County of Alameda
7
8



9
10 STATE OF CALIFORNIA
State Energy Resources
11 Conservation And Development Commission

12
13 In the Matter of:

14
15
16 **RUSSELL CITY ENERGY CENTER**

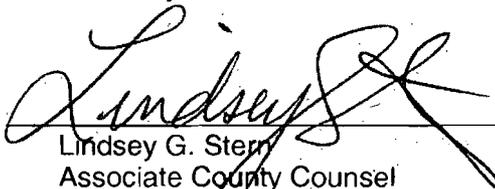
Docket No.: 01-AFC-7C

County of Alameda's Objection to Staff's
Recommendation to approve Petition for
Extension of Deadline for
Commencement of Construction for the
Russell City Energy Center

17
18
19
20 DATED: July 29, 2008

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

BRIAN E. WASHINGTON,
Assistant County Counsel

21
22
23
24 By 
Lindsey G. Stern
Associate County Counsel

25
26 Attorneys for County of Alameda
27
28

1 RICHARD E. WINNIE [68048]
County Counsel
2 Brian Washington [146807]
Assistant County Counsel
3 Andrew Massey [240995]
By: Lindsey Stern [233201]
4 Associate County Counsels
Office of County Counsel, County of Alameda
5 1221 Oak Street, Suite 450
Oakland, California 94612
6 Telephone: (510) 272-6700
Attorneys for County of Alameda
7

8
9 STATE OF CALIFORNIA
State Energy Resources
10 Conservation And Development Commission
11

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

13 In the Matter of:

County of Alameda's Objection to Staff's
Recommendation to approve Petition for
Extension of Deadline for
Commencement of Construction for the
Russell City Energy Center

14
15 **RUSSELL CITY ENERGY CENTER**

16
17 On June 18, 2008, the County of Alameda ("the County") received from the California
18 Energy Commission ("the Commission") a Notice of Receipt of the Petition to Extend
19 Construction Deadline for the Russell City Energy Center Project (01-AFC-7C) dated June 13,
20 2008 ("Notice of Receipt"). The County thereafter filed comments in opposition to the Petition.¹
21 On July 24, 2008, Staff issued its recommendation to the Energy Commission that it approve
22 the Petition. Having considered the Staff recommendation and argument of the Applicant, the
23 County submits this objection to Staff's recommendation.

24 **1. The County Requested An Evidentiary Hearing into Good Cause**

25 The County first takes issue with Staff's response to the request for a full evidentiary hearing
26 into whether good cause exists for the extension as provided in SEPCO (92-AFC-2C). Both the
27

28 ¹ The County hereby reincorporates by reference all of its previously submitted comments.

1 County and Group Objectors demanded such an evidentiary hearing in accordance with the
2 procedures set forth in the SEPCO Committee Procedural Conference transcript. (See County
3 of Alameda's Comments On Petition, 8:4-5, 4:1-6; Group Objectors Objections...and Demand
4 for Evidentiary Hearing, 2:10-11)

5 The only information presently before the Commission is counsels' argument. No testimony
6 or evidence in support of good cause has been provided. The Commission should thus hold an
7 evidentiary hearing on whether the Applicant has a reasonable likelihood of obtaining financing
8 for the project and the existence of the Power Purchase Agreement with PG&E. This Petition
9 once again indicates that the Applicant does not have the financing to commence construction.
10 As lack of financing has plagued the RCEC since the original approval of the AFC in September
11 of 2002, and prevented the original applicant, Calpine, from commencing construction, and
12 evidentiary hearing is warranted to determine whether good cause exists.²

13 **2. Staff Does Not Address the Requirement that the Extension be Analyzed Pursuant to**
14 **20 CCR 1769(b) as Provided By SEPCO**

15 The June 13, 2008 Notice of Receipt of Petition to Extend Construction Deadline for this
16 project specifically states the request "was submitted to the Energy Commission for review and
17 approval as required by Title 20, California Code of Regulations, section 1769(b)." Pursuant to
18 that Notice and in accordance with the procedural steps enumerated in SEPCO, the County
19 submitted its opposition to the Petition with a full briefing of the section 1769 criteria. Staff's
20 letter to the County then stated that the Petition was filed under section 1720.3 and therefore
21 Petitioner simply had to make a showing of good cause. Staff's subsequent recommendation
22 similarly ignored the precedent set in SEPCO and concluded that Applicant's statements
23 constituted good cause for another extension.

24 While the County concedes that there seems to be no consistent treatment of petitions filed
25 under the authority under section 1720.3, the County asserts that a petition filed under section

27 ² The County notes that Staff mischaracterized the burden of proof in this matter, stating in the proposed Order "[T]he
28 Commission received several public comments protesting the extension, but there was *no evidence refuting the*
petitioner's statements..." (emphasis added)

1 1720.3 nonetheless should be analyzed under the criteria set forth in section 1769. When the
2 Committee first received a petition for an extension, recognizing that it did not have a clear
3 procedure, it held a separate "Procedural Conference" to develop the proper analysis for such
4 requests. (See generally, Transcript of Committee Procedural Conference, SEPCO Compliance
5 Proceeding, 92-AFC-02, July 1, 1999.) Through the Procedural Conference, the Committee
6 intended on setting precedent for assessment of future petitions. The end determination was
7 that a finding of "good cause" under section 1720.3 requires that the Applicant satisfy the criteria
8 enumerated in section 1769(a)(1)(a)-(g).³

9 While future proceedings are not *bound* by such agency decisions absent specific
10 designation as precedent, the County believes that SEPCO is illustrative of the proper inquiry.
11 As the County has previously submitted, the Committee should analyze this petition in
12 accordance with the 1769 inquiry discussed in SEPCO.

13 **3. Inconsistent Treatment of Similar Petitions Is Ill-Advised**

14 While Applicant may argue that SEPCO does not apply, counsel for the Applicant, who also
15 represents East Altamont, did not object to the 1769 analysis conducted for the East Altamont
16 petition for extension of deadline, submitted only two weeks before Russell City's petition. Staff
17 treated the East Altamont petition as a modification and conducted an inquiry under the section
18 1769 criteria.⁴

19 In fact, the document noticing the petition was titled "Notice of Petition to Amend The Energy
20 Commission Decision" and stated that the "review process includes an evaluation of the
21 consistency of the proposed change with the Energy Commission's Decision and if the project,
22 as modified, will remain in compliance with applicable laws, ordinances, regulations and
23 standards." (East Altamont, 01-AFC-4C, Notice of Receipt). Staff's June 23, 2008 analysis of
24 the East Altamont petition for an extension highlighted numerous areas of concern that would
25

26 _____
27 ³ The County's argument that Applicant has failed to satisfy these factors is fully briefed in its "Comments on Petition
for Extension", filed June 30, 2008.

28 ⁴ The County requests that the Commission take administrative notice of the East Altamont petition, Notice of Receipt
and Staff Analysis (01-ACF-4C).

1 need to be revisited in the amendment. For example, the Staff Analysis notes that newer
2 ambient air quality standards are in force that may require further review. (p.3)

3 As the County sees no distinction between the form of the two petitions, filed within two
4 weeks of each other by the same counsel, the County believes that the two petitions should
5 have been evaluated under the same criteria, to wit, assessment of the section 1769 factors.

6 **4. Evidence of the Power Purchase Agreement Should be Critically Analyzed**

7 By way of example of the need for an evidentiary hearing, the Commission should consider
8 with a critical eye Applicant's unsworn statement that it has a Power Purchase Agreement with
9 PG&E. (See Petition, pg 6) While the Applicant, through its counsel, states that the "Project
10 Owner has executed a Power Purchase Agreement with PG&E", a finding to this effect can not
11 be made without sworn testimony. In contrast, PG&E's position is that it has "reached
12 agreement in principle."⁵ It is exactly this sort of inconsistency that requires a noticed
13 evidentiary hearing on a petition for extension.

14 **5. Section 1720.3 Provides for An Extension, But Not Successive Extensions**

15 It is the County's position that section 1720.3 provides authority to grant only one extension.
16 The Applicant's reliance on Mirant Delta (00-AFC-1C), which by its own argument, is not
17 precedent setting, is misplaced. The Mirant Delta Order 04-0825-04 granted the extension of
18 construction *milestones*, not the deadline to begin construction. Moreover, the Mirant Delta plant
19 was more than just a plan on paper. (See Staff Analysis, June 16, 2006) While this was the
20 second extension of construction milestones, construction had already begun and was nearly
21 10% completed. As such, it is not a similar situation as RCEC and should not be considered to
22 refute the County's proposed interpretation of the regulation limiting extensions.

23 **6. The County's Previous Appeals Are Not Good Cause For Extension**

24 The Applicant noted that "the Supreme Court's denial of the Petitions [re reconsideration
25 and intervention] on January 3, 2008 should have cleared the path for the Project Owner to
26 move forward with the RCEC Project and to commence construction well before September 10,
27
28

1 2008." (Applicant's Comments, at 4) As such, all references to the County's previous appeals
2 are irrelevant and should not be given any weight in determining whether the Applicant has
3 made a showing of good cause.

4 **Conclusion**

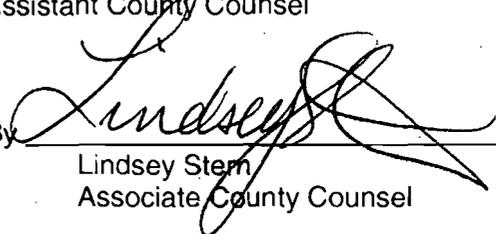
5 For the reasons stated herein, the County respectfully requests that the Commission either
6 deny Applicant's petition on its face, or in the alternative, schedule a full evidentiary hearing into
7 whether good cause exists.

8
9 Respectfully Submitted.

10
11
12 DATED: July 29, 2008

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

14 BRIAN E. WASHINGTON,
15 Assistant County Counsel

16
17 By 

Lindsey Stern
Associate County Counsel

18
19 Attorneys for County of Alameda

20
21
22
23
24
25
26
27
28 ⁵ See, PG&E News Release, July 22, 2008,
http://www.pge.com/about/news/mediarelations/newsreleases/q3_2008/080722.shtml

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

Amendment to the APPLICATION
FOR CERTIFICATION OF THE
RUSSELL ENERGY CENTER
POWER PLANT PROJECT

Docket No. 01-AFC-7C
PROOF OF SERVICE
(Revised 7/6/07)

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

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

APPLICANT

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

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

COUNSEL FOR APPLICANT

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

CONSULTANT TO APPLICANT

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

INTERESTED AGENCIES

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

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

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

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

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

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

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

INTERESTED PARTICIPANTS

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

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

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

ENERGY COMMISSION

JEFFREY D. BYRON
Associate Member
jbyron@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Lance Shaw
Project Manager
lshaw@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

OTHER RECIPIENTS

Brian E. Washington, Assistant County
Counsel, County of Alameda
brian.washington@acgov.org
FAX: (510) 272-5020

Andrew J. Massey, Associate County
Counsel, County of Alameda
andrew.massey@acgov.org
FAX: (510) 272-5020

Jewell Hargleroad
jewellhargleroad@mac.com

Laura Schulkind
lschulkind@lcwlegal.com

Arlin B. Kachalia
akachalia@lcwlegal.com

Suzanne Solomon
ssolomon@lcwlegal.com

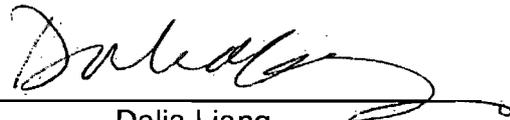
DECLARATION OF SERVICE

I, Dalia Liang, declare that on July 29, 2008, I deposited copies of the attached: County of Alameda's Objection to Staff's Recommendation to Approve Petition for Extension of Deadline for Commencement of Construction for the Russell City Energy Center in the United States mail at Oakland, 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 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.



Dalia Liang