

**DOCKET**

**01-AFC-7C**

DATE SEP 19 2008

RECD. SEP 19 2008

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8

9 STATE OF CALIFORNIA  
10 STATE ENERGY RESOURCES  
11 CONSERVATION AND DEVELOPMENT COMMISSION  
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13 In the Matter of:  
14 RUSSELL CITY ENERGY CENTER

Case No. 01-AFC-7C

**CHABOT-LAS POSITAS COMMUNITY  
COLLEGE DISTRICT'S WRITTEN  
RESPONSE TO ROB SIMPSON'S  
PETITION FOR RECONSIDERATION OF  
COMMISSION'S JULY 30, 2008  
DECISION GRANTING RUSSELL CITY  
ENERGY COMPANY, LLC'S PETITION  
TO EXTEND CONSTRUCTION  
DEADLINE**

Date: September 24, 2008  
Time: 10:00 a.m.  
Location: Hearing Room A  
1516 Ninth Street, Sacramento,  
CA

22 TO THE ENERGY COMMISSION, TO THE PARTIES AND THEIR ATTORNEYS OF  
23 RECORD, TO ROB SIMPSON, AND TO ANY INTERESTED PERSONS OR ENTITIES:

24 **I. INTRODUCTION**

25 Chabot-Las Positas Community College District ("District"), an interested local  
26 governmental agency, submits the following response to Rob Simpson's petition for  
27 reconsideration regarding this Commission's erroneous granting of Russell City Energy  
28

1 Company, LLC's Petition to Extend Construction Deadline for the Russell City Energy Center  
2 ("RCEC") Project.

3 The District asks that the Commission and its staff provide its counsel, Laura Schulkind  
4 and Arlin Kachalia of Liebert Cassidy Whitmore, copies of petitions or any other notice of any  
5 future hearing dates or deadlines with respect to this matter. The District asks to be placed on the  
6 proof of service.

7 **II. PROCEDURAL HISTORY**

8 On or about May 30, 2008, applicant sought a two-year extension to begin construction on  
9 the RCEC, delaying the start from September 10, 2008, to September 10, 2010. The District  
10 submitted timely written objections to RCEC's petition for an extension. At the July 30, 2008,  
11 Commission meeting, the District reiterated its written objections and asked the Commission to  
12 deny RCEC's petition. The Commission granted the applicant's petition and Rob Simpson has  
13 since filed a petition for reconsideration.

14 **III. THE DISTRICT AGREES THE COMMISSION SHOULD RECONSIDER ITS**  
15 **RULING REGARDING THE APPLICANT'S PETITION FOR EXTENSION**

16 Although Rob Simpson's petition is not posted on the Commission's RCEC website, the  
17 District was able to locate a copy of Mr. Simpson's petition. The District asks that the  
18 Commission grant Mr. Simpson's petition, in that the District agrees with Rob Simpson that the  
19 Commission should reconsider its ruling on RCEC's petition and order an evidentiary hearing.

20 During the course of its consideration of applicant's petition for an extension, this  
21 Commission created a procedural error which cannot be cured absent, at a minimum, granting Mr.  
22 Simpson's petition for reconsideration and holding an evidentiary hearing on the applicant's  
23 petition for an extension to start construction. On June 13, 2008, the Commission issued a  
24 "Notice of Receipt of a Petition to Extend Construction Deadline" for the RCEC, advising the  
25 parties and interested parties that the petition was submitted for review and approval as required  
26 by Title 20, California Code of Regulations, section 1769. At the July 30, 2008, Commission  
27 meeting, Staff belatedly stated the citation to section 1769 was in error, and that the notice should  
28 have identified title 20, California Code of Regulations, section 1720.3 [stating "Unless a shorter

1 deadline is established pursuant to § 25534, the deadline for the commencement of construction  
2 shall be five years after the effective date of the decision. Prior to the deadline, the applicant may  
3 request, and the commission may order, an extension of the deadline for good cause.)) However,  
4 the parties did not learn of this alleged “error” until the date of the meeting and did not have an  
5 adequate opportunity to respond to this belated and improper change in the notice.

6 The District refers to and incorporates its arguments already presented to the Commission  
7 on July 1, 2008 and on July 29, 2008 as well as the oral presentation to the Commission on July  
8 30, 2008. If the Commission grants reconsideration [absent properly denying the application on  
9 the ground the applicant lacks the statutory entitlement to receive an extension], the District seeks  
10 notice and the opportunity to attend and present evidence at an evidentiary hearing on the  
11 Applicant’s petition for an extension.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Chabot-Las Positas Community College District  
14 respectfully requests that this Commission reconsider its July 30, 2008, decision allowing the  
15 applicant an extension. The District also requests that the Commission and its staff provide it  
16 copies of any petitions and notice of any future hearing dates or deadlines with respect to this  
17 petition.

18 Dated: September 19, 2008

LIEBERT CASSIDY WHITMORE

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21 By: Arlin B. Kachalia  
22 Laura Schulkind  
23 Arlin B. Kachalia  
24 Attorneys for Interested Governmental  
25 Agency, Chabot-Las Positas Community  
26 College District  
27  
28

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  
(Updated 09/19/08 by em)

**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  
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## DECLARATION OF SERVICE

I, Ervieta McCullough, declare that on September 19, 2008, I deposited copies of the attached: Chabot-Las Positas Community College District's Written Response to Rob Simpson's Petition for Reconsideration of Commission's July 30, 2008 Decision Granting Russell City Energy Company, LLC's Petition to Extend Construction Deadline, in the United States mail at San Francisco, 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.

**OR**

I deposited the same document at a designated place for collection maintained by Federal Express, an express service carrier, with fully-prepaid delivery fees, and addressed to those identified on the Proof of Service listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

  
Ervieta McCullough  
Ervieta McCullough