

CALIFORNIA ENERGY COMMISSION

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May 12, 2011

Charmaine Giel, Fire Marshal
City Hall - Fire Prevention
777 B Street, First Floor
Hayward, CA 94541

RUSSELL CITY ENERGY CENTER PROJECT (01-AFC-7C)

Dear Ms. Giel:

Pursuant to your recent request, I am providing you with additional information on the nature and scope of the legal authorities vested in the California Energy Commission (Energy Commission) related to construction and operation of the Russell City Energy Center (RCEC) and how the Energy Commission will work together with the City of Hayward Fire Department during this current construction phase.

The RCEC and its related facilities are subject to exclusive licensing jurisdiction of the Energy Commission. Specifically, pursuant to Public Resources Code Section 25500 *et seq.*, the Energy Commission has exclusive jurisdiction over thermal-electric power plants 50 megawatts or greater:

In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law. (Public Resources Code Section 25500.)

Thus, the Energy Commission's exclusive certification is issued "in lieu" of any state, local or regional permits or approvals, including local land use approvals. (Pub. Res. Code, §25500.) During licensing proceedings for RCEC, the Energy Commission acted as lead state agency under the California Environmental Quality Act ("CEQA"). (Pub. Res. Code, §§ 25519(c), 21000 *et seq.*) The Energy Commission's certified regulatory program, established pursuant to Public Resources Code Section 21080.5, provides the environmental clearances for the RCEC and is functionally equivalent to the preparation of an Environmental Impact Report. (Pub. Res. Code, § 21080.5.) The conditions of certification contained in the RCEC Final Decision ensure that the project will be designed and operated in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, air and water quality standards and local ordinances and regulations.

In performing construction and operation monitoring of the RCEC project, the Energy Commission staff acts as, and has the authority of, the chief building official (“CBO”). We have currently delegated an independent third party, TRB+ and Associates, to act as our delegate CBO to review drawings, calculations, specifications, as well as for ensuring compliance with conditions of certification and all laws, ordinances, regulations, and standards.

The cooperating agencies may, per the conditions of certification in the Final Decision, be asked to review and comment on specific documents; however, the final approval lies with Energy Commission staff or staff’s delegate CBO. In the RCEC Final Decision, the City of Hayward Fire Department has specific consultation, recommendation and/or review/comment functions in the areas of Worker Safety, Hazardous Materials Handling, and Waste Management.

While the Energy Commission staff will seek the cooperation of state, regional, and local agencies that have an interest in environmental protection, the Energy Commission retains exclusive review and approval jurisdiction of all aspects of project construction and operations. During our phone conversation of May 10, 2011, you indicated that your Department has a strong interest in safeguarding the public health, safety and general welfare from the hazards of fire, explosion or dangerous conditions at the site. You offered to review and comment on plans, specifications, and construction activities to ensure that your interests are met. In cooperation with the delegate CBO and the developer, we have all agreed to work together to gain your valuable input and will meet in early June 2011 to assess how we can facilitate our working relationship.

Thank you for the opportunity to elaborate on the process to ensure the input of the City of Hayward Fire Department is obtained during the construction of the RCEC. If you have any questions, I can be reached at (916) 651-0587.

Sincerely,

CHRISTOPHER J. MARXEN, Manager
Compliance and Dockets Office
Siting, Transmission & Environmental Protection
Division

Cc: Robert Bauman, Director of Public Works, City of Hayward
Docket Unit, California Energy Commission
Jeffery Ogata, Assistant Chief Counsel, Energy Commission
Allison Bryan, Project Compliance Manager, Calpine Corporation
Todd Bailey, Chief Building Official, TRB+ and Associates