League of Women Voters—Eden Area

Representing Hayward, San Leandro, and surrounding unincorporated areas of Ashland, Castro Valley, Cherryland, Fairview, & San Lorenzo

Political Responsibility Through Informed and Active Participation

March 21, 2013

California Energy Commission
DOCKETED
01-AFC-7C
TN # 70024
MAR. 22 2013

Via Email bboyer@energy.state.ca.us and U.S. Mail
Bruce Boyer,
Compliance Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Re: **Proposed Amendment No. 4 for Russell City Energy Center**
State Energy Resources Conservation and Development
Commission Docket No. 01-AFC-7C

Dear Mr. Boyer:

The League of Women Voters of the Eden Area (LWVEA), part of the League of Women Voters, was formed in 1920. The League is a nonpartisan political organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. We support measures to establish air quality standards that will protect the public health and welfare, and effective enforcement and implementation procedures to attain these standards. LWVEA members reside in Ashland, Castro Valley, Cherryland, Fairview, Hayward, Hillcrest Knolls, San Leandro, and San Lorenzo, all nearby communities impacted by RCEC presently under construction.

Although RCEC's owner Calpine petitioned to amend its certification for a fourth time on November 8, 2012, to date there has been no Staff analysis published on any of the proposals. Presently your calendar for RCEC states "There Are No Upcoming Events Available." We also note that since filing its petition, Calpine has modified its request to modify condition VIS 10. Without the benefit of the CEC Staff analysis, we offer the following comments based on the available record:

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1. The Proposed Modification To Condition VIS-2 And VIS-10 Should Be Promptly Denied So That The Landscaping May Be Promptly Commenced Prior To Start-Up To Better Allow The Landscaping To Grow And Achieve Some Mitigation.

Based on the available documents, it appears that both the on and off site landscaping plans remain at the preliminary stage and have not even been approved. Under Calpine's proposed modifications, Calpine seeks to delay both onsite (VIS-2) and offsite (VIS-10) landscaping, the offsite landscaping to be completed "within one year following commercial operation." (Barbara McBride's Feb. 19, 2013 Email & Peti, p. 6, §2.2.) Further, within the text of VIS-10, Calpine seeks to insert after "trees," that they be allowed to install alternatively "or other visual mitigation." Undefined is "what" "other visual mitigation." Given Calpine's failure to define "what" "other visual mitigations" are contemplated, this is to urge Staff and the Commission to reject this proposed modification providing Calpine a "blank check."

Although present VIS-10 provides that "*Prior to the start of construction*, the project owner ***shall prepare <u>and implement</u> an approved off-site landscaping plan***," based on the information available to the public, it appears that no landscaping has been installed. (Emphasis and italics added.) In this regard, Calpine proposes the following modification to VIS-2 for the onsite landscaping:

> 2) An installation schedule. The project owner shall not implement the landscape plan until the project owner receives approval of the plan from the CPM. The planting must be completed **<u>during the</u>** ~~by the start of commercial operation, and the planting must occur during the~~ **<u>first</u>** optimal planting season (**<u>either March through June or September through November) following the start of commercial operation</u>**.

(Emphasis added.)

Essentially, rather than *completing the planting by the start* of the commercial operation, the planting is not complete until *after commercial operation commences* during two short timeframes during the year. (Peti., §6.6.) According to Calpine, under the present requirement, landscaping would "impede construction efforts of nearby major equipment and structures, potentially affecting the safety of construction workers. Second, because of the ongoing construction nearby the onsite landscaping, trees installed prior to commercial operation are likely to be disturbed or injured from construction activities and therefore require replacement." (Peti., §6.6.) No explanation, however, is given as to why Calpine did not object to VIS-2 as written during any of the prior three proceedings before the CEC.

Given Calpine's extensive experience on constructing thermal fire gas power plants, such as RCEC's sister plant in Pittsburg, among others around the country, if such a conflict existed, Calpine should have raised this point early on, not when the work intended to mitigate the adverse impact of the plant is supposed to be performed and/or completed.

On behalf of the LWVEA, we urge Staff to recommend to the Commission that Calpine's proposed modifications to both VIS-2 and VIS-10 be denied *en toto*. The purpose of the landscaping being installed prior to the start of construction was to enable significant plant growth to occur prior to

start-up to help mitigate the unsightliness of this large 14 story industrial complex before the plants would be burdened by RCEC's significant pollution, 2 million tons of CO2 annually, among millions of tons of other pollutants annually. To delay the installation of the landscaping for one year *after* RCEC is "commercially operable" is to add insult to injury to the community, already damaged by Calpine's failure to comply with both VIS-2 and VIS-10. Such a delay will result in smaller and unhealthier plant growth burdened by RCEC's significant pollution defeating the purpose of both VIS-2 and VIS-10.

Given the delays have already prejudiced the community, this is to urge the CEC to promptly and fully enforce both VIS-2 and VIS-10 as approved so that planting may begin at once.

2. LWVEA Joins With HARD In Opposing The Deletion Of VIS-9 And That Substantial Additional Mitigations Are Needed.

LWVEA disagrees that VIS-9 requires HARD to execute any contract with Calpine. Specifically, VIS-9 presently provides:

> Prior to commercial operation, **the project owner shall install** new trailside amenities in the Hayward Regional Shoreline that ***may*** include, benches, free-of-charge viewscopes, and an information kiosk and set of low panels for the display of interpretive information related to Mt. Diablo and other important elements of the regional setting. **The project owner shall work with the Hayward Area Recreation and Parks District (HARD)** to develop the final designs for these facilities. As part of this measure, **the project owner shall provide the HARD *with an adequate budget*** that would allow its Staff to research and prepare the interpretive materials to be mounted on the kiosk and panels. **The project owner shall determine** the precise location of the trailside amenities **in consultation with the CPM and the HARD.**
>
> Verification:
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> Within 12 months after the start of HRSG construction, **the project owner shall submit a final design plan for the trailside amenities to the HARD for review and comment** and to the CPM for review and approval. If the CPM notifies the project owner that revisions are needed before the CPM would approve the plan, within 30 days of receiving that notification the project owner shall submit a revised plan to the CPM. Not less than thirty 30 days prior to the first turbine roll, the project owner shall notify the CPM that the trailside amenities are ready for inspection.

(Emphasis added.) Given Calpine's failure to implement any presently required offsite landscaping, it is not a surprise that HARD is objecting to the inadequacies of the mitigations of this large industrial complex which detrimentally impacts its entire shoreline along the San Francisco Bay, as nothing has been planted as anticipated by VIS-2, VIS-9 and VIS-10.

LWVEA urges CEC Staff to work with HARD and the community, such as the Hayward Area Shoreline Joint Powers Agency's Advisory Committee, as to what additional mitigations are needed to

mitigate the adverse impact on HARD's shoreline which was a substantial asset to our community before the construction of RCEC.

3. Air Quality Standards Should Be Strictly Enforced Given Calpine's Insistence On Constructing This Major Stationary Source Of Pollution In A Non-Attainment Region That Already Suffers From Too Much Pollution And Is Already Overbuilt.

According to the CEC's summary posted on the Amendment web page for RCEC, Calpine proposes "[v]arious *non-substantive administrative changes* to the Air Quality Conditions of Certification to clarify certain terms concerning monitoring and test methods and timing for initial source testing and to conform to the conditions in the Authority to Construct (ATC) air permit issued by the Bay Area Air Quality Management District (BAAQMD)." (Italics added.) Based on our initial review, without the benefit of a staff report from BAAQMD, we disagree that these changes are non-substantive or administrative.

RCEC is located on the San Francisco Bay shoreline adjacent to the area designated by BAAQMD as a "CARE" community, an economically disadvantaged "community at risk" from too much pollution. Presently, the region fails to satisfy minimum federal Clean Air standards for ozone and 24-hour PM2.5 and minimum California standards for both annual and 24-hour PM2.5 and PM10. Given these circumstances, adding another month, resulting in four months of unregulated emissions is one month too many of too much pollution. Additionally several schools are located nearby and this area already suffers from heightened respiratory illness as established by the Alameda County Department of Health during the Commission's 2008 Eastshore Energy Power Plant evidentiary proceedings, docket no. 06-AFC-06.

Likewise, Hayward Area Recreational District carries on an annual summer camp for both elementary and middle school age children at the Shoreline Facility next to RCEC. Across the street from RCEC are the nesting grounds for several endangered and special species, including one of the few, if not last remaining nesting grounds for the federally endangered California Clapper Rail, which numbers to less than 1,000. At the same time, as observed in a recent letter from the League of Women Voters of San Diego to the California Public Utilities Commission, a copy of which is attached for your convenience, "the [S]tate has about 30 percent more power than is needed on peak energy days . . . . and [State] data anticipates that the [S]tate will be 60 to 80 percent over-built by 2020, should current trends continue."

We understand that BAAQMD will be working with CEC staff on addressing the portion of Calpine's petition seeking to amend the air quality conditions. In this regard, we have no objection to the amendment's modification of allowing only one turbine to be in start-up mode at a time as proposed under modified AQ-20. However, issues that the Staff report needs to explore and discuss are the following:

- "How much" unregulated emissions will be emitted during the 3 month allowed testing time and how much more is anticipated to be emitted during the additional one month requested time?

- It is unclear as to when would testing be performed, such as would testing

occur during the active fall or spring semesters when the schools' outdoor sports programs are most active or during summer youth camps?

• Will testing result in noxious fumes be emitted resulting in foul smells and if so, at what distance and levels?

• Will concentration levels of pollutants be such that athletic coaches or instructors of summer camps should be forewarned from conducting outdoor athletic activities?

• An explanation as to why Calpine seeks to substitute a more accurate means of measurement for the ammonia slip for a less accurate means under AQ-19(e)?

• Additionally, why is additional time needed for testing when Capine actively represented (contrary to industry commentators) that the licensed conditions are achievable, such as the emission rate for PM2.5?

Lastly, this is to request and confirm that we would like to receive notice of any and all notices, postings, staff reports or proceedings scheduled. If there is any further information you would like from us to follow up on the above issues, please feel free to contact Jewell Hargleroad at jewellhargleroad@mac.com, Jewell is an attorney and a member of our League Board specializing in environmental issues.

We look forward to your response and staff report on these important issues impacting the public's and our ecological health and safety, which is already at risk without RCEC's substantial pollution, that will define just what will the San Francisco shoreline look like along the East Bay.

Sincerely,

Dr. Jennifer H. Ong, O.D.

President

Cc: (Via Email Only)
Robert Weisenmiller, Commission Chair &
Members of the Commission
President & Trustees of the Hayward Area Recreational District
And Manager John Gouvia
City of Hayward Public Works Department, Mr. Alex Ameri
Chair & Members of the Stationary Source Committee of the
Bay Area Air Quality Management District