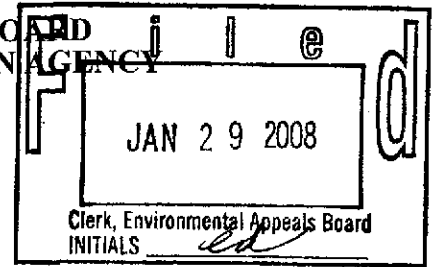


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re:

Russell City Energy Center

PSD Appeal No. 08-01

**ORDER DENYING MOTION FOR CONTINUANCE AND**  
**GRANTING MOTION FOR**  
**EXTENSION OF TIME TO FILE RESPONSE**

On November 1, 2007, the Bay Area Air Quality Management District (“District”) issued a federal prevention of significant deterioration (“PSD”) permit, pursuant to Clean Air Act § 165, 42 U.S.C. § 7475, to Russell City Energy Center for the construction of 600-megawatt natural gas-fired power plant in Hayward, California. The Bay Area District is authorized to make PSD permitting decisions for new and modified stationary sources of air pollution in the San Francisco Bay area of California pursuant to a delegation agreement with Region IX of the U.S. Environmental Protection Agency. Because the Bay Area District acts as EPA’s delegate under the PSD program, the District’s PSD permits are considered EPA-issued permits, and appeals of the permit decisions are heard by the Environmental Appeals Board (“Board”) pursuant to 40 C.F.R. § 124.19.

In a petition filed with the Board on January 3, 2008, Mr. Rob Simpson (“Petitioner”) seeks Board review of the PSD permit. On January 18, 2007, the District filed a response seeking summary dismissal of the petition on the grounds that the Petitioner lacks standing, the issues raised were not preserved for review, and the Petition is untimely. Response to Petition for Review Requesting Summary Dismissal (Jan. 18, 2008) (“District’s Response”) at 1. In addition, the District argues that many of the issues raised in the petition are outside the scope of the PSD program and, therefore, outside the scope of the Board’s jurisdiction. *Id.* By motion filed with the Board on January 28,

2008, Petitioner requests a continuance of this matter or, in the alternative, an extension of time to file a reply to the District's Response. Request for Continuance (Jan. 28, 2008). According to Petitioner, "[a]n identical concurrent appeal is now pending at the air quality management district," which "may resolve all concerns and effectively settle this matter." *Id.*

Because the District has requested summary dismissal citing jurisdictional grounds, the Board does not believe that a continuance would be appropriate. Accordingly, the request for continuance is denied. However, Petitioners alternative request for an extension of time to respond to the District's Response is granted. Petitioner must file a response no later than February 11, 2008.<sup>1</sup>

So ordered.

Dated: 1/29/08

ENVIRONMENTAL APPEALS BOARD

By: 

Edward Reich  
Environmental Appeals Judge

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<sup>1</sup> Documents are "filed" with the Board on the date they are *received* by the Clerk of the Board.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Motion for Continuance and Granting Motion for Extension of Time to File Response in the matter of Russell City Energy Center, PSD Appeal No. 08-01, were sent to the following persons in the manner indicated:

First Class Mail:

Alexander G. Crockett  
Assistant General Counsel  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

Rob Simpson  
27126 Grandview Ave.  
Hayward, CA 94542

Dated: JAN 29 2008



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Annette Duncan  
Secretary