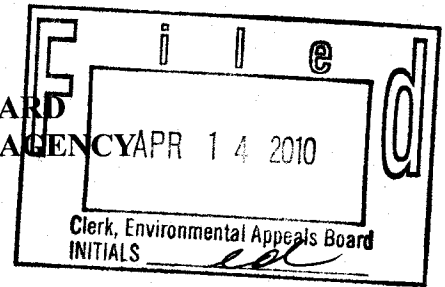


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Russell City Energy Center, LLC)

PSD Permit No. 15487)

) PSD Appeal No. 10-01

**ORDER DENYING REQUEST FOR SUMMARY DISMISSAL OF CALPILOTS
PETITION AND REQUESTING RESPONSE ON THE MERITS**

On April 8, 2010, the Bay Area Air Quality Management District (“District”) filed a response with the Environmental Appeals Board (“Board”) requesting the summary dismissal of the petition for review (“Petition”) filed by the California Pilots Association (“CalPilots”), PSD Appeal No. 10-01. *See* District’s Response to Petition for Review Requesting Summary Dismissal (“District Response to CalPilots Petition”) at 1. CalPilots’s Petition challenges the District’s issuance of the above-captioned prevention of significant deterioration (“PSD”) permit (the “Final Permit”), which authorizes Russell City Energy Company, LLC (“RCEC”) to construct a new natural gas-fired combined-cycle power plant in Hayward, California. *See generally* CalPilots Petition for Review. RCEC also filed a motion requesting that the Board dismiss the CalPilots Petition.¹ *See* RCEC’s Response Seeking Summary Disposition (“RCEC Response”) at 1, 6-10.

¹ RCEC’s Response also asks the Board to dismiss several other petitions for review filed in connection with this PSD permit. *See, e.g.*, RCEC Response at 11-21. The Board will address RCEC’s requests concerning these other petitions in separate orders.


In their responses requesting summary dismissal, both the District and RCEC argue that the CalPilots Petition should be dismissed for several reasons. The District claims that the Petition lacks specificity, fails to articulate any specific objections to any condition of the permit, and raises issues outside the Board's jurisdiction. District Response to CalPilots Petition at 5-10. RCEC raises similar arguments and also contends that the Petition should be dismissed because it fails to explain why the District's response to comments on the issues it raises were clearly erroneous or otherwise warrant review. RCEC Response at 1, 6-10.

The Board notes that there is no assertion that Petitioners failed to comment on the draft permit, *see* RCEC Response at 9, or that the Petition was not timely filed, two procedural prerequisites to the filing of a Petition with the Board. While there may be merit in the arguments raised by the District and RCEC in their responses seeking summary disposition, the Board is reserving judgment on those issues pending a fuller explication of the issues. Therefore, the Board requests that the District and RCEC file responses addressing the merits of the CalPilots Petition.

Accordingly, the Board DENIES the District's and RCEC's request to dismiss the CalPilots Petition (PSD Appeal No. 10-01) at this time and requests each participant to file a substantive response to the Petition on or before April 23, 2010.

So ordered.

ENVIRONMENTAL APPEALS BOARD



Edward E. Reich
Environmental Appeals Judge

Date: 4/14/10

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Request for Summary Dismissal of CalPilots Petition and Requesting Response on the Merits in the matter of Russell City Energy Center, PSD Appeal No. 10-01, were sent to the following persons in the manner indicated:

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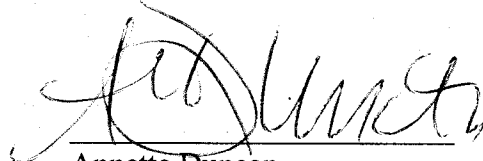
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