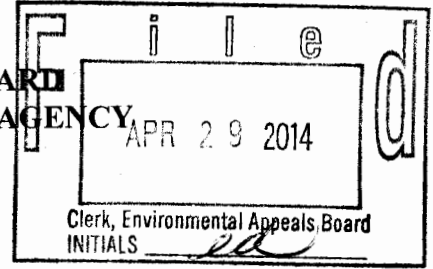


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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)  
In re: Energy Answers Arecibo, LLC )  
(Arecibo Puerto Rico Renewable Energy )  
Project) )  
)  
)  

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PSD Appeal Nos. 13-05 to 13-09

**ORDER DENYING MOTIONS FOR RECUSAL AND REHEARING**

In this Order, the Environmental Appeals Board (“Board”) considers two motions submitted to the Clerk of the Board via email by Mr. Lenoardo Ramos-Hernandez on April 24, 2014. The first is a motion requesting the recusal of Environmental Appeals Judge Kathie A. Stein and the second is a motion requesting “rehearing” on two prior motions filed by Mr. Ramos, which the Board denied on April 11, 2014. For the reasons that follow, the Board denies Mr. Ramos’ motions for recusal and rehearing.

*DISCUSSION*

On March 25, 2014, the Board issued a decision on five consolidated petitions for review of a prevention of significant deterioration (PSD) permit decision. The Board upheld the permit on nearly all grounds, but granted the Region’s motion for a limited remand to revise the permit to regulate biogenic greenhouse gas emissions. The Board considered, but did not require, the Region to reopen the permit for public comment on the proposed revisions.

On April 4, 2014, Mr. Ramos submitted via email<sup>1</sup> to the Clerk of the Board two motions. The first motion requested leave to intervene in this matter for the purpose of filing a Motion for Reconsideration of the Board's final order. The Board, via order signed by Judge Kathie A. Stein, denied the motion to intervene on April 11, 2014. Also on April 4, 2014, Mr. Ramos together with Petitioner Eliza Llenza submitted, via email to the Clerk of the Board, a motion requesting an extension of time to file for reconsideration. The Board, via order signed by Judge Kathie A. Stein, also denied this motion on April 11, 2014.

On April 24, 2014, the Clerk of the Environmental Appeals Board received, again via email to the Clerk's individual email address, two additional motions. The first is a motion requesting the recusal of Environmental Appeals Judge Kathie A. Stein and the second is a motion requesting rehearing on the two prior motions. The premise underlying Mr. Ramos' latest motions is that the Board orders denying Mr. Ramos' motions for intervention and

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<sup>1</sup> The Board treated both motions as "filed," notwithstanding the fact that they were emailed to the Clerk of the Board rather than filed using the Board's electronic filing system. In accepting the motions as filed, the Board warned:

Mr. Ramos and all parties before the Board are reminded that ***the failure to follow the proper procedures for filing may result in your filing being rejected by the Board.*** See 40 C.F.R. § 124.19(i)(2) (setting forth the methods of filing). Parties may obtain more information on electronic filing on the Board's website at [www.epa.gov/eab](http://www.epa.gov/eab).

See Order Denying Motion to Intervene at 1, n.1 (April 11, 2014) (emphasis added); Order Denying Motion Requesting Extension of Time to File for Reconsideration at 1, n.1 (April 11, 2014) (emphasis added).

requesting more time to file for reconsideration of the Board's final order in this matter were signed solely by Judge Stein, and without the concurrence of any other Environmental Appeals Judge. Mr. Ramos asserts that these orders were issued "in absence of a quorum," and implies that they are, therefore, invalid. Mr. Ramos also takes issue with the substance of the orders.

The Board first clarifies that Mr. Ramos has failed to follow procedures for filing despite the Board's warning in the orders previously issued. *See* note 1, above. Methods of filing are set forth in 40 C.F.R. § 124.19(i)(2) and include electronic filing using the Board's electronic filing ("eFiling") system, filing by U.S. Mail, and filing by hand delivery. These methods do not include emailing a document directly to the Clerk. As the Board explained in response to Mr. Ramos' previous filing, the Board will on occasion exercise its discretion to allow documents for filing to be sent directly to the Clerk via email, but only as a fail-safe for when the Board's eFiling system is experiencing technical difficulties, through no fault of the user. The Board requires filers to appropriately document such difficulties. Mr. Ramos has not provided any documentation of technical difficulties or any other justification for failing to follow Board procedures. Thus, the Board would be well within its discretion to reject Mr. Ramos' motions as not properly filed. Nevertheless, the Board will accept these motions as filed, but informs Mr. Ramos that ***the Board will not consider as filed any future filings that Mr. Ramos emails directly to the Clerk of the Board, absent properly documented technical difficulties with the eFiling system.***

With respect to Mr. Ramos' assumption that Judge Stein, alone, considered his prior motion to intervene and to extend the time allowed for filing for reconsideration, Mr. Ramos is mistaken. Those motions and the Board's orders denying those motions were considered by the entire panel assigned to the *Energy Answers Arecibo* matter. The Board in its discretion will often list the panel members who have considered a significant order. *See, e.g.*, note 2, below. The Board did not indicate the panel that decided its April 11, 2014 orders. Nevertheless, by this order, the Board clarifies that the three-member panel that considered and denied Mr. Ramos' belated motion to intervene and his motion requesting an extension of time to file for reconsideration was composed of Environmental Appeals Judges Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein. The absence of a footnote indicating the panel members does not render the order any less a decision of the Board.

Finally, Mr. Ramos generally asserts that the Board erred in its consideration of Mr. Ramos' motions for intervention and for an extension of time to file for reconsideration for a myriad of reasons that the Board will not repeat here. Having fully considered all motions filed,

the Board is unpersuaded. Mr. Ramos has not established that either the recusal of Judge Stein or a rehearing on his prior motions is warranted. Further, there is no basis for referring this matter for disciplinary action.

*CONCLUSION*

For all the reasons stated, the Board denies Mr. Ramos' Motion for the Recusal of Judge Kathie A. Stein and Motion Requesting Rehearing.

So ordered.<sup>2</sup>

ENVIRONMENTAL APPEALS BOARD

Dated: *April 29, 2014*

By: *Leslye M. Fraser*

Leslye M. Fraser  
Environmental Appeals Judge

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<sup>2</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein.

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Denying Motions for Recusal and Rehearing* in the matter of Energy Answers Arecibo, LLC, PSD Appeal Nos. 13-05 through 13-09, were sent to the following persons in the manner indicated:

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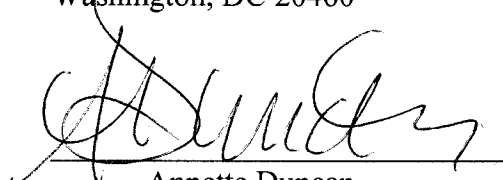
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Dated: APR 29 2014

  
Annette Duncan  
Secretary