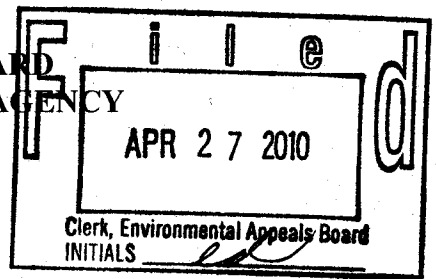


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )

Russell City Energy Center, LLC )

PSD Permit No. 15487 )  
\_\_\_\_\_

PSD Appeal No. 10-06

**ORDER GRANTING EXTENSION OF TIME TO RESPOND TO  
ORDER TO SHOW CAUSE**

On April 14, 2010, the Environmental Appeals Board (“Board”) issued an order providing Ms. Juanita Gutierrez the opportunity to show cause why her petition for review,<sup>1</sup> which challenges the issuance of the above-captioned prevention of significant deterioration (“PSD”) permit (the “Final Permit”), should not be dismissed as untimely.<sup>2</sup> *See* Order to Show Cause Why Petition Should Not Be Dismissed (“Order to Show Cause”). The Board’s Order stated that such response was due by April 23, 2010. *Id.* at 3.

On April 26, 2010, the Board received a facsimile from Ms. Jewell Hargleroad, an attorney representing one of the other petitioners in this matter, that contained a copy of an e-mail from Ms. Gutierrez. *See* Notice of Receipt of Communication from Petitioner Juanita Gutierrez by Chabot-Las Positas Community College District, Attach. In her e-mail, which was dated

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<sup>1</sup> The document submitted by Ms. Gutierrez was in the form of a letter. Because Ms. Gutierrez is acting without the benefit of counsel, the Board construed it as a petition for review. *See, e.g., In re Sutter Power Plant*, 8 E.A.D. 680, 684-85, 687 (EAB 1999) (explaining that the Board endeavors to liberally construe petitions filed by persons who are unrepresented by legal counsel and considering letters from pro se parties as petitions for review); *see also In re Envotech, L.P.*, 6 E.A.D. 260, 268 (EAB 1996) (same).

<sup>2</sup> Ms. Gutierrez’s petition was received by the Board on March 23, 2010. The Final Permit, however, stated that “Petitions for Review must be *received* by the [Board] no later than March 22, 2010.” *See* Russell City Energy Center Response, Exh. 4 at 2 (copy of Final Permit) (emphasis added); *see also id.* at 1 (explaining that the Final Permit would become effective on March 22, 2010, unless an appeal is filed with the Board “by that date”). Because Ms. Gutierrez’s Petition was received one day after the filing deadline, it appears to be untimely.

April 13, 2010, Ms. Gutierrez requests "an extension to respond and to request [sic] not to grant my dismissal." *Id.* Ms. Gutierrez's e-mail was sent to Mr. Keven Poloncarz, one of the attorneys representing the permittee, Russell City Energy Center.<sup>3</sup> In her e-mail, Ms. Gutierrez states that she left the country April 10, 2010, due to a family emergency, and would not be back until April 28, 2010. She also indicates that, because of her situation, she "was unable to reply." *Id.* The Board interprets this document as a request for an extension of time. The Board notes that Ms. Gutierrez may not yet have received the Order to Show Cause as she is not due back into the country for several more days.

In light of the fact that Ms. Gutierrez is proceeding *pro se* in this matter and in light of the fact that she was out of the country when the Board issued its Order to Show Cause and, moreover, because the Board does not believe an extension of time will prejudice any of the other participants or unduly delay the proceedings, the Board GRANTS Ms. Gutierrez an additional two weeks from the date upon which she is scheduled to return to the country in which to file her response to the Order to Show Cause. Should Ms. Gutierrez choose to file for this purpose, such brief or other document must be filed (i.e., *received by the Board* via mail or by e-filing through the CDX system) on or before May 12, 2010.

So ordered.

ENVIRONMENTAL APPEALS BOARD



Edward E. Reich  
Environmental Appeals Judge

Date:

4/27/10

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<sup>3</sup> Neither this e-mail nor any similarly framed e-mail was sent by Ms. Gutierrez to the Board. Based on the date of her e-mail, it appears she may have sent the e-mail to Mr. Poloncarz in response to the Response for Summary Disposition he filed on behalf of his client on April 8, 2010.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Granting Extension of Time to Respond to Order to Show Cause in the matter of Russell City Energy Center, PSD Appeal No. 10-06, were sent to the following persons in the manner indicated:

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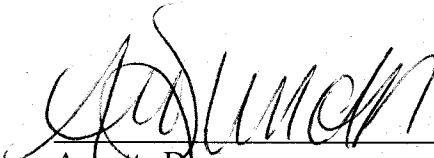
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Dated: APR 27 2010



Annette Duncan  
Secretary