

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

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In re:	)	
	)	
Russell City Energy Center	)	PSD Appeal Nos. 10-02, 10-03, 10-4, 10-08, 10-
	)	09 & 10-10
PSD Permit No. 15487	)	
	)	

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**DECLARATION OF KEVIN POLONCARZ, ESQ., CONCERNING CONSOLIDATED  
EXHIBITS TO RESPONSES TO PETITIONS FOR REVIEW 10-02, 10-03, 10-04, 10-08,  
10-09 & 10-10**

I, Kevin Poloncarz, Esq., hereby declare as follows.

1. On Friday, April 23, 2010, I filed responses on behalf of Russell City Energy Company, LLC (“RCEC”) to the above-captioned petitions for review via the Central Data Exchange (“CDX”) portal.

2. On Friday, April 23, 2010, I also attempted, via the CDX portal, to submit RCEC’s Consolidated Exhibits to Its Responses to Petitions for Review (“Consolidated Exhibits”) concerning the above-captioned petitions for review.

3. On repeated occasions, I attempted to submit the Consolidated Exhibits, either as two large Adobe Acrobat Portable Document Format (“PDF”) files (Volumes 1 and 2) or as smaller files consisting of individual exhibits. Except with respect to the index of these exhibits, I was unsuccessful and received error messages from the CDX portal, examples of which are attached at Exhibit 1.

4. After these failed attempts, I sent the email attached at Exhibit 2 to the Clerk of the Board, Eurika Durr, attaching PDF-versions of these error messages, along with Volume 1 of the Consolidated Exhibits. This email noted that, “the certification I signed indicated that I was filing an identical paper copy of the version filed electronically via the CDX portal.” Exhibit 2, Email to Eurika Durr from Kevin Poloncarz, Subject: PSD Appeal Nos. 10-02, 10-03, 10-04, 10-08, 10-09 & 10-10: Russell City Energy Center, April 23, 2010, 5:58 p.m. Pacific daylight-

savings time ("PDT"). It also corrected the discrepancy between the certification and the actual means by which the Consolidated Exhibits were submitted, explaining that, "[u]nfortunately, Federal Express has already taken possession of the original paper copy and, as indicated, I was not able to successfully file via the CDX portal." *Id.*

5. I subsequently sent a second email to Ms. Durr, as attached at Exhibit 3, along with a ZIP-file containing a PDF-version of Volume 2 of the Consolidated Exhibits. Exhibit 3, Email to Eurika Durr from Kevin Poloncarz, Subject: PSD Appeal Nos. 10-02, 10-03, 10-04, 10-08, 10-09 & 10-10, April 23, 2009, 6:09 p.m. PDT.

6. On Monday, April 26, 2010, I spoke with Ms. Durr and confirmed that she had received my email attaching Volume 1 of the Consolidated Exhibits (Exhibit 2) along with the error messages (Exhibit 1), but had not received my second email attaching Volume 2 (Exhibit 3). As a consequence, I proceeded to submit Volume 2 as four separate PDF files via the CDX portal.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed on April 23, 2010.

/s/  
\_\_\_\_\_  
Kevin Poloncarz, Esq.

## CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of April, 2010, copies of the foregoing Declaration of Kevin Poloncarz, Esq., Concerning Consolidated Exhibits to Responses to Petitions for Review 10-02, 10-03, 10-04, 10-08, 10-09 & 10-10 were served via first-class U.S. mail, postage prepaid, to:

Andy Wilson  
California Pilots Association  
P.O. Box 6868  
San Carlos, CA 94070-6868

Karen D. Kramer  
2215 Thayer Ave.  
Hayward, CA 94545

Jewell J. Hargleroad  
Law Office of Jewell Hargleroad  
1090 B Street, No. 104  
Hayward, CA 94541

Minane Jameson, Vice-President  
Board of Directors  
Hayward Area Recreation and Park District  
1099 E Street  
Hayward, CA 94541-5299

Helen H. Kang, Kelli Shields, Patrick Sullivan  
and Lucas Williams, Attorneys  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105

Minane Jameson  
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Idojine J. Miller  
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Michael E. Boyd, President  
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Nancy J. Marvel, Regional Counsel  
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2236 Occidental Rd.  
Hayward, CA 94545

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

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Kevin Poloncarz

# **Exhibit 1**



## U.S. Environmental Protection Agency

# Environmental Appeals Board Electronic Submission

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Logged in as, KEVINPOLONCARZ.

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Last updated on August 31, 2006.  
URL: <http://www.epa.gov/epahome/usenotice.htm>



## U.S. Environmental Protection Agency

# Environmental Appeals Board Electronic Submission

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An unexpected failure ( Node Submission Error ) has occurred while accessing the Ears data flow. A notification has been sent to our system administrators. Please try your request again and if you continue to have difficulties, please contact the CDX Help Desk at 888-890-1995.

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Last updated on August 31, 2006.

URL: <http://www.epa.gov/epahome/usenotice.htm>

# **Exhibit 2**

## Poloncarz, Kevin

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**From:** Poloncarz, Kevin  
**Sent:** Friday, April 23, 2010 5:58 PM  
**To:** 'durr.eurika@epa.gov'  
**Cc:** Pearson, Holly L.  
**Subject:** PSD Appeal Nos. 10-02, 10-03, 10-04, 10-08, 10-09 & 10-10: Russell City Energy Center

**Attachments:** UploadFilesErrorMessage.pdf; EAB Electronic Filing Error Message.pdf; Consolidated Responses Exhibits Vol 1.pdf

Ms. Durr:

Via the CDX portal, I successfully filed Russell City Energy Company, LLC's (RCEC) Responses to the Petitions filed by Chabot-Las Positas Community College District, Citizens Against Pollution, Robert Sarvey, Hayward Area Park and Recreation District, Minane Jameson and Idojine J. Miller concerning the above-captioned appeals. However, after failing on repeated attempts to file the exhibits via the CDX portal, I was only able to file the index to our Consolidated Exhibits. I have attached PDF copies of error messages from the CDX portal as examples of the error messages I received on repeated occasions over more than an hour.

I would ask that the Board please accept these error messages as evidence that the CDX portal was not accepting RCEC's exhibits, either as a consolidated file or broken-down into individual exhibits. Attached is Volume 1 of 2 of the Consolidated Exhibits.

In addition, the certification I signed indicated that I was filing an identical paper copy of the version filed electronically via the CDX portal. Unfortunately, Federal Express has already taken possession of the original paper copy and, as indicated, I was not able to successfully file via the CDX portal. Please excuse this discrepancy.

Best regards,

**Kevin Poloncarz**

*Partner*

T 415.393.2870

F 415.393.2286

[kevin.poloncarz@bingham.com](mailto:kevin.poloncarz@bingham.com)

**B I N G H A M**

Bingham McCutchen LLP

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San Francisco, CA 94111-4067



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ssage.pdf (2...



EAB Electronic  
Filing Error Me...



Consolidated  
Responses Exhibit..



# **Exhibit 3**

## Poloncarz, Kevin

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**From:** Poloncarz, Kevin  
**Sent:** Friday, April 23, 2010 6:09 PM  
**To:** 'durr.eurika@epa.gov'  
**Cc:** Pearson, Holly L.  
**Subject:** PSD Appeal Nos. 10-02, 10-03, 10-04, 10-08, 10-09 & 10-10

**Attachments:** Consolidated Responses Exhibits Vol 2.zip

Ms. Durr:

Per my preceding message, attached is Volume 2 of 2 of the Consolidated Exhibits to Russell City Energy Company, LLC's Responses to the petitions filed by Chabot-Las Positas Community College District, Citizens Against Pollution, Robert Sarvey, Hayward Area Recreation and Park District, Minane Jameson and Idojine J. Miller.

As indicated by my prior message, I would ask that the Board please accept these, although sent via email, due to the problems I experienced filing them via the CDX portal this afternoon.

Best regards,



Consolidated  
Responses Exhibit..

**Kevin Poloncarz**

*Partner*

**T** 415.393.2870

**F** 415.393.2286

[kevin.poloncarz@bingham.com](mailto:kevin.poloncarz@bingham.com)

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