

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

In re Russell City Energy Center	)	PSD Appeal No. 10-03
	)	[Citizens Against Pollution]
Russell City Energy Company, LLC	)	
PSD Permit Application No. 15487	)	
_____	)	

**MOTION OF PETITIONER CITIZENS AGAINST POLLUTION  
FOR LEAVE TO FILE A REPLY**

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Dated: May 14, 2010

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Pursuant to the Board’s order establishing requirements for motions to file a reply brief, Petitioner Citizens Against Pollution (CAP) respectfully moves for leave to file a reply to the Responses of the Bay Area Air Quality Management District and Russell City Energy Company, LLC, to CAP’s petition seeking review of a PSD permit for a power plant proposed to be located in Hayward, California.

Good cause exists for leave to file a reply concerning the following issues:

1. The Air District set Best Available Control Technology (BACT) for startup and shutdown emissions based on a likely operating scenario. But the permit’s daily and annual emissions limits for the pollutants allow for more startup and shutdown events than the likely scenario. Thus, the Air District set BACT on a “trust me” scenario and not based on enforceable limits. Since the District failed to impose lower daily and annual limits for pollution that a likely scenario would produce, and the high daily and annual limits can allow for many cold starts, the District should have determined the maximum number of cold, warm, or hot startup events (and combination of such events) to determine the appropriateness of requiring technology that can limit the emissions for each startup event. In addition, the information is relevant to determining cost effectiveness.

CAP seeks leave to reply to analyze the lengthy responses of the Air District and the permittee on this issue, which would demonstrate, once CAP has an opportunity to explain certain inaccuracies in the Air District's response, that there are no material factual disputes on this issue. Then the issue for the Board is a legal one: whether BACT was properly set without providing the public with information concerning the maximum number of high emission startup events that would merit imposing technology requirements rather than work practices as BACT.

This issue appears to be a question of first impression for the Board. Thus, a reply would assist the Board in determining this issue.

2. Respondents argue that CAP failed to raise the argument that "achieved in practice" technology does not require a cost effectiveness determination. CAP would like an opportunity to discuss how it indeed raised this argument with sufficient specificity.

3. The Delegation Agreement, which applies to PSD permitting proceedings here, provides that the Air District should apply the District's State Implementation Rule 2-2 to PSD proceedings. That rule provides that "achieved in practice" technology does not require a cost effectiveness determination. Respondents contend that the rule does not apply here. Should the Board rule in favor of Respondents on this issue, it will impact every PSD permitting analysis that involves "achieved in practice" technology. Moreover, this issue appears to be a question of first impression. A reply would therefore be in the public interest.

4. A short reply is necessary to address Respondents' arguments about the emissions assumptions the District used to reject technology that is achieved in practice.

5. Respondents cite cases to argue that the high BACT limits that the Air District set for cold and hot startup NO<sub>2</sub> emissions are based on Board precedent. CAP would like an opportunity to distinguish the cases Respondents cite and to address other relevant arguments on this issue.

The Board has granted petitioners leave to file replies in similarly complex cases. *See, e.g.*, Order of Nov. 6, 2007, *In re ConocoPhillips Co.*, PSD Appeal No. 07-02; Order of Aug. 19, 2005, *In re Prairie State Generation*, PSD Appeal No. 05-05.

CAP believes that 25 pages would be sufficient to address the issues covered in 130 pages of Respondents' briefing addressing CAP's arguments.

/s/ Helen Kang

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## CERTIFICATE OF SERVICE

I, Fe Gonzalez, certify that a copy of the foregoing MOTION OF PETITIONER CITIZENS AGAINST POLLUTION FOR LEAVE TO FILE A REPLY was e-filed with the Board's CDX system.

The document was served to the following persons in the manner indicated this 14th day of May, 2010:

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CAP obtained specific consent from the following parties to serve them by e-mail.

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