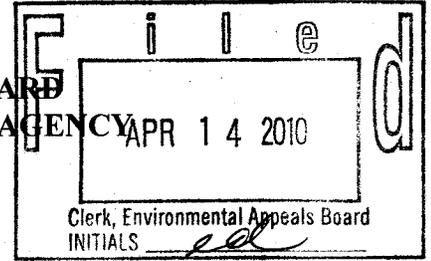


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)
Russell City Energy Center, LLC) PSD Appeal No. 10-05
)
)
PSD Permit No. 15487)
)
_____)

**ORDER DENYING REQUEST FOR SUMMARY DISMISSAL OF CARE 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 Petitioners CALifornians for Renewable Energy, Inc. (“CARE”), PSD Appeal No. 10-05. *See* District’s Response to Petition for Review Requesting Summary Dismissal (“District Response to CARE Petition”) at 1. CARE’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* CARE Petition. RCEC also filed a motion requesting that the Board dismiss the CARE Petition.¹ *See* RCEC’s Response Seeking Summary Disposition (“RCEC Response”) at 1, 11-17.

In their responses requesting summary dismissal, both the District and RCEC argue that CARE’s Petition should be dismissed because it was untimely filed. District Response to CARE

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 17-21. The Board will address RCEC’s requests concerning these other petitions in separate orders.

Petition at 1; RCEC Response at 1. Both assert that the Final Permit established an appeal deadline of March 22, 2010, and that the CARE Petition was filed at least a day late. District Response to CARE Petition at 2-3, 5; RCEC Response at 4, 11. Both participants also note that the CARE Petition was filed via e-mail rather than through CDX, the Board's electronic filing system. District Response to CARE Petition at 3, 10-11; RCEC Response at 14-15.

Several participants in this proceeding, including the CARE Petitioners, have asserted that they experienced filing problems with the CDX portal on the evening of March 22, 2010, prior to 11:59 pm ET, the filing deadline. The Board is currently investigating this issue in order to determine whether there indeed was a problem with the CDX portal on that evening. While the Board acknowledges that there may be a timeliness issue associated with the filing of the CARE Petition, rather than delay consideration of the substantive issues raised in the petitions while awaiting this investigation, which could also potentially delay the resolution of this permit appeal, the Board requests that the District and RCEC file responses addressing the merits of the CARE Petition.

Accordingly, the Board DENIES the District's and RCEC's request to dismiss the CARE Petition (PSD Appeal No. 10-05) at this time and requests both participants file a substantive response to the Petition. Such response is due 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 CARE Petition and Requesting Response on the Merits in the matter of Russell City Energy Center, PSD Appeal No. 10-05, were sent to the following persons in the manner indicated:

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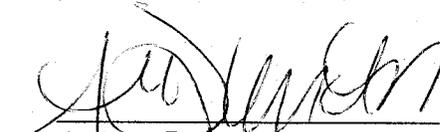
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