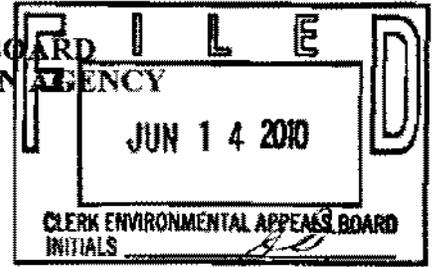


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:

Russell City Energy Center, LLC

PSD Permit No. 15487

PSD Appeal Nos. 10-01, 10-02, 10-03,
10-04 & 10-05

ORDER ON FURTHER BRIEFING AND ORAL ARGUMENT

The Board has now received all of the reply and sur-reply briefs contemplated by its May 19, 2010 order. *See Order Granting Motions to File Reply Briefs and Allowing Sur-Reply Briefs, Denying Motion to Conduct Discovery and a Hearing, and Rescheduling Oral Argument (May 19, 2010) ("May 19 Order")*. No further briefing will be permitted except as may be requested by the Board.

The Board notes that the sur-reply briefs argue that the reply briefs raise a number of new issues not raised in the original petitions. If true, this would be impermissible, as clearly stated in the Board's May 19 Order. *Id.* at 7 (stating that petitioners "may not raise any new issues in their reply briefs"). The Board does not anticipate ruling on these objections prior to the oral argument scheduled for July 22, 2010. Therefore, the Board clarifies the following for purposes of oral argument.

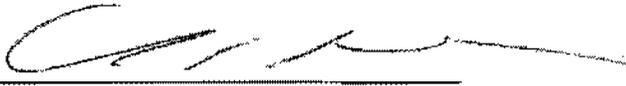
Petitioners may present argument on any issues contained in their petitions and reply briefs. However, the parties must understand that allowing argument on such issues does not mean that the Board has determined that those issues are properly before it. If the Board subsequently determines

that any issue is not properly before it, that issue will not be considered in the Board's final decision. That is true notwithstanding the issue being presented at argument, and even if the Board asked questions about the issue at argument. Since each petitioner has only a limited amount of time for argument, petitioners are advised to consider the extent to which they want to use their time on issues that may be vulnerable to a challenge on procedural grounds.

So ordered.

Dated: June 14, 2010

ENVIRONMENTAL APPEALS BOARD

By: 

Edward Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order on Further Briefing and Oral Argument in the matter of Russell City Energy Center, LLC, PSD Appeal Nos. 10-01, 10-02, 10-03, 10-04 & 10-05 were sent to the following persons in the manner indicated:

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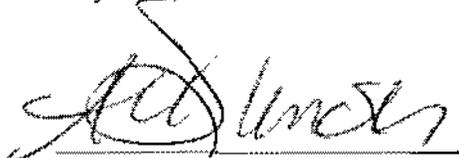
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Dated: **JUN 14 2010**



Annette Duncan
Secretary