

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

In re:)	
)	PSD Appeal Nos. PSD 10-01; PSD 10-02;
Russell City Energy Center)	PSD 10-03; PSD 10-04; PSD 10-05; PSD 10-06;
)	PSD 10-07; PSD 10-08; PSD 10-09; PSD 10-10
PSD Permit No. 15487)	
)	

**CHABOT-LAS POSITAS FACULTY ASSOCIATION’S MOTION
FOR LEAVE TO JOIN IN AND SUPPORT THE CHABOT-LAS POSITAS
COMMUNITY COLLEGE DISTRICT’S PETITION FOR REVIEW
AND REQUEST FOR ADMINISTRATIVE NOTICE**

The Chabot-Las Positas Faculty Association (the “Faculty Association”) is a labor Union organized under the laws of the State of California and is the exclusive bargaining agent of the faculty of the Chabot-Las Positas Community College District (the “District”). The Association represents nearly 1,000 faculty of the District, the majority of whom will spend most of their working time on the campus of Chabot College, near the proposed Russell City Power Plant.

The faculty Association participated in all of the following public comment periods, satisfying standing requirements to petition for review under 40 C.F.R. § 124.19(a):

- *Statement of Basis for Draft Amended Federal Prevention of Significant Deterioration Permit* issued by BAAQMD on December 8, 2008, as corrected on December 12, 2008, referred to as “SOB.”
- *Additional Statement of Basis, Draft Federal Prevention of Significant Deterioration Permit* for the RCEC, which the District issued on August 3, 2009, referred to as “ASOB.”
- *Responses to Public Comments, Federal Prevention of Significant Deterioration Permit* for the RCEC, which the District issues on February 3, 2010, at which time it issued the final PSD permit, referred to as “Response.”

The Faculty Association has an interest in this proceeding because the permit issued in this matter relates to the construction of a power plant just over a mile from the Chabot College Campus where members of the Faculty Association work, and the toxic emissions from that Plant threaten the safety and health of the Faculty Association's members, and the students they serve. In addition, some faculty members live in the neighborhood and even bring their children to the childcare facility provided on campus. Thus, the health and safety of the faculty members' families also are at risk.

The Faculty Association understands that the deadline for filing a Petition for Review pursuant to 40 C.F.R. §124.19(a) was March 22, 2010. Due to a change in counsel, the Association was unaware of the deadline. A conflict of interest forced the Association's previous counsel to recuse herself from continuing to represent the Association. Unfortunately, the Faculty Association was not informed of this developments until *after* the deadline to file this Petition had passed. Therefore, the Faculty Association seeks leave to file this Joinder in support of the Chabot-Las Positas Community College District's Petition for Review. The Faculty Association's joinder will not create unnecessary delay of the ultimate resolution of this matter, and because the Faculty Association's position mirrors that of the District, no party will suffer any prejudice as a result of the Faculty Association's participation..

It is in the interest of justice that the Faculty Association's motion be granted. First, the Association has been party to these proceedings. As such, the Association has valuable insight into the proceedings up to this point.

Second, the Faculty Association's "Resolution in Opposition to the Russell City Energy Center Power Plant" is attached as an Exhibit to the Chabot-Las Positas' Community College District's Petition for Review.

Third, although the Faculty Association made its concerns known in the proceedings prior to the current appeal, the thousands of faculty members who have a strong interest in this matter are not directly represented. The Faculty Association is the exclusive bargaining agent for these faculty members under California law, and its presence in this matter, through joinder with the community college district, is imperative to the exercise and protection of those faculty members' health and safety rights.

Request for Administrative Notice

The Association requests the Board take Administrative Notice of the proceedings in the Matter of Application for Certification For the Eastshore Energy Center, California State Energy Resources Conservation and Development Commission, Docket No. 06-AFC-06, of which Chabot-Las Positas Community College District also took Administrative Notice before the Bay Area Air Quality Management District ("BAAQMD").¹ Attached, as Exhibit 1, is a copy of Witness Testimony on behalf of Chabot-Las Positas Community College District and Chabot-Las Positas Faculty Association given in the Eastshore Matter. Its inclusion in the record will assist this Board in making its final determination.

The proposed permit, the statement of basis and additional statement of basis, public comments, additional communications between the College District and BAAQMD, and responses to comments are available on BAAQMD's website, www.baaqmd.gov , as well as the Faculty Association's and College District's Comments on the SOB and ASOB submitted

¹On November 20, 2007, the Association's Petition to Intervene in the proceeding for the Application for Certification for the Eastshore Energy Center was granted. The Bay Area Air Quality Management District ("BAAQMD") was also a participant in the Eastshore proceedings. At least one or more of Calpine's attorneys attended some of the proceedings in the Eastshore Matter.

in February 2009 and September 2009 are available at:

<http://www.baaqmd.gov/Divisions/Engineering/Public-Notices-on-Permits/2009/080309-15487/Russell-City-Energy-Center.aspx>

Conclusion

The Faculty Association has been in contact with counsel for the District, and been advised that the District supports the Association's joinder in this matter.

The members of the Faculty Association have participated in the proceedings up to this point and have a direct interest in assuring that they, their students, and their families have working and learning conditions conducive to the educational mission and which are not adverse to their public health and safety.

Therefore, the Chabot-Las Positas Faculty Association respectfully requests leave to join the Chabot-Las Positas Community College District's Petition for Review and to have administrative notice taken of the proceedings in the Eastshore matter.

Respectfully Submitted,

Dated: April 16, 2010

/s/Robert J. Bezemek
Robert J. Bezemek
Counsel for the Chabot-Las Positas Faculty Association

**STATEMENT REGARDING AGENT FOR SERVICE ON
CHABOT-LAS POSITAS FACULTY ASSOCIATION**

Pursuant to the requirements of Section I.G.4 of the Environmental Appeals Board Practice Manual, the following persons are authorized to receive service in this proceeding on behalf of Chabot-Las Positas Faculty Association:

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