

ENVIRONMENTAL LAW AND JUSTICE CLINIC

VIA FIRST CLASS MAIL AND EMAIL

August 9, 2010

Mary Dyas, Compliance Project Manager
California Energy Commission
1516 9th Street, MS-2000
Sacramento, CA 95814

**Re: Russell City Energy Center (01-AFC-7C),
August 11, 2010 Business Meeting, Agenda Item 5
*Petition to Amend Air Quality Conditions of Certification***

Dear Ms. Dyas:

Citizens Against Pollution (“CAP”) respectfully submits these comments on the Proposed Project Modifications to the Russell City Energy Center (01-AFC-7C) to be considered at the August 11, 2010 Business Meeting. For the reasons set forth below, the Energy Commission (“Commission”) should not make a decision on the proposed air quality amendments until the appeals pending before EPA’s Environmental Appeals Board are adjudicated.

Currently, there are five appeals challenging Russell City Energy Center’s (“RCEC”) Prevention of Significant Deterioration Permit (“PSD”) pending before EPA’s Environmental Appeals Board (“EAB”). *See* EAB Appeal Nos. PSD 10-01, *et al.*, available at http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/df250cdc9ddc2bce852576ef00513d84!OpenDocument. CAP is one of the petitioners in those appeals. The EAB heard oral argument in the case on July 22, 2010, and the petitioners are now awaiting a decision.

Until the EAB has resolved the appeals and, more specifically, has determined whether RCEC’s PSD permit conforms with the federal Clean Air Act, any Energy Commission decision on the petition to amend air quality conditions would be premature. Since the PSD permit is not yet final, the Commission cannot properly certify that the RCEC’s air quality conditions will comply with federal PSD requirements. *See* 40 CFR 124.19(f)(1) (PSD permits not final until EAB makes decision on merits or remands); *see also* Staff Report on Air Quality Amendments at p.

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2 (as Commission Staff itself acknowledges, “[t]he PSD permit will not become final until all appeals to EPA’s Environmental Appeals Board are resolved”). As a result, the Commission cannot certify that RCEC will comply with the applicable Laws, Ordinances, Regulations and Standards as required by the Warren-Alquist Act. *See* Pub. Resources Code § 25525. Furthermore, a decision at this time on the proposed air quality amendments risks wasting Commission resources, since the conditions must be amended again in the event that the EAB remands the PSD permit to the Air District.

In short, the Commission should not approve the proposed air quality amendments; instead, any decision on the amendments should be deferred until the EAB has adjudicated the pending appeals.

Sincerely,

/s/ Lucas Williams
Lucas Williams
Helen Kang

Attorneys for Citizens Against Pollution

CC: Docket Unit and Service List in Docket No. 01-AFC-7C