

September 16, 2009

Weyman Lee, P.E., Senior Air Quality Engineer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: PSD Permit for Russell City Energy Center

Dear Mr. Lee:

Communities for a Better Environment (“CBE”) submits this letter in opposition to the proposed Prevention of Significant Deterioration (“PSD”) Permit for a potential power plant in Hayward, CA, known as Russell City Energy Center.

I. Introduction

CBE is a unique organization, employing community organizers, researchers, and lawyers to serve the cause of environmental justice by empowering underrepresented communities. Established in 1978 in California, CBE works with community members in low income communities of color to fight pollution. CBE’s members in the Bay Area suffer disproportionately from the impacts of local and regional air pollution. Specifically, CBE works with communities in Alameda and Contra Costa counties, where industrial pollution sources exacerbate the impacts from goods movement and mobile sources from ports and the freeways that bisect these traditionally disempowered communities. Residents of the communities where CBE works, such as East Oakland and Richmond, are predominantly people of color whose voice is not heard by those who decide how much pollution they will breathe.

CBE has long worked statewide to ensure that new sources of energy are as clean they can be, and to prevent new power plants from exacerbating existing environmental injustice. CBE has specific concerns around construction of new fossil-fueled power plants in this era of increased awareness of impacts from particulate matter, carbon monoxide, VOCs and hazardous air pollutants. In addition to these concerns, the Russell City project is moving forward in absence of adequate environmental review.

II. BAAQMD Must Conduct a Subsequent Environmental Analysis Prior to Issuance of a New PSD Permit

When a responsible agency approves a project after the lead agency completes its environmental review, and new information or substantial changes occur after the lead

agency's analysis is completed, the responsible agency must conduct a subsequent environmental review. This mandatory duty cannot be avoided: "no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted." 14 Cal. Code Regs. § 15162(c). Substantial changes include, but are not limited to, identification of new environmental effects or increase in the severity of previously identified effects; mitigation measures or alternatives previously found not to be feasible would in fact be feasible; or that mitigation measures that were not previously analyzed would substantially reduce significant effects. *Id.* at (b).

For power plants, California law denominates the California Energy Commission ("CEC") as lead agency for purposes of the California Environmental Quality Act ("CEQA"). CEC conducts environmental review under its certified equivalency program in lieu of producing an environmental impact report. CEQA's substantive provisions, however, still apply to power plant analysis. Other resource agencies are responsible agencies for CEQA purposes. In an ordinary case, upon receipt of an application for certification, the CEC conducts a data adequacy process that incorporates CEQA's requirements to analyze the project's environmental impacts, including its cumulative impacts, and impose mitigation measures. CEC engages the other responsible agencies in the analysis process. It secures a determination of compliance ("FDOC") from the local air district, which relies on the CEC's CEQA analysis as if it were an EIR.

The Russell City power plant permitting process proceeded along a very different path. Calpine filed its application with the CEC in May 2001. The application was determined to be data adequate five months later, and after a process that included securing an FDOC from BAAQMD, the CEC approved Russell City's license in 2002. Calpine did not, however, secure a PSD permit for its facility, because power plant was located in a wetland, and the US Fish and Wildlife Service did not complete its consultation with US EPA.

Four years later, in 2006 Calpine sought and secured an amendment to the license so it could move the project approximately 1,500 feet north of its original location. At the time, BAAQMD noted that the amended FDOC described how Calpine would comply with all local, state and federal air protection requirements, including implementation of Best Available Control Technology ("BACT")¹. BAAQMD issued its amended FDOC in July 2007. At the time, BAAQMD correctly relied on the CEC to conduct its CEQA

¹ CBE urges BAAQMD to reinitiate its determination of compliance process, since the current draft PSD permit and the public comments it has brought show how dramatically local, state and federal air regulation has changed since BAAQMD issued its FDOC in July 2007. Clearly, the July 2007 FDOC does not and could not determine compliance with the law as it exists in September 2009.

analysis of the entire project. CEC issued its amendment to the 2002 decision in October 2007.

More than a year later, in December 2008, BAAQMD issued a draft PSD permit for Russell City. That proposed PSD permit, as amended and re-circulated in July 2009, is a discretionary action on BAAQMD's part to approve the Russell City power plant. BAAQMD cannot now simply rely on the CEC's stale CEQA analysis from 2002, as updated in 2007.

The proposed Russell City power plant has changed substantially since 2002 and 2007, as have information about the environmental impacts from the power plant and the mitigation measures that can be applied. As described in comments by Citizens Against Pollution, BACT has evolved. In 2007, PM2.5 and CO2 were not regulated, CO2 was not even considered a pollutant for federal Clean Air Act purposes. Their impacts were drastically underestimated in the 2007 and 2002 analyses. For example, a recent study showed that mortality from particulate matter exposure is significantly than previously believed.² This is but one of many changes that have occurred since 2007. These constitute significant changes CEQA purposes, and require BAAQMD to undertake a subsequent environmental analysis prior to issuance of the proposed PSD permit.

III. Conclusion

CBE incorporates by reference the comments submitted by Citizens Against Pollution, and other members of the Hayward and Bay Area communities. We particularly object to the prospect of locating this new, dirty power plant in this part of the Bay Area, using old equipment not designed for the job it will perform. We ask that you perform a new, more vigorous analysis and impose control measures that actually address the impacts the proposed power plant would have on our communities.

Sincerely,

/s/

Shana Lazerow
Staff Attorney, Communities for a Better Environment

² *Extended Follow-Up and Spatial Analysis of the American Cancer Society Study Linking Particulate Air Pollution and Mortality* D. Krewski et al. Health Effects Institute No. 140 (May 2009). Included herewith as Attachment 1.