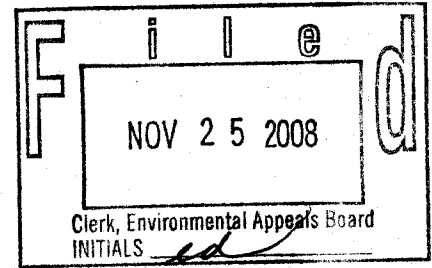


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

In re:

Russell City Energy Center

PSD Appeal No. 08-07



**ORDER DENYING REVIEW**

In a petition for review filed with the Board on September 29, 2008, Mr. Rob Simpson seeks review of a decision relating to construction of the Russell City Energy Center ("RCEC"), a 600-megawatt natural gas-fired facility. *See* Petition For Review (Sept, 29, 2008) ("Petition").<sup>1</sup>

On October 2, 2008, Ms. Eurika Durr, the Clerk of the Board, sent a letter to the Bay Area Air Quality Management District ("Bay Area AQMD") seeking a response to the Petition. *See* Letter from Eurika Durr, Clerk of the Board, to Mr. Jack Broadbent, Officer, Air Pollution Center, Bay Area Air Quality Management District (Oct. 2, 2008) ("EAB Letter"). This letter stated that if the Bay Area AQMD determined that summary disposition was appropriate, it should file a response with the Board no later than October 17, 2008. EAB Letter at 1.

On October 17, 2008, the Bay Area AQMD filed with the Board a response seeking summary dismissal of the Petition. *See* Response to Petition for Review Requesting Summary Dismissal ("Bay Area AQMD Response"). By order dated November 3, 2008, the Board provided to Mr. Simpson the opportunity to file a reply by no later than November 14, 2008. Mr. Simpson filed a timely reply on

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<sup>1</sup> On July 29, 2008, this Board remanded a federal Prevention of Significant Deterioration permit issued by the Bay Area Air Quality Management District to the Russell City Energy Center so that the District could renounce the draft permit in accordance with the applicable notice provisions of 40 C.F.R. § 124.10. *See In re Russell City Energy Center*, PSD Appeal No. 08-01 (July 29, 2008), 13 E.A.D. \_\_\_\_.

November 14, 2008. See Response to Request for Summary Dismissal (Nov. 13, 2008) (“Simpson Reply”).

In its Response, the Bay Area AQMD states that the two actions to which Mr. Simpson objects are actions “made within the sole discretion of the California Energy Commission \* \* \* under California’s Warren-Alquist Act (California Public Resources Code sections 25000 *et seq.*)”<sup>2</sup> These decisions are a July 30, 2008 decision to extend the period of the license the California Energy Commission (“CEC”) granted for the Russell City Energy Center and a subsequent CEC decision not to grant reconsideration of that action. The Bay Area AQMD asserts that neither of these actions is a PSD action subject to Board review. Bay Area AQMD Response at 2. The Bay Area AQMD argues that, as a matter of state law, these decisions must be addressed solely through the state system of review. *Id.*

In his Reply, Mr. Simpson details at length the power plant approval process in California but never responds to the essence of the Bay Area AQMD argument, that neither of the actions complained of are PSD actions within the scope of the Board’s review. Instead, Mr Simpson argues that two of the documents that are part of the State approval process, the Preliminary Determination of Compliance and the Final Determination of Compliance, are invalid. Simpson Reply at 1.

The Board’s jurisdiction extends only to the review of Federally issued permits, permits issued either by EPA or by a State under a delegation from EPA. It does not extend to decisions made by a State that do not implement the Federal program. *In re Knauf Fiber Glass, GMBH*, 8 E.A.D. 121, 161-62 (EAB 1999) (“The Board’s jurisdiction to review PSD permits extends to those

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<sup>2</sup> In the *Russell City Energy Center* decision, the Board explained that the PSD permitting authority for the Russell City permit was the Bay Area AQMD but that the Bay Area AQMD had delegated the bulk of the public outreach responsibilities to the California Energy Commission. *Russell City Energy Center*, slip op. at 13-14.

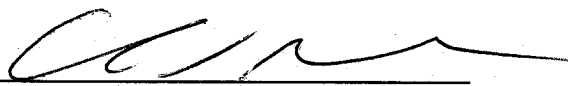
issues directly relating to permit conditions that implement the federal PSD program. \* \* \* The Board does not have authority to review every environmental concern associated with this project. Rather, the Board is charged with ensuring that AQMD's PSD permit decision comports with the applicable requirements of the federal PSD program."); see *In re Sutter Power Plant*, 8 E.A.D. 680, 690 (EAB 1999) ("The Board may not review, in a PSD appeal, the decisions of a state agency made pursuant to \* \* \* state or local initiatives and not otherwise relating to permit conditions implementing the PSD program." (citations omitted)).

The two documents to which Mr. Simpson objects were issued by the CEC under the State approval process, not by the Bay Area AQMD as part of the Federally delegated PSD program. While there is a relationship between these documents and the PSD permit, neither is part of a PSD permit or the process for issuance of a PSD permit. See the discussion of the interrelationship in *In re Russell City Energy Center* at 8-11. Since no PSD action within the Board's jurisdiction is being appealed, the review of the Petition is denied.

So ordered.

Dated: 11/25/08

ENVIRONMENTAL APPEALS BOARD

By:   
Edward Reich  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**


I hereby certify that copies of the forgoing Order Denying Review in the matter of Russell City Energy Center, PSD Appeal No. 08-07, were sent to the following persons in the manner indicated:

First Class Mail:

Alexander G. Crockett  
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Dated: NOV 25 2008

  
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Annette Duncan  
Secretary