BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: PETITION FOR REVIEW RE: PALMDALE HYBRID POWER PLANT PSD PERMIT PSD Permit No. SE 09-01	Appeal No. PSD 11-07 PETITIONER MOTION TO CLARIFY SCOPE OF APPEAL; REQUEST FOR STATUS CONFERENCE; REQUEST FOR ORAL ARGUMENT; REQUEST FOR SUR REPLY; REQUEST FOR OFFICIAL NOTICE.

In preparing to file a formal response to the Environmental Appeals Board's ("the Board")May 1, 2012 Order to Show Cause as to Why Petition Should Not Be Dismissed (Docket No. 26) ("the Order"), I submit this Motion and Requests for the Board's consideration.

I. There was Confusion Regarding Word Limits and Parties' Representation.

Although it may have been based, at least partly, on some of my prior appeals, I was uninformed of the ramifications of the standing order word count limit. Coincidentally, according to the Permittee. the word count for the appeal (response pg. 6) that I timely filed Docket 1-3 totals 14,000 words plus addendum Docket No. 4.

Ms. Sommers, who also commented on the permit, and I were both employed by Helping Hand Tools (2HT). I never retained her to represent me as an individual. My expectation was that we would file a consolidated appeal or 2 appeals and the she would represent 2HT. Subsequently 2HT was omitted as a Petitioner and Ms. Sommers appeared to represent only me. This was neither my intent nor the intent of 2HT. Ms. Sommers does not represent me and she no longer works for 2HT. I represent myself in this action.

II. The Region deserves no deference on constitutional issues

The Board may wish to give the Region deference in its permitting action. The agency and the permittee warrant no deference in their attempts to restrict my protected speech. Decisions to decline to record public comments at meeting(s), refuse to extend the comment period (despite my and others requests), refuse to reopen the comment period and attempt to deny review show a pattern of abuse of my constitutional rights.

The Region certainly could have reopened the comment period since the final permit bears little resemblance to what was circulated for public review. Instead the Region chose to, strategically punt the issue to the Board. There can be no doubt that this is a more restrictive and onerous venue than simply commenting on a permit. I am left at a

clear disadvantage. Without response to my comments, I am allotted 14,000 words to not only make comments, but also to make an appeal that warrants review. The region and permittee are allowed a double-barreled response which allows 14,000 words each to try to prevent review. They are not compelled to actually respond to my comments on the final permit except perhaps to the extent that they deny that there was an abuse of discretion.

The Region bolsters its decision in response; "See In re Indeck-Elwood, 13 E.A.D. at 147 (identifying and explaining each permit change "ensures that interested parties have an opportunity to adequately prepare a petition for review and that any changes in the draft permit are subject to effective review")." They then go on to argue against review with no explanation of where this "effective review" would then come from. The Region cannot have it both ways. If it is to "pass the buck" to the Board to excuse themselves from considering my comments, it cannot then also prevail in attempts to prevent the Board's review. To do so would run afoul of my constitutional rights. The Region should give deference to the scrutiny of the informed public in requests to reopen a public comment period, particularly when changes imposed to a permit were based upon the Permittee's previously undisclosed "public comments".

III. Petitoner Should Not Be Held to a Higher Standard than Any Other Petitioner.

The Permittee argues both that my speech should be restricted for actions that I have and have not participated in its response; "Although the Board attempts to construe pro se petitions "as generously as possible," no such deference is needed here because Mr. Simpson is represented by counsel and Mr. Simpson has been actively involved with previous appeals before the Board. See id., at *22; see also, e.g., In Re Russell City, PSD Appeal No. 08-01, July 29, 2008 (Mr. Simpson actively participated in petition to the Board). permittee response pg. 6-7 "As stated above, we request that the Appeal be dismissed because the Petition Materials are defective, and request that the Board not stretch to allow a component of the Petition Materials to constitute the Appeal petition, particularly because Mr. Simpson is represented by counsel and has significant experience with the Board's proceedings. See In re Environmental Disposal Systems, Inc., 12 E.A.D. 2542005 WL 2206804, at *22, 28, n. 27 (EAB 2005) ("[I]t is neither [the Board's] responsibility nor [the Board's] practice to 'scour the record' for information that would support a petitioner's arguments."); See In Re Russell City, PSD Appeal No. 08-01, July 29, 2008 (Mr. Simpson actively participated in petition to the Board). permittee response pg.8 "The CEC has an open process that allows any interested person to become a formal party (or "intervenor") in the CEC's proceedings, which grants the intervenor with significant rights to request data, submit testimony, and cross-examine witnesses, among other things. Mr. Simpson did not intervene even though Mr. Simpson is familiar with the process and has intervened on other projects." See, for example, Carlsbad Energy Center, 07-AFC-06" pg. 11

I am *Pro Se* in this proceeding. Any other proceeding that I may or may not have participated in is not a basis for limiting my protected speech in this proceeding. One only needs to examine the record to demonstrate that any of my prior actions before the

Board do not denote some prowess or expertise which could result in me being held to a higher or more prejudicial standard. I am not here based upon some desire to be in this venue. I should, at the very most, be held to the same standard as any other member of the public. I am here to exercise my right to; “petition the Government for a redress of grievances.” This happens to be the venue that the Region found most favorable and selected. If I do have some expertise in these issues, it only demonstrates that my words should be held the highest level of protection. If anything, my history should require that the Region exercise deference to me in requests to extend or reopen comments periods.

In;Albert SNYDER, Petitioner, v. Fred W. PHELPS, Sr., et al. HYPERLINK "http://scholar.google.com/scholar?scidkt=6454605884798161634&as_sdt=2&hl=en" No. 09-751.Supreme Court of United States. Argued October 6, 2010. Decided March 2, 2011.
"[S]peech on `matters of public concern' ... is `at the heart of the First Amendment's protection.'" HYPERLINK "http://scholar.google.com/scholar_case?case=14343170427684392260&q=westboro+Baptist+Church+us+supreme&hl=en&as_sdt=2,5" Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 758-759, 105 S.Ct. 2939, 86 L.Ed.2d 593 (1985) (opinion of Powell, J.) (quoting HYPERLINK "http://scholar.google.com/scholar_case?case=3768819597963662504&q=westboro+Baptist+Church+us+supreme&hl=en&as_sdt=2,5" First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 776, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978)). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." HYPERLINK "http://scholar.google.com/scholar_case?case=10183527771703896207&q=westboro+Baptist+Church+us+supreme&hl=en&as_sdt=2,5" New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government." HYPERLINK "http://scholar.google.com/scholar_case?case=6463657344879720774&q=westboro+Baptist+Church+us+supreme&hl=en&as_sdt=2,5" Garrison v. Louisiana, 379 U.S. 64, 74-75, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." HYPERLINK "http://scholar.google.com/scholar_case?case=12292534138488546769&q=westboro+Baptist+Church+us+supreme&hl=en&as_sdt=2,5" Connick v. Myers, 461 U.S. 138, 145, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) (internal quotation marks omitted).

IV. Petitioner Requests Leave to Correct Filing Requirement Deficiencies, and Proposes Alternative Currently Filed Document Combinations for Consideration.

Though the Board has a history of considering multiple appeals and significantly more complicated issues than I have presented, I would very much like to ease deliberations for

the Board as much as possible. If the Board is not inclined to consider everything filed, my next choice would be that the Board consider the Clerical amendment Docket No. 9 and Docket No. 2 with attachment Docket No.4 as my timely filed appeal and consider the Appeal. Item 1 was an earlier version of item 5, and item 9 is the same as item 5. Item 9 is also what the Region responded to. The permittee appeared to respond to item 5. Using the Permittee's word count, on page 6 of their response, this would represent 14,500 words (plus addendum). Alternatively, Docket No. 2 and 5 could be considered (same number of pages). For either of the above actions I could omit significant portions of Docket No. 2 to reduce the word count and duplication. The Region and Permittee have already responded to most of the issues with 19,114 words. The Board could simply excuse my extra 500 words or consider 500 words of my Petition to be comments on the final permit and not subject to the word limit, or allow me as many words as the project proponents.

Should the Board wish to impose a word limit or other procedural requirements that I may not have met, I hereby seek leave to correct any procedural deficiencies and pare down my appeal to the word limit. My first choice would be to take words out of No. 2. Should the Board only agree to consideration of 14,000 words of what was timely filed, I would choose my filing Docket 1-4, unless 5 was needed to cure some other procedural flaw then I would choose 5 and whatever else the Board allowed.

V. Denying to Extend or Reopen the Comment Period was Overly Restrictive of Public Participation and Protected Speech.

It appears that the Region and applicant have developed a method that could prevent public participation by allowing applicants to rewrite permits through, otherwise unpublished, purported "public comments," declining to recirculate a draft permit, then shuffling the public off to a venue that subjects their comments and appeal to an entirely different and more restrictive standard, with word limits and more restrictive procedural requirements. Under this scheme extensions and reopening of comment periods are a thing of the past. The Board in this scenario is used as a tool to circumvent public participation and protected speech.

It is an important matter of policy for the Board to determine if their standard of review for allegations of refusal to extend or reopen comment periods, particularly on permits altered by applicant comments, is effective and should be the same for projects that were vetted through public scrutiny. Does the Board have a duty to consider comments that the agency should have considered if the Board does not require the agency to do so? Is it equitable that the consideration of public comments in this instance is limited to, if they prove that the permit; "is based on a clearly erroneous finding of fact or conclusion of law, or (that the comment) involves an important matter of policy or exercise of discretion that warrants review"? (Standing Order at 10)

VI. Permittee and Region Had the Opportunity to Respond to Comments and Petition, and Appear Prepared for Further Briefing.

The Permittee and the Region may feign confusion over the documents filed. If the parties truly did not understand or agree with the categorization of the appeal they could have simply requested a "status conference... to expedite case resolution" (Standing Order at 6). Instead the Region and permittee wasted the last 3 weeks drafting complaints of ignorance and procedural confusion. The Region took the approach of answering only Docket #9 which is a safe bet since it is the same as docket number 5, both of which incorporate docket 1 and 3. The Board certainly could not have been ordering response to the "Clerical Amendment" Docket No. 9 since it had not been filed yet when the order was made. The Region and Permittee have probably answered 85% of the appeal. I can pare the appeal down (Docket No. 2) in a day and the other parties can respond to any outstanding issues on their schedule. Perhaps they already have responses prepared.

I am sensitive to the potential time considerations in a PSD permit appeal. The Permittee has not indicated that this action has delayed construction in any way. There appears to be no contract for the generation, no financing for the construction and no need for the facility. The Permittee has not indicated that they are harmed in any way by any potential delay. The Permittee has not indicated that they have completed the subdivision necessary for this development.

The Region does not appear to object to further briefing; "Should the Board request further briefing concerning this issue, Region 9 would be happy to provide it." Region response pg.4. "If the Board desires further briefing on the merits of this issue, Region 9 would be happy to provide it." Region response pg. 33. Should the Board desire further briefing on the merits of these arguments, Region 9 would be happy to provide it. Region response pg.38"

VII. I Request a Status Conference, Oral Argument, Leave to File a Sur Reply, and Official Notice.

I hereby "request the Board to schedule such a conference to expedite case resolution." (Standing Order at 6) Just as the other parties could have done if they had confusion, I believe that we can resolve confusion in about 15 minutes at a case management conference.

I request oral argument. I believe that oral arguments would expedite consideration of our contested issue and hereby request the opportunity for oral arguments.

I request leave to file a sur reply. I would like the opportunity to respond to parties briefs. In this instance I was deprived of an opportunity to comment on the final permit and so I had no prior opportunity to consider the Regions response. I should be afforded the opportunity to respond. I am left in this venue defending my comments without response

I request that the Board take Official Notice. The Region first referenced the California Energy Commission Integrated Energy Policy Report (IEPR) in its response to

comments; " Various mechanisms are in place within the State of California that provide a structure for considering the need for new natural gas-fired power plants in the context of the State's renewable energy requirements and policies. These mechanisms include, among other things, a regular integrated assessment by the CEC of major energy trends and issues facing the State's electricity and natural gas sectors" (Emphasis added).

I, the Permittee and again the Region discussed this, perhaps crucial, report to these proceedings in our filings. I request that the Board take official notice of this Official CEC policy document.

Please also add me to the Electronic service list for this proceeding at the below email address.

I will continue to persevere to respond to the Order To Show Cause.

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