

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

IN THE MATTER OF)
Humboldt Bay Repower Project)
)

Appeal No. 08-08

OBJECTION TO REPLIES

Summary

On November 25, 2008 The Environmental Appeals Board ordered responses regarding if the permit is a “modification” of the existing facility. The responses would appear to mislead the EAB.

Argument

PG&E Air Quality Application For Certification (AFC) attached (Exhibit 1) identifies that the project was “treated as a modification”. The replies misstate this fact.

For the purposes of the District’s PSD rule, the source is treated as a reconstructed (new) source; this is in contrast with the treatment of the project under the SIP-approved PSD program, under which the project is treated as a modification to an existing stationary source.

AFC 8.1-78

The Air District identified the project as:

As discussed in the AFC (Section 8.1.5.2.1.1), the HBRP will be a major modification to a major stationary source that will result in significant net emissions increases of PM10 and reactive organic gases (ROG), and therefore subject to the PSD permitting requirements.

FDOC March 2008 Page 2 of 22 HBRP PM10 Increment Analysis

It should be noted that this is the FDOC submitted to the CEC (exhibit 2) not the one submitted to the EAB as exhibit A in the declaration of Gary Rubenstein

The California Energy Commission (CEC Final Decision) identifies the project as a “major modification”:

40 CFR 52.21 Prevention of Significant Deterioration (PSD) requires major sources to obtain permits for emissions of attainment pollutants. PSD review requires the new or modified source to achieve the Best Available Control Technology (BACT) and to demonstrate that significant deterioration of ambient air quality would not occur. NCUAQMD implements the PSD program with U.S. EPA oversight (also NCUAQMD Rule 110). The existing HBPP is a major source and PSD review applies to the HBRP, which would be a major modification of the source.

Appendix A: 1

CEC Final Decision (extracted from table)

PG&E enjoyed the benefits of this classification throughout the permitting process.

Public Resources Code Section 25527 and 25550.5(i)
The Warren-Alquist Act requires the California Energy Commission to “give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaeological, and cultural sites...”
With respect to paleontologic resources, the Energy Commission relies on guidelines from the Society for Vertebrate Paleontology (SVP), indicated below. Section 25550.5(i) defines the criteria for a repowering project that involves modification of an existing power plant rather than construction of a new facility.

Appendix A: 11

CEC Final Decision (extracted from table)

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Best Available Control Technology (BACT) and to demonstrate that significant deterioration of ambient air quality would not occur. NCUAQMD implements the PSD program with U.S. EPA oversight (also NCUAQMD Rule 110). The existing HBPP is a major source and PSD review applies to the HBPP, which would be a major modification of the source.

CEC final staff assessment May 2008 4.1-3

The applicability of PSD to a project is based on the difference between the post-modification potential to emit (i.e., the maximum possible emissions allowed under the proposed permit) and the existing facility's actual emissions. As discussed in Section 8.1.2.2.1, the baseline period for emissions from the existing facility is the 24-month period immediately preceding the filing of the AFC: September 29, 2004, through September 28, 2006.
AFC8.1-31

Emissions increases from the project are compared with regulatory significance thresholds to determine whether the **increases are significant**. If the emissions **increases** exceed the **significant emissions** thresholds, the proposed modification **may be** subject to PSD review. The comparison in Table 8.1-33 indicates that the increases **in ROC and PM10 emissions** will be significant.

Contemporaneous emissions increases and decreases at the facility are **then** included in the netting calculation to determine the net emissions changes at the facility. The net emissions changes are compared with the PSD significance levels in Table 8.1-34.

AFC 8.1-62

7 Although the District enforces its current PSD rule for major sources as defined in 40 CFR 52.21, this rule has not been approved by EPA as the basis for PSD program delegation. Therefore an applicant for a new major source or major modification that is subject to PSD review must also comply with the requirements of the District's 1984 SIP-approved PSD rules. 8.1-21

The calculation of net emission increases was shown in Table 8.1-18 above. Table 8.1-32 shows that the existing Humboldt Bay Power Plant is a major source under the PSD regulations. Table 8.1-33 shows that the net increases of ROC and PM10 from the project are above the PSD significance thresholds, so the project is subject to PSD review for these pollutants.

~~Deleted: s that emissions from HBPP will be significant, so the project will be a major modification to an existing major source and thus subject to PSD review~~

AFC 8.1-64

IT should be noted that the deletion of the above does not appear to be based upon the applicants belief that the project is not a modification but on the applicants skill in utilizing inter pollutant trading to justify their calculations

Under the District definitions in Rule 110, HBRP is considered a reconstructed source. The Humboldt Bay Power Plant is a source undergoing physical modification.
AFC 8.1-77

Shutdown of the existing HBPP Units 1 and 2 and MEPPs following commissioning of the new HBRP would provide emission reductions that offset the new HBRP emissions.
CEC Final Decision 102

OBJECTION TO PG&E “NOTICE OF CLARIFICATION AND MOTION TO STRIKE

Objection is made to PG&E’s Argument, Ironically titled “Clarification“. The “clarification” states:

“See PSD Permit NC 77-05, as revised, attached hereto as Exhibit 1”

While the exhibit appears to identify that the EPA retained authority for the facility at least through October of 2000 and that the original permit NC 77-05 may have actually been expanded. There exhibit does not appear to provide a complete record including a copy of the identified original PSD permit NC 77-05. Petitioner hereby seeks to compel NCUAQMD, PG&E or the Region to actually produce a copy of the original permit NC 77-05 and all records related to it prior to the EAB decision on this matter.

PG&E further argues in its “clarification”:
The Humboldt Bay Repowering Project does not involve a modification of the MEPPs permitted under PSD permit NC 77-05 nor does it involve that permit in any way”

They then go on to identify that it is involved and the modification:

“Rather, the MEPPs will be decommissioned and removed after the project is completed”

PG&E offered clarity on how the project Does “involve a modification of the MEPPs” when seeking offsets for the “reconstructed source” in:

PG&E’s Air Quality section of the California Energy Commission Application For Certification (AFC) attached (Exhibit 1)

“For the federal PSD analysis, the potential to emit for the proposed HBRP must be compared with the actual emissions from the existing units. Calculation of actual emissions during the baseline period is shown in detail in Appendix 8.1, Table 8.1A-1. Actual historical emissions for Units 1 and 2 and MEPPs 2 and 3 are summarized in

Table 8.1-9.”
AFC .1-22

“9 Because HBRP is considered a *reconstructed* source under District rules, the emissions reductions from the shutdown of the existing Humboldt Bay Power Plant units are treated as offsets for District NSR purposes. See Section 8.1.5.2.3.1.” (*italic added*)

AFC .1-22

NCUAQMD rules define “Reconstructed Source” as a modification:

NCUAQMD Rule 110 New Source Review (NSR) And Prevention of Significant Deterioration (PSD)

4.22 Reconstructed Source means any source undergoing physical *modification* where the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Fixed capital cost means that capital needed to provide all the depreciable components.
(*italic added*)

Now, that possible EAB oversight may become an inconvenience for PG&E, PG&E appears to want to reconstruct the record to avoid scrutiny.

§ 52.01 Definitions.

(a) The term *stationary source* means any building, structure, facility, or installation which emits or may emit an air pollutant for which a national standard is in effect.

(d) The phrases *modification* or *modified source any physical change* in, or change in the method of operation of, a stationary source which increases the emission rate of any pollutant for which a national standard has been promulgated under part 50 of this chapter or which results in the emission of any such pollutant not previously emitted..

The District Region and applicant must understand that the term modification means more than a paint job. If a replacement of the equipment is not a modification then what is?

Objection to Motion to strike

While petitioner believes that the EAB will understand the Exhibits as response to its

order, this further clarification is offered. Exhibit B demonstrates the basis for the manipulation of “stack parameters” disclosed in Exhibit C.

Prior to the evidentiary hearing, Applicant proposed several project modifications that reduced the health risks to below levels of significance. These modifications included raising the exhaust stack heights to improve air dispersion characteristics

CEC final decision page 189

This demonstrates that the applicant met the threshold to retain EAB Jurisdiction through “Dispersion Techniques” as identified in CFR52.270(B)(2) and defined in 40 cfr 51.100 (hh)(1):

40CFR52.270(B)(2)..

(ii) Those projects which are major stationary sources of major modifications under § 52.21 and which would either have stacks taller than 65 meters or would use “dispersion techniques” as defined in § 51.1.

40 cfr 51.100 (hh)(1) *Dispersion technique* means any technique which attempts to affect the concentration of a pollutant in the ambient air by:..

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

Exhibit D dispels the argument made by PG&E that:

“IV. ADEQUATE REMEDIES ARE AVAILABLE UNDER STATE LAW”
PG&E MOTION FOR SUMMARY DISPOSITION

Ostensibly PG&E made this argument against EAB jurisdiction. Petitioners evidence to the contrary (that adequate remedies are not available under state law) demonstrates the need for the EAB to retain jurisdiction.

PG&E’s argument regarding appeals of CEC decisions, in the same section, does not have bearing as this is not an appeal of a CEC action.

Petitioner also argues against PG&E's assertion in its motion for Summary Disposition that the previous EAB decision is unreliable.

**"V. PETITIONER'S RELIANCE ON THE *RUSSELL CITY* DECISION IS MISPLACED"
PG&E MOTION FOR SUMMARY DISPOSITION**

Petitioner believes that the EAB wrote a decision that is reliable and can provide valuable guidance for all PSD permits. Had PG&E, the Air District or the Region relied on the EAB remand in the first place and provided public notice of their actions we would not likely be in this proceeding.

The EAB has jurisdiction because the facility does not comply with NESHAP. No public notice was made regarding the facility being a major source for hazardous air pollutants

"NESHAP COMPLIANCE:

National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (40 CFR 63 Subpart ZZZZ) The facility is a major source for hazardous air pollutants (HAPs), having the potential to emit 10 tons or more per year of one HAP, and 25 tons or more per year of more than one HAP. There are multiple types of Reciprocating Internal Combustion Engines (RICE) regulated by this NESHAP. The Wärtsilä reciprocating dual-fuel engines qualify, by definition, as CI engines when operating in Diesel Mode"
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"40 CFR 63 Subpart ZZZZ requirements include:

- Emission and Operating Limitations §63.6600(b)
- General Compliance §63.6605
- Initial Performance Testing §63.6610(a)
- Subsequent Performance Testing §63.6615
- Monitor Installation, Operation and Maintenance §63.6625
- Notifications, Reports, and Records §63.6645"

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CONCLUSION

Petitioner feels that he has done his duty as a Citizen and would like to rely on the authority

In order to correct serious and fundamental deficiencies in the District's public notice of the draft permit and to remedy the resulting harm to the PSD program's public participation process, the Board finds it necessary to remand the Permit to the District to ensure that the District fully complies with the public notice and comment provisions

Furthermore, conferring standing in a restrictive manner would be at odds with clear Congressional direction for "informed public participation," see CAA § 160(5), 42 U.S.C. § 7470(5), and § 124.10's expansive provision of notice and participation rights to members of the public

given the pivotal importance to Congress of providing adequate initial notice within EPA's public participation regime

(xxxix) *Project* means a physical change in, or change in the method of operation of, an existing major stationary source.

(11) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. The plan may allow the offset requirements in paragraph (a)(3) of this section for direct PM 2.5 emissions or emissions of precursors of PM 2.5 to be satisfied by offsetting reductions in direct PM 2.5 emissions or emissions of any PM 2.5 precursor identified under paragraph (a)(1)(xxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area
§ 51.166 40 CFR

(5) *Public participation.* Any State action taken under this paragraph shall be subject to the opportunity for public hearing in accordance with procedures equivalent to those established in

§ 51.102.
§ 51.165 Permit requirements.

Respectfully submitted on Monday December 8 2008

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