

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

In re:  
California power plant licensing )  
Humboldt Bay Repower Project)  
and Russell City Energy Center )

September 26, 2008

PETITION FOR REVIEW

Introduction:

Petitioner Rob Simpson seeks review and sanctions for ongoing violations of the Clean Air Act and the Environmental Appeals Board Order 08-01 Dated July 29, 2008.

Complaint:

On July 29, 2008 the Environmental Appeals Board (EAB) remanded the PSD permit for the Russell City Energy Center (RCEC). Petitioner expresses sincere gratitude for that just decision. The EAB sent a clear message that EPA permits require the opportunity for public participation. Regrettably the decision is being ignored in the State of California. On July 30<sup>th</sup> the despite objections by the County of Alameda, Petitioner, the Audubon Society , environmental groups and nearly 1000 citizens, the California Energy Commission (CEC) extended the license of RCEC.

Petitioner served a copy of the Remand Order to the CEC on July 30, 2008 and requested that the CEC take notice, to which the CEC agreed. Petitioner appealed the CEC for reconsideration of its extension decision giving it time to review the remand (Exhibit 1).

While petitioner acknowledges that the PSD permit was not a requisite to the CEC license, the Determination of Compliance or Draft Permit was a requisite

“As applied to the notice violation, the allegation of error is considered to be the Permit in its entirety.”

EAB Remand Order page 26

Prior to the Reconsideration hearing petitioner met with the Bay Area Air Quality Management District (District) counsel Sandy Crocket to request that the district inform the CEC of the remand and the fact that the CEC should no longer rely on the Draft permit. Mr. Crocket declined the request to inform the CEC of the remand or its ramifications.

Subsequently the CEC misinterpreted and belittled the Remand order, even offering it as a basis for the extension.

“EAB’s remand is not a denial of the PSD permit, it is merely a continuation of the permit process.”

Order Denying petitions for reconsideration concerning extension of construction deadline

“Ironically, it was the petitioner's appeal to EAB that provided the requisite good cause to warrant the granting of the RCEC's Petition to Extend the Deadline to Commence Construction.”

(CEC) STAFF RESPONSE TO PETITION FOR RECONSIDERATION CONCERNING EXTENSION OF CONSTRUCTION DEADLINE

The PSD proceedings that are the subject of this case are embedded in a larger California “certification” or licensing process for power plants conducted by the California Energy Commission”

EAB Remand Order Syllabus

To continue to prevent public participation, the CEC and Bay Area Air Quality Management District are using the Remand to dis-integrate the permit process by attempting to continue to rely on aspects of the remanded permit for CEC licensing and process the PSD permit after

the close of the CEC license Record. It is requested that the EAB not allow its order to be bastardized in this fashion.

“The District process for permitting power plants is integrated with the CEC’s certification process to support the latter’s conformity Findings”  
EAB Remand Order page 10

“given the pivotal importance to Congress  
of providing adequate initial notice within EPA’s public participation  
regime under 40 C.F.R. part 124, *see supra* Part IV.B”  
EAB Remand Order 38

### **The North Coast Air Quality Management District (NCUAQMD)**

On September 16, 2008 in response to a public information request from the petitioner The North Coast unified Air Quality Management District provided a copy of the public notice for an Authority to Construct (ATC), PERMIT NO: 443-1 Prevention of Significant Deterioration (PSD) permit and Title V permit (Exhibit 2) that were all issued on April 14, 2008 for the Humboldt Bay Repower Project.

Because the notice provided did not identify the PSD permit, Title V permit, effect on air Quality or opportunity to request a public hearing the petitioner provided a copy of the PSD Appeal 08-01 remand order with requests to cure the notice defects (Exhibit 3) prior to the CEC licensing the project. The Remand order and request were ignored and so petitioner provided written comments to the CEC (Exhibit 4) and attended the September 24, 2008 CEC licensing hearing to request compliance. The CEC licensed the project on that date without compliance.

The NCUAQMD operates under a State Implementation Plan (SIP)  
“The notice shall include the preliminary determination: present the expected additional and cumulative increment consumption: provide opportunity for a public hearing” rule 220 (a)(4) 50 FR 30941

The project is a repower project aimed at replacing an existing power plant. The only notice regarding Air Quality found by petitioner was a press release from the applicant Pacific Gas and Electric (PG&E) (Exhibit 5) that claimed that the new plant would produce “90% fewer air emissions” Petitioner found tables in the 732 page CEC staff report demonstrating that the project can emit up to 275 percent of “standard” for PM and other emission increases (Exhibit 6)

The present Particulate matter (PM) emissions are claimed to be 23.4 tons per year. 90% fewer would be 2.3 tons. According to the California Energy Commission the new plant is slated to emit 119.8 tons per year that's 50 times higher than PG&E's claim or nearly 5 times higher than present emissions. Some other emissions are also significantly higher.

A comparable sized facility is planned in San Francisco. It is scheduled to Emit 15% of this plan or 18.2 tons of PM per Year. PG&E accomplishes this massive increase in emissions by employing 10 cheap Soviet Ship Engines in Eureka and modern Equipment in San Francisco.

Petitioner requests remand of the NQUAQMD permits or will raise substantive arguments upon request from the (EAB) or administrator

“Because issuance of the draft permit will reopen the public comment period and allow new opportunity for filing public comment, the Board, for reasons of judicial economy, refrains from opining on the substantive arguments raised in Mr. Simpson’s appeal”  
EAB Remand Order page 27

The California Air Districts and CEC are operating with virtual impunity because California appeals of CEC decisions which are interpreted to include preceding Air District decisions are relegated to the California Supreme Court and the Supreme court declines to consider most CEC appeals.

California Public Resources Code section 25531

(c) Subject to the right of judicial review of decisions of the commission, no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter which was, or

could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal Power plant except to enforce compliance with the provisions of a decision of the commission.

#### 5.0 NOTIFICATION AND OPPORTUNITY FOR REVIEW OF PROPOSED DECISION:

Within the applicable time frame specified in Rule 503 3.0, the Air Pollution Control Officer shall provide official and public notice of and opportunity to review the proposed decision to issue a permit to operate in accordance with requirements of this Rule.

[Reference: 40 CFR 70.7(h) and 70.8]

It is clear that the NCUAQMD was aware of the deficiency and opted to ignore it and the EAB authority.

The Air Districts and CEC should not be permitted to ignore the EAB and the Clean Air Act.

It is extremely cumbersome for the petitioner, a private citizen without pay to protect the Clean Air Act While agencies disregard the EAB and attempt to act without consequences. It is requested that the EAB Sanction the above Air Districts in the amount of the fees paid to them by the applicants and remit this amount to the petitioner and then perhaps Air districts will not ignore or mutilate EAB orders and the Clean Air Act.

A reason that this appeal addresses 2 projects is to demonstrate the failure of the California Power plant licensing process and seek guidance for the system as a whole.

This appeal is filed concurrently with the EAB and the EPA administrator.

Respectfully Submitted by,  
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