

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

In re Russell City Energy Center)	PSD Appeal No. 10-5 (CALifornians
)	for Renewable Energy, Inc. (CARE)
Russell City Energy Company, LLC)	and Rob Simpson Petitioners
PSD Permit Application No. 15487)	
)	Response Brief, Objections to
)	December 14, 2010 Order, and
)	Motion to Strike Russell City and
)	BAAQMD Opposition submitted
)	without a Motion

In accordance with the December 14, 2010 Environmental Appeals Board Order Establishing Requirements for Motions to File a Response Brief Petitioners CALifornians for Renewable Energy, Inc. (CARE) and Rob Simpson respectfully file a response brief in full support of the Chabot-Las Positas Community College District ("College District") District's Petition and Supplemental Petition for Reconsideration or Alternatively Clarification and Request for Immediate Stay of Effective Date of November 18, 2010 Order Denying Review.

Response Brief

This order approves the actions by BAAQMD, the EPA's delegate, to outright ignore BAAQMD's own evidence that RCEC will cause and contribute to a violation of the National Ambient Air Quality Standard (NAAQS) for PM_{2.5} contrary to the statutory language in the Clean Air Act under section 7475. This prejudicial error is exacerbated by the Board's failure to address the arguments raised by Chabot concerning the community in which its campus is located, which BAAQMD itself identifies as an "environmental justice" community which it recognizes is at risk from too much existing pollution, see Exhibits submitted by Chabot and where in his comments Robert Sarvey submitted 2009 raised this issue of environmental justice.¹

¹ See http://www.baaqmd.gov/~media/Files/Engineering/Public%20Notices/2009/15487/letters/02-06-09_sarvey_robert.ashx

Likewise, the Board still has failed to examine Chabot's arguments that BAAQMD has not completed a cumulative impact analysis with respect to annual PM_{2.5}. BAAQMD's own air runs established that there are 2,400 additional sensitive receptors which remain undisclosed to the public, unmapped and unknown (except to BAAQMD and RCEC), which under the NSR Manual must be disclosed and identified to determine

That is, even if a particular highway segment might generate a significant concentration gradient somewhere within the impact area, but not within the same location where the source's impacts also exceed the SIL, then its exclusion from the multi-source full impact analysis is appropriate; so long as the facility's predicted impacts which exceed the SIL do not coincide in both time and location with any potential violation of the NAAQS resulting from the highway segments, then the facility cannot be found to cause or contribute to such a violation.

BAAQMD Feb. 2010 Response at 158-159. As a result, BAAQMD has failed to identify the 2,400 additional locations where the RCEC will exceed the SIL, which, CARE suspects will be along those roadways which will generate a significant concentration gradient. The fact that BAAQMD and RCEC have refused this repeated request from so many members of the public implies that in fact there is a significant concentration gradient at these highway segments.

That is because the College District, which is governed by locally elected public servants of the people, knows its duty is to protect the public's health and safety first and foremost who attend and work at its campuses.

Because the issues which the College District has raised remain unresolved, but go to the rigorous examination necessary to protect the public's health and safety, it would be an abuse of discretion for the Board to deny the College District Petition and Supplemental Petition for Reconsideration or Alternatively Clarification and Request for Immediate Stay of Effective Date of November 18, 2010 Order Denying Review.

A Stay Must Be Ordered To Enable The Board To Complete Its Review Of The Outstanding Issues On The Merits.

While this Board was reviewing the multiple and numerous petitions for review submitted in March 2010, an automatic stay was in effect to protect the Board's jurisdiction. However, presently, the Board issued an order allowing for the dissolution of the stay, but still has failed to address all the issues presented before it that were raised

in the College District's petition. Here, before the Board is an application to construct a 600 megawatt thermal gas fired power plant which will be the second biggest power plant polluter in the nine San Francisco Bay Area Counties and six biggest polluter overall including the refineries, next to a community which BAAQMD itself identifies health is at risk and BAAQMD's own records establish will cause and contribute to a violation of the NAAQS for PM2.5, a dangerous pollutant to the health and safety of residents. Because these issues raised in March 2010 remain unresolved, in order to protect the status quo, a stay must be issued to protect this Board's jurisdiction to reach the merits of these important questions.

Objections to December 14, 2010 Order

CARE and Rob Simpson object to the Board's December 14, 2010 Order which states:

On December 10, 2010, Mr. Robert Sarvey and the CALifornians for Renewable Energy, Inc. ("CARE") filed motions requesting leave to file responses to the College District's motion for reconsideration. See Motion for Mr. Sarvey to File a Response Brief to College District Petition for Reconsideration; CARE's Motion Requesting Leave to File a Response Brief. While it was the Board's intention that any such response be filed by December 10, because the Board's order required that "any party wishing to file a response brief to submit such motion" by the December 10 deadline, the Board will treat these motions as timely. The Board grants the motions. Any response must be submitted on or before Wednesday, December 15, 2010. The response must be limited to the specific issues raised in the College District's motion for reconsideration. Any such filed response may not exceed five pages. [2]

On May 14, 2010 CARE and Rob Simpson, requested the Board take Official Notice of the Petition for Review before the United States Department of Labor Administrative Review Board of Petitioner *Michael E. Boyd, Complainant, v. U.S. Environmental Protection Agency, Respondent*, ARB Case No. 10-082 ALJ Case No. 2009-SDW-00005.

² Neither Mr. Sarvey's nor CARE's petition is involved in this reconsideration proceeding and any attempt to raise issues in their own petitions would be untimely. Further, since neither is the permit issuer nor the permittee, the Board has set a page limit that reflects their tangential role in this reconsideration proceeding.

We object to the Board's December 14, 2010 Order as a violation of due process requirements and an act of constructive retaliation by US EPA against Mr. Boyd who has an outstanding whistleblower claim against US EPA pending review before the US DOL, CARE, and its members including Mr. Simpson and Mr. Sarvey. The pending whistleblower complaint involves other of CARE's members.

Motion to Strike Russell City and BAAQMD Oppositions without a Motion

It appears to us as parties representing ourselves who are not attorneys that the Board has a double standard on the way it treats the citizens who seek to enforce the Clean Air Act by exercising their rights to public participation in the Act's enforcement by its public servants, in the case at hand here the US EPA and those who the Act was setup to regulate.

The Board's December 3, 2010 Order seems clear to us where it states "Parties have inquired about the time frame for filing responses to the College District's motion and supplemental motion. The Board hereby ORDERS *any party wishing to file a response brief to submit such motion on or before Friday, December 10, 2010.*"

Why then would the Board accept the Russell City and BAAQMD Opposition without a Motion while limiting non-attorney Parties to five pages with only three days to do so other than because of constructive retaliation against them for engaging in a protected activity which US EPA does not support?

We therefore move that the Board strike Russell City and BAAQMD Oppositions which they submitted without a Motion.

Respectfully Submitted,



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December 15th, 2010

Verification

I am an officer of the Appellant Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 15th day of December 2010, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy, Inc.
(CARE)

Certificate of Service

I hereby certify that on December 15, 2010 I sent copies of the foregoing document *CARE and Robert Simpson's Response Brief, Objections to December 14, 2010 Order, and Motion to Strike Russell City and BAAQMD Opposition without a Motion* in the matter of the Russell City PSD Appeal Nos. 10-01, 10-02, 10-03, 10-04, 10-05, 10-06 were sent to the following persons by email where available.



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