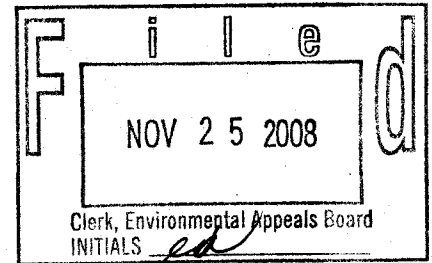


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

Humboldt Bay Repowering Project

PSD Appeal No. 08-08



ORDER REQUIRING REPLIES

In a petition for review filed with the Board on September 29, 2008, pursuant to 40 C.F.R. §124.19, Mr. Rob Simpson seeks review of a Prevention of Significant Deterioration ("PSD") permit issued to the Pacific Gas and Electric Company ("PG & E") for the Humboldt Bay Repowering Project. ("HBRP").¹ See Petition For Review (Sept. 29, 2008) ("Petition").² The permit was issued by California's North Coast Unified Air Quality Management District ("North Coast UAQMD").

By letter dated October 2, 2008, Ms. Eurika Durr, the Clerk of the Board, sent a letter to the North Coast UAQMD seeking a response to the Petition. See Letter from Eurika Durr, Clerk of the Board, to Mr. Richard L. Martin, Jr., North Coast UAQMD (Oct. 2, 2008) ("EAB Letter"). This

¹ As described in a Declaration filed by Richard L. Martin, Jr., the Air Pollution Control Officer for the North Coast Unified Air Quality Management District, the project consists of the following:

The HBRP project consists of the construction and operation of 10 Wartsila 18V50DF 16.3 megawatt reciprocating engines, a new emergency generator and a new fire pump engine, all of which will replace an existing power plant located in Eureka, California. The existing plant, a natural gas and fuel oil power plant, consists of two steam turbine generators, 52 and 53 megawatts, respectively, primarily fueled by natural gas, with number 6 fuel oil used as a secondary fuel; and two mobile emergency power plants, consisting of diesel fueled turbines that operate as back-up units and peaker units. * * * Upon completion of the HBRP, PGE will decommission the existing power plant and they will be replaced with the 10 new 16.3 MW engines.

Declaration of Richard L. Martin, Jr. In Support of the Response of the North Coast Unified Air Quality Management District Requesting Summary Dismissal (Oct. 14, 2008) at 2, attached to the Response of the North Coast Unified Air Quality Management Requesting Summary Dismissal (Oct. 14, 2008).

² Although the Petition is dated September 26, 2008, it was not received by the Board until September 29. Documents are "filed" with the Board on the date they are *received*.

letter stated that if the North Coast UAQMD determined that summary disposition was appropriate, it should file a response with the Board no later than October 17, 2009. EAB Letter at 1.

On October 15, 2008, the North Coast UAQMD filed a response seeking summary dismissal of the Petition. *See* Response of the North Coast Unified Air Quality Management District Requesting Summary Dismissal (Oct. 15, 2008) (“North Coast Response”).

PG & E and U.S. EPA Region 9 (“Region”) filed motions with the Board requesting leave to participate in this matter. *See* Pacific Gas and Electric Company’s Motion for Leave to Intervene (Oct. 17, 2008); Motion of the United States Environmental Protection Agency, Region 9, for Leave to File A Brief as *Amicus Curiae* in Support of Summary Disposition (Oct. 21, 2008). Both PG & E and the Region have also filed briefs in support of summary disposition. *See* Intervenor PG & E’s Opposition to Petition for Review and Motion for Summary Disposition (Oct. 17, 2008) (“PG & E Response”); United States Environmental Protection Agency Region 9’s *Amicus Curiae* Brief in Support of Summary Disposition (Oct. 21, 2008) (“Region 9 Response”). PG & E’s and the Region’s motions to participate in this matter were granted and their submissions incorporated into the record before the Board by the Board’s order of November 3, 2008. Order Extending Time to File Response (EAB, Nov.3, 2008).


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, with the reply limited to the jurisdictional issue raised in the North Coast Response and in the briefs submitted by PG & E and the Region. Mr. Simpson filed a timely reply on November 14, 2008. *See* Response to Request for Summary Dismissal (Nov. 13, 2008) (“Simpson Reply”). PG & E has submitted a response to Mr. Simpson’s reply. *See* Notice of Clarification and Motion to Strike (Nov. 20, 2008).

In his reply, Mr Simpson asserts, among other things, that this project is a "modification" of PG & E Buhne Point (NC 77-05), one of the permits specifically reserved to EPA, in EPA's approval.³ Simpson Reply at 2. The Board has determined that a response from the North Coast UAQMD as well as the Region on this issue would be of assistance in the Board's deliberations. Accordingly, the North Coast UAQMD and the Region are hereby ordered to file responses with the Board no later than December 5, 2008.

So ordered.

Dated: 11/25/08

ENVIRONMENTAL APPEALS BOARD

By: 

Edward Reich
Environmental Appeals Judge

³ The North Coast Response asserts that the Board does not have jurisdiction in this matter. According to this Response, the permit being challenged was issued by North Coast UAQMD under its authority to implement a PSD program, which authority is part of the Federally approved State Implementation Plan ("SIP") for California.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Requiring Replies in the matter of Humboldt Bay Repowering Project, PSD Appeal No. 08-08, were sent to the following persons in the manner indicated:

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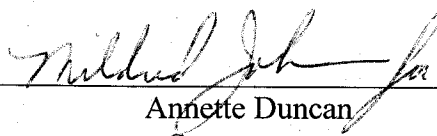
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Dated: NOV 25 2008


Annette Duncan
Secretary