

**DOCKET**

**06-AFC-7**

DATE \_\_\_\_\_

RECD. APR 30 2010

**UNITED STATES COURT OF APPEALS  
FOR THE  
NINTH CIRCUIT**

Petitioner,  
Robert James Simpson  
vs.  
United States Environmental  
Protection Agency, United States  
Environmental Protection Agency  
Administrator  
Lisa Jackson In her official capacity,  
North Coast Unified Air Quality  
Management District, Pacific Gas and  
Electric Corporation,  
Bay Area Air Quality Management  
District,  
Calpine Corporation, California  
Energy Commission, and California  
Public Utilities Commission

Case No.: 10- 71396

Petition for Review

**RECEIVED**  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**APR 29 2010**

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

**PETITION FOR REVIEW  
PETITIONER'S INFORMAL BRIEF**

**1. JURISDICTION:**

- Date proceedings initiated; *On September 29, 2008*
- Date agency's decision entered; *The EPA Administrator has not heard or even docketed my petition*
- Date petition for review filed; *April, 29, 2010*

**2. WHAT ARE THE FACTS OF YOUR CASE?**

*Below Identified as; "Summary"*

**3. PROCEEDINGS BEFORE THE AGENCY**

- What forms of relief did you request? *Objection to permit/ remand of permit*
- What did the agency do? *Ignored my petition*

#### 4. PROCEEDINGS BEFORE THE NINTH CIRCUIT:

- What issues are you raising in this Court? *Below*

What do you think the agency did wrong? *Ignored my petition*

- What legal arguments support your position? *Below*
- Do you have any other cases pending in this Court? If so, give the name and docket number of each case. *No*
- Have you filed any previous cases that have been decided by this Court? If so, give the name and docket number of each case. *No*

### **Introduction**

Pacific Gas & Electric (PG&E) and its contractors<sup>1</sup> increase their financial position through the illegal burning of fossil fuels which they generally cause to be imported into the State of California, and their captive customers pay the bill.

PG&E has defrauded the public to overbuild its fleet of fossil fuel fired facilities under the threat of an electricity shortages, like the one fabricated by the fossil fuel industry at the turn of the Century in 2000. Electrical outages cause injury, loss of income and even loss of life as the blackouts of June 14, 2000 caused in the San

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<sup>1</sup> For example Calpine.

Francisco bay area. These facilities provide a California Public Utilities Commission (CPUC) guaranteed rate of return from customers regardless of, how much, or whether the facilities operate at all.<sup>2</sup> PG&E defrauds the public of their rights to meaningful and informed participation in the environmental assessment of their sponsored projects and violates the Clean Air Act with impunity from prosecution.

Prior to PG&E's filing for Bankruptcy, as a result of its participation in the contrived Western energy crisis of 2000-1, it appears that PG&E transferred approximately six point seven billion dollars (\$6,700,000,000)<sup>3</sup> of ratepayers money to its then newly formed out of state "parent company PG&E National Energy Group, Inc. PG&E is presently investing at least thirty five million dollars (\$35,000,000) of ratepayers money, from these activities, into passage of California Proposition 16 which, if passed, would protect its monopoly by eliminating potential competition and preventing the development of renewable resources. I received misleading propaganda by U.S. Mail promoting the passage of Proposition 16. It stated "major funding from Pacific Gas And Electric" I am a captive PG&E customer who would like lower electricity rates, cleaner electricity

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<sup>2</sup> See Humboldt Decision [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/63628.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/63628.htm)  
See Gateway Decision [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/57179.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/57179.htm)  
See Russell City Decision [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/100001.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/100001.htm)

<sup>3</sup> See <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12067647>

generation and more secure locally generated electricity, by more secure I mean secure from resource price manipulation, curtailment and redirection of rates paid, to fund a criminal enterprise. I suffer the effects of global warming and environmental degradation from the burning of fossil fuels, as do all people. Our economy suffers from focus on manufacturing a product, which is subsequently burned, leaving no lasting value or economic opportunity for others, as development of renewable energy resources could do. Governmental agencies have violated my civil rights to protect the fossil fuel industry, and PG&E.

Pacific Gas and Electric (PG&E) is presently installing 10 reciprocating engines, of a type typically used for Eastern European ocean ships, at its Humboldt Bay Generating Station, for the production of electricity. The Engines are permitted to burn up to 271,877 gallons of diesel fuel daily. The site is less than 1000 feet from South Bay elementary school. The air quality impacts will be comparable to over 11,000 heavy diesel trucks at idle next to the school. PG&E misrepresented the project impacts to the public, The North Coast Unified Air Quality Management (District) did not provide Public Notice of the Air Quality impacts of the facility. The public has not been informed of the threat.

The California Energy Commission (CEC) licensed the project in violation of the Clean Air Act. The Administrator of the United States Environmental

Protection Agency (EPA) failed to consider my Title V permit appeal. 2 out of 3 District Hearing Board members voted to sustain my appeal, but the appeal was denied. The permit terms violate the Clean Air Act and PG&E is violating the permit terms also in violation of the Clean Air Act. The permit(s) fail to regulate greenhouse gases. This is but one in a series of illegal power plant sitings in California.

### Summary

On October 20, 2006 Pacific Gas & Electric Company (PG&E) submitted an Application for Certification (AFC) for the Humboldt Bay Repowering Project.

On October 22, 2007 the North Coast Unified Air Quality Management (District) issued document titled; "Preliminary Determination Of Compliance (PDOC) On October 29, 2007 the California Energy Commission (CEC) docketed this item and identified it as

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT PDOC

On October 23, 2007 North Coast Unified Air Quality Management (District) issued a "Preliminary Determination Of Compliance Permit to Construct Evaluation" On October 29, 2007 the California Energy Commission (CEC) docketed this item and identified it as; " NORTH COAST UNIFIED AIR

## QUALITY MANAGEMENT DISTRICT PDOC+ PERMIT TO CONSTRUCT" <sup>4</sup>

On January 2, 2008 I filed an appeal of PG&E's affiliate Calpine Corporation's Prevention of Significant Deterioration Permit (PSD) to the U.S. EPA Environmental Appeals Board (EAB). The permit was issued by The Bay Area Air Quality Management District. On July 29, 2008 the EAB remanded the permit EAD 08-01.<sup>5</sup> The EAB implicated the California Power plant licensing scheme and the California Energy Commission (CEC). "The District's almost complete reliance upon CEC's certification related outreach procedures to satisfy the District's notice obligations regarding the draft permit resulted in a fundamentally flawed notice process." [EAD 08-01 Pg. 3] I informed the CEC and the District of the decision and the similarity with the Humboldt Bay notice process. They chose not to correct their deficiencies. On February 4, 2010 BAAQMD issued a new PSD permit. On March 3, 2010 I, and host of environmental and community groups, filed appeals of the new permit to the EAB.<sup>6</sup>

On April 8, 2008 The District issued a document titled; "FINAL  
DETERMINATION OF COMPLIANCE AUTHORITY TO CONSTRUCT

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See [http://www.energy.ca.gov/sitingcases/humboldt/documents/others/NORTH\\_COAST\\_UNIFIED\\_AIR\\_QUALITY\\_MANAGEMENT\\_DISTRICT\\_PDOC\\_2007-10-22\\_TN-43074.PDF](http://www.energy.ca.gov/sitingcases/humboldt/documents/others/NORTH_COAST_UNIFIED_AIR_QUALITY_MANAGEMENT_DISTRICT_PDOC_2007-10-22_TN-43074.PDF)

<sup>5</sup> See [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Dockets/PSD+08-01](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Dockets/PSD+08-01)

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See [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/ce9f7f898b59eae28525707a00631c97/df250cdc9d4c2bce852576ef00513d84!OpenDocument](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/ce9f7f898b59eae28525707a00631c97/df250cdc9d4c2bce852576ef00513d84!OpenDocument)

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EVALUATION THE HUMBOLDT BAY REPOWERING PROJECT." On April 23, 2008 the CEC docketed this item and identified it as North Coast Unified Air Quality Management District Final Determination of Compliance.<sup>7</sup>

On April 14, 2008 The District issued a document titled; "TITLE V FEDERAL OPERATING PERMIT NCUAQMD PERMIT TO OPERATE AND FINAL DETERMINATION OF COMPLIANCE ATC PERMIT NO: 443-1" also identified by the District as (ATC PSD Original Permit.pdf)<sup>8</sup>

On April 23, 2008 the CEC docketed this document and identified it as "Title V Operating Permit"

On April 14, 2008 The District issued a Document titled; "AUTHORITY TO CONSTRUCT, PREVENTION OF SIGNIFICANT DETERIORATION AND TEMPORARY PERMIT TO OPERATE ATC / PSD PERMIT NO: 443-1 also identified by the District as (ATC PSD Amendment Final.pdf)<sup>9</sup> This Item does not appear to be docketed by the CEC but appears substantially similar to the Document identified as a "Title V Operating permit" but without the Title V Operating permit integrated, as it is on the CEC version.

On September 24, 2008 the California Energy Commission licensed the project The License included; "...a Final Determination of Compliance (FDOC)

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<sup>7</sup> See [http://www.energy.ca.gov/sitingcases/humboldt/documents/others/2008-04-08\\_FDOC\\_TN-45996.PDF](http://www.energy.ca.gov/sitingcases/humboldt/documents/others/2008-04-08_FDOC_TN-45996.PDF)

<sup>8</sup> See <http://www.ncuaqmd.org/files/Public%20Notice/PG&E/ATC%20PSD%20Original%20Permit.pdf>

<sup>9</sup> See <http://www.ncuaqmd.org/files/Public%20Notice/PG&E/ATC%20PSD%20Amendment%20Final.pdf>

which ensures that all federal, state, and local air quality requirements will be met by the project. (Ex. 206, 6/17/08 RT 34.) The FDOC also serves as the Authority to Construct (ATC) and the federal Prevention of Significant Deterioration (PSD) Permit." pg.97 "on the evening of last day of the 30-day comment period, letters were filed by Rob Simpson, of Hayward, California, and from Californians for Renewable Energy (CARE), based in Soquel, California. Additional oral comments were made at the full Commission hearing on September 24, 2008, by Mr. Simpson and by Mr. Robert Sarvey, of Tracy, California." pg. 121

"FEDERALLY ENFORCEABLE GENERAL REQUIREMENTS Title V Permit Modifications and Renewal AQ-1 This Permit shall serve as the Prevention of Significant Deterioration preconstruction permit for the sources identified herein, and is issued pursuant to 40 Code of Federal Regulations (C.F.R.), Part 70 and Regulation V of the Rules and Regulations of the North Coast Unified Air Quality Management District. [NCUAQMD Reg 5 Rule 405(b)] [NCUAQMD Reg V Rule 502 § 2.2 (5/19/05)] [40 C.F.R. 70.5(a)(1)(iii).]" Pg. 130

It appears that this represents a PSD permit issued by the CEC.

On April 21, 2010 the CEC approved an amendment to the Air Quality and Public Health conditions of its original decision. Despite my participation in the licensing they did not provide Public Notice to me of the amendment or decision.



On April, 29, 2009 I began participation in the Avenal Energy Project proceeding. I informed the San Joaquin Valley Air Pollution Control District of deficiencies in its Public Notice for the project. I also informed the CEC of the issue. I intervened in the CEC proceeding. The CEC refused to consider my grievances and refused to consider my evidence. I presented my evidence to the EPA for its concurrent PSD permitting activity. The CEC licensed the project on December 16, 2009 in violation of my rights, Due process and the Clean Air Act. I believe that based upon the same evidence that I submitted to the CEC the US EPA has, to date, declined to issue a permit for the facility. The permit is now the subject of AVENAL POWER CENTER, v U.S. EPA Case 1:10-cv-00383-RJL Filed 03/09/10.<sup>10</sup>

On September 29, 2008 I filed identical appeals of the permit for the Humboldt Bay project to the Environmental Appeals Board (EAB) and the Administrator of the United States Environmental Protection Agency.<sup>11</sup> The EAB considered responses from the District, PG&E and US EPA Region 9. On December 10, 2008 the EAB denied review concluding; "[t]he permit was issued under State authority, not pursuant to a federal delegation. Whether the permit is

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<sup>10</sup> See <http://www.regulations.gov/search/Regs/home.html#docketDetail?R=EPA-R09-OAR-2009-0438>

<sup>11</sup>

See [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/ce9f7f898b59eae28525707a00631c97/cbea426032375225852574d6006195c3!OpenDocument](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/ce9f7f898b59eae28525707a00631c97/cbea426032375225852574d6006195c3!OpenDocument)

valid as a matter of State law, or whether a permit still needs to be obtained from EPA as a matter of federal law, are questions outside the scope of Board review." Order Denying Review Pg. 7 The Administrator has, to date, not considered or even docketed my appeal. PG&E commenced construction but has not yet began operations.

On May 5, 2009 I filed an appeal (appeal No. 09-02) to the EAB regarding PG&E's Gateway Generating Station. <sup>12</sup>

I had expressed an interest in the permitting prior to operation of the facility but the BAAQMD failed to provide Public Notice to me of the action. Mr. Robert Sarvey submitted comments on a draft permit. Instead of issuing a final permit BAAQMD allowed PG&E to commence operations without the required PSD permit. The EAB concluded that there was no permit to review therefore they denied review. The EPA issued a Notice of Violation (NOV) on May 22, 2009 and subsequently pursued a presently pending action *United States v. Pacific Gas & Electric Company*, Civil Action No. 09-4503 (N.D. Cal.) and D.J. Ref. No. 90-5-2-1-09753 .

On August 26, 2009 the CEC granted the Gateway Generating Station a

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See [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/ce9f7f898b59eae28525707a00631c97/e21ed03510b6c284852575ae006ce5861OpenDocument](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/ce9f7f898b59eae28525707a00631c97/e21ed03510b6c284852575ae006ce5861OpenDocument)

modification of their license to continue operating despite knowledge of the NOV.<sup>13</sup>

On February 17, 2010 The CEC dismissed my complaint regarding the Gateway Generating Station. It was ; "dismissed based upon a determination of the insufficiency of the complaint and a determination of lack of merit." The Commission had received 3 complaints with identical issues which it consolidated into one proceeding. My complaint raised substantive issues based upon my appeal to the EAB and the Subsequent NOV.

My complaint also incorporated the complaint filed by the Contra Costa branch of the Association of Community Organizations for Reform Now ( ACORN). The Commission held that the Acorn complaint had merit and that the third complaint which only incorporated the Acorn complaint also had merit and fined PG&E.<sup>14</sup>

On June 11, 2009 I provided 60 day notice of my intent to sue the EPA for failing to consider my Title V appeal of the Humboldt Bay permit.

On September 14, 2009 the District issued a revised ATC/PSD draft permit for the Humboldt Bay Generating Station for public comment.

On September 30, 2009 the District issued ENGINEERING EVALUATION FOR PROPOSED AMENDMENT TO AUTHORITY TO CONSTRUCT / PSD

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<sup>13</sup> See [http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-08-26\\_Filing\\_of\\_Notice\\_of\\_Decision\\_TN-53027.pdf](http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-08-26_Filing_of_Notice_of_Decision_TN-53027.pdf)

<sup>14</sup> See [http://www.energy.ca.gov/sitingcases/gateway/compliance/2010-01-26\\_Decision\\_of\\_Siting\\_Committee.pdf](http://www.energy.ca.gov/sitingcases/gateway/compliance/2010-01-26_Decision_of_Siting_Committee.pdf)

PERMIT which intended to; "Clarify what type of permit PG&E holds for HBGS"

Pg 4. Robert Sarvey and I submitted comments.

On October 8, 2009 The San Diego Air pollution Control District (SDAPCD) Hearing Board heard my complaint regarding the Final Determination of Compliance (FDOC) that the SDAPCD had issued for the Carlsbad Energy Center. The CEC participated in the proceeding and informed the Hearing Board that they did not have authority to hear an appeal pursuant the preclusive nature of the Warren Alquist Act. The Warren Alquist Act serves to allow the CEC to violate the Clean Air Act by interjecting itself between the California Air Districts and their responsibilities under the Clean Air Act. The Hearing Board agreed with the CEC's construction of the rules and denied the appeal. I am participating as an intervenor in the CEC process for this facility. The CEC in each proceeding violates my rights. In this proceeding they denied my request to join the other intervenors in their opening briefs or put another way; "peaceably to assemble, and to petition the Government for a redress of grievances" (First amendment) Throughout each proceeding the CEC attempts to preclude my and others informed public participation.

On October 13, 2009 the District issued a public Notice of a Proposal to Modify Title V Permit to Operate NCU 059-12 for the PG&E Humboldt Bay

Generating Station. Mr. Sarvey and I submit comments.

On December 2, 2009 the District issued an "AUTHORITY TO CONSTRUCT, PREVENTION OF SIGNIFICANT DETERIORATION AND TEMPORARY PERMIT TO OPERATE ATC / PSD PERMIT NO: 443-1" and issued a significantly revised ENGINEERING EVALUATION FOR PROPOSED AMENDMENT TO AUTHORITY TO CONSTRUCT / PSD PERMIT without the opportunity for public comment.

On January 4, 2010 I filed an appeal to the District Hearing Board. I included a petition for fee waiver. My Appeal was not accepted by the Air Pollution Control Officer because I did not have the \$500 filing fee and a fee waiver hearing would not be conducted without first paying the fee. I joined an appeal filed by Mr. Sarvey. The appeal was heard by 3 members of the Hearing board. 2 of the 3 members agreed with our appeal and voted to sustain the appeal. Apparently the Hearing board actually had 5 members and 2 had to recuse themselves, ostensibly due to affiliation with PG&E. The hearing Board interpreted their rules as requiring a quorum (3) of the 5 members to decide. On April 2, 2010 I was served a "Final Order" of the Hearing Board denying our appeal.

I filed a lawsuit in the Sacramento Superior Court against false and misleading Ballot initiative Proposition 16 that PG&E placed on the California

Ballot using captive customers rates to protect its monopoly. On March 18, 2010 A host of municipalities took this cause in Sacramento Superior Court; MODESTO IRRIGATION DISTRICT; SACRAMENTO MUNICIPAL UTILITY DISTRICT; CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION; CITY OF MORENO VALLEY; CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION; CITY OF REDDING; SAN JOAQUIN VALLEY POWER AUTHORITY; and MERCED IRRIGATION DISTRICT; v. DEBRA BOWEN, in her official capacity as CALIFORNIA SECRETARY OF STATE,

On April 7, 2010 Mr. Sarvey filed an appeal of the new Title V permit to the EPA Administrator and I reiterated my original appeal. To date there is still no Docket identifying either appeal.

### **Discussion**

The California Environmental Quality Act (CEQA) states; "Every citizen has a responsibility to contribute to the preservation and enhancement of the environment. Chapter 1 Policy§ **21000**."

In 2007 two Fossil fuel burning power plant plans were pending in my community, Hayward California, by affiliates of PG&E. Upon review it appeared to me that the permits were being issued without the opportunity for informed

public participation. I filed an appeal of the permit for a plant called the Russel City Energy Center (RCEC) to the EAB. The plant was actually to be developed in the City of Hayward. The EAB eventually agreed with my appeal and remanded the permit. EAD 08-01. The other plant planned was called the Eastshore Energy Center. It was to be much smaller than RCEC but was determined to have a higher air quality impact. It would have used the same combustion engine configuration as that planned in Humboldt Bay instead of turbine engines typically used for electrical generation. Instead of firing exclusively on natural gas, the Humboldt Bay plan would utilize a Diesel pilot for Natural gas ignition and could operate exclusively on diesel. The plan in my community was defeated which would have been the first plant of this type in the State. With the knowledge that I gained in the RCEC remand I investigated other planned plants throughout the state and discovered systems that served to preclude public participation and review in violation of the Clean Air Act. The CEC and Air Districts were not informing the public in their Notices of the projects effects on air Quality pursuant the National Ambient Air Quality Standards (NAAQS) or otherwise.

I informed the North Coast District of my concerns with its Humboldt Bay permitting scheme in hopes that they would correct deficiencies to allow informed public participation. They chose not to. I filed the above identified appeals of the

permit(s).

After the EAB denied review of my Humboldt Bay appeal, it appeared to me that my Title V appeal was still pending and in the appropriate venue for satisfaction of my claims. It also appears that the permit identified as a Title V permit which wholly integrated in to the AUTHORITY TO CONSTRUCT, PREVENTION OF SIGNIFICANT DETERIORATION AND TEMPORARY PERMIT TO OPERATE ATC / PSD PERMIT NO: 443-1 precluded any other appeal of the permit. I was not informed that the District and EPA had decided that the permit identified as a Title V permit was to be re-categorized as another type of permit until after I gave 60 day Notice of intent to sue. When the District eventually issued the amendment to the permit, shortly after the expiration of the 545 day permit, they precluded review of the original permit claiming that the opportunity had expired, shortly after the original permit was issued, and only consideration of the changes to the permit were open to comment. At no time was an opportunity to seek review of the, newly named, original permit offered. Had I known that the original permit was not (as titled) a Title V permit, that it may have been some permit that was not a Title V permit, I could have appealed the permit to a more appropriate venue. I believe that the permit was renamed to preclude review. At the end of the public comment period for the amended permit the



District issued Notice of a Title V permit for the facility. No longer integrated but timed to shield review of the new permit, a Title V permit was issued. I reiterated my appeal to the EPA Administrator, and it has still, to my knowledge, not been docketed. Mr. Sarvey also filed an appeal of the Title V permit with the Administrator.

### **Cause One**

#### **Objection to Title V permit**

“The text of § 7607, which allows for direct review of regionally applicable EPA action in the geographically appropriate circuit court of appeals, also makes clear that this form of judicial review is exclusive, stating that ‘[a]ction of the Administrator with respect to which review could have been obtained under [this section] shall not be subject to judicial review in civil or criminal proceedings for enforcement.’ 42 U.S.C. § 7607(b)...

“Any denial of such petition shall be subject to judicial review under” 42 U.S.C. § 7607, a CAA provision concerning judicial review of agency actions...

“[11] Title V permits are by no means wholly insulated from the CAA’s citizen suit provision. To the contrary, when the CAA was amended in 1990 to add Title V, the citizen suit provision was also amended to add to the definition of ‘emission standard or limitation,’ an alleged violation of which authorizes any

person to bring an enforcement action, “any other standard, limitation, or schedule established under any permit issued pursuant to title V, . . . any permit term or condition, and any requirement to obtain a permit as a condition of operations.” 42 U.S.C. § 7604(f)(4). In other words, if IEEC had violated a term or condition of the permit the air district issued to it, or if it had sought to begin building and operating the power plant in *Romoland* without obtaining a permit under SCAQMD’s merged Title V/construction permit system, either of those alleged violations would have been grounds for a citizen suit in district court under 42 U.S.C. § 7604.”

Because these challenged terms are part of a permit issued under Title V, we must consider Title V’s administrative and judicial review provisions for challenging a permit. Those provisions require persons objecting to the issuance of a Title V permit to “petition the Administrator,” and provide for judicial review regarding such petitions in the courts of appeal under 42 U.S.C. § 7607, not through citizen suits in the district courts via § 7604. 42 U.S.C. § 7661d(b)(2).” Those provisions require persons objecting to the issuance of a Title V permit to “petition the Administrator,” and provide for judicial review regarding such petitions in the courts of appeal under 42 U.S.C. § 7607, not through citizen suits in the district courts via § 7604. 42 U.S.C. § 7661d(b)(2).” *ROMOLAND SCHOOL v. INLAND EMPIRE ENERGY* No. 06-56632 D.C. No. v. CV-06-02514-

## AG OPINION

The Administrator's failure to consider my appeal of the permit identified on its face as a "Title V Permit" allowed construction of the facility under the guise of a Title V permit. It served to shield earlier review of the permitting action. The District has now re-categorized the permit, after its 545 day term expired, concluding that although identified on its face as a Title V permit and 60 more times throughout the permit the permit was never a Title V permit which could serve to moot the appeal to the Administrator. The amended permit precluded comment on the original permit claiming that the opportunity to comment on the, newly named, permit expired years before it was issued. The District invited comment only the amendments to the permit. The Administrators inaction threatens to preclude review of the original faulty permit and allow the operation of an otherwise illegal pollution source, with no limits on greenhouse gas emissions. This is a global and individual threat to all people and the planet. The Administrator should be compelled to object to the newly named permit until such time as the underlying permit is publicly Noticed with an opportunity for comment and review.

The permit which once appeared integrated is now issued as 2 separate permits with the Title V permit timed so closely after the preconstruction permit as to evade review of the preconstruction permit outside of this venue. The permit

violates emission standards and the emission credits used to justify the permit are not valid, as discussed in the permit appeals. The permit violates the California Environmental Quality Act (CEQA)

Remedy Under 42 U.S.C. § 7607 The Administrator should make a ruling on my original appeal. The Present Title V permit should be remanded or an opportunity to comment on and hear an appeal of the underlying permit should be created.

### Cause Two

#### **Fraud/Misrepresentation**

PG&Es monopolistic actions constitute an ongoing criminal conspiracy. They serve to block the development of alternative electrical generation resources to preserve the fossil fuel burning profit scheme.

PG&E and its affiliates systematically misrepresent; the need for their projects, the environmental impacts and illegally manipulate regulatory permits (see RCEC and Gateway Generating Station). Humboldt Bay is no exception PG&E sold the concept of the project to the local community publishing a promise that the "***New Power Plant will be 35% More Efficient with 90 % Fewer Air Emissions***" than the existing plant. (page 178 of 225 hearing board packet)<sup>15</sup> The air emissions are actually as much as 5 times higher than the existing plant or 500

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<sup>15</sup> See <http://www.ncuaqmd.org/files/Hearing%20Board/Hearing%20Board%20Packet%202-5-2010.pdf>

times what PG&E promised, with a much greater impact on the community from the shorter smoke stacks and continuous diesel use in reciprocating engines.

In the Gateway proceeding ample evidence has been presented that PG&E conspired with the Bay Area Air Quality Management District to specifically preclude Mr. Sarvey and I from public participation in violation of our rights and to knowingly operate the facility without permits in violation of the Clean Air Act.

PG&E's Proposition 16 is misleading and PG&E is misrepresenting the effects of Proposition through the U.S. mail and otherwise.

PG&E's subcontractor, Calpine Corporation is misleading the public regarding its RCEC power plant plan.

PG&E is in violation of its state Renewable Energy Portfolio Standard established by the State of California that requires it to procure 20% of its portfolio of renewable energy by 2010.

Remedy; These actions should be reviewed civilly and criminally pursuant to the ; **Racketeer Influenced and Corrupt Organizations Act (RICO)**<sup>16</sup>. PG&E

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<sup>16</sup> Section 1962(c)'s utility stems from its breadth. Section 1962(a) and (b) claims are relatively narrow. To have standing under sections 1962(a) and (b), the plaintiff must allege more than injury flowing from the racketeering activity. Under section 1962(a), a civil plaintiff has standing only if he has been injured by reason of the defendants' investment of the proceeds of racketeering activity. Under section 1962(b), a civil plaintiff has standing only if he has been injured by reason of the defendants' acquisition or maintenance of an interest in or control over an enterprise through a pattern of racketeering activity. These distinctions will be discussed in greater detail in the section of this memorandum that is particularly concerned with the section 1962(a) and 1962(b) claims.

RICO's interstate commerce requirement racketeering shared common goals (increasing and

and its subcontractors should be enjoined from the development of fossil fuel burning facilities at least until they have developed renewable resources consistent with the law.

### **Cause Three**

#### **Appeal of Hearing Board Decision.**

The District issues permits pursuant the Federal Clean Air Act. This appeal is pursuant 42 U.S.C. § 7604 and 7661d(b)(2) et al. The District Hearing Board erred in the failure of the appeal. Numerous procedural violations occurred. I was not offered an equal opportunity for justice. My "petition (to) the Government for a redress of grievances" (First amendment) was not heard due to my inability to pay the \$500 filing fee. The Districts refused to allow a fee waiver hearing without first paying the fee. Therefore, I joined Mr. Sarvey in his appeal. He paid the fee and a fee waiver hearing was conducted for his fee. In the fee waiver hearing the District argued for denial of the fee waiver because the fee was paid; "Hearing Board Filing

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protecting the financial position of the enterprise) and common victims (those who threatened its goals), and drew their participants from the same pool of associates (those who were members and associates of the enterprise)).

A state agency's interpretation of a federal statute is not entitled to deference. See *Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491, 1495 (9th Cir. 1997) (review is de novo); cf. *JG v. Douglas County Sch. Dist.*, 552 F.3d 786, 798 n.8 (9th Cir. 2008) (explaining that although a state agency's interpretation of federal law is not entitled to deference, "the Secretary's approval of that agency's interpretation is due some deference because it shows a federal agency's interpretation of the federal statute that it is charged to administer.")

1. The plaintiff has suffered an actual or threatened injury;
2. The conduct of the defendant is a cause of the plaintiff's injury; and
3. If the plaintiff wins the lawsuit, his injury will be corrected or compensated for

Fees specifies that the appropriate fee for the petition is \$500.00 and that said fee must accompany the petition in order for it to be processed by the Clerk. The Petitioners were so advised and subsequently remitted payment in the correct amount. Therefore, prompt and accurate payment of the fee by personal check indicates that the petitioners were able to satisfy this requirement." in addition the District requested that the Hearing Board consider charging us an additional \$7,501.09.<sup>17</sup> The Hearing board initially denied the fee waiver but upon further briefing reversed its decision. Although I gained party status with Mr. Sarvey's generous cooperation, I was still prejudiced in the proceeding by not having my own appeal heard and not receiving service of documents. Documents were served to Mr. Sarvey.

Three Hearing Board members heard the appeal. Two of the three members voted to sustain the appeal, The Doctor on the Board expressed concerns with the public health effects of the plant and the attorney on the Board contended that the District failed their duties under the California Environmental Quality Act (CEQA) and the dissenting voter did not appear to understand the proceedings. Apparently the Hearing Board originally had 5 members. The Hearing Board construed their rules as requiring a unanimous vote of the 3 sitting members to carry a quorum of the 5 member board. The Hearing board Chairman then dismissed the appeal

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<sup>17</sup> See <http://www.ncuaqmd.org/files/Hearing%20Board/Memos%20To%20Hearing%20Board.pdf>

without a further vote.

The first hearing was continued. The Hearing Board did not follow the required procedure for continuance pursuant California Government Code; 54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.



54955.1. Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or re-continued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made."

The Hearing Board did not post Notice of the continued Hearing "within 24 hours after the time of the adjournment" it did not post it until several hours before the hearing and only after my request. The Hearing was held at the Eureka City Hall. The District contended that they posted the Notice at their District headquarters several miles away.

#### **Cause Four**

#### **Civil Right Violations and due process.**

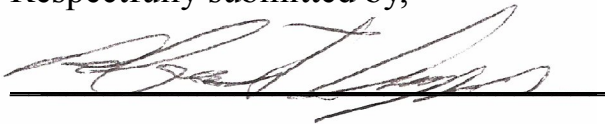
The CEC and Air Districts violate Due Process, the Clean Air Act and Civil Rights in permitting polluters. The Warren Alquist Act serves to hijack the public

participation processes put in place through the Clean Air Act. The CEC and Air districts violate my civil rights and due process. BAAQMD conspired with PG&E to preclude my participation in the Gateway action. BAAQMD violated my right to informed participation in the RCEC proceeding. The North Coast District violated my rights under the Equal Access to Justice Act. I request that the Court allow further briefing on this and the other causes identified in this petition.

### **Conclusion**

I am not presently represented by counsel. I apologize to the court for any difficulty that this presents. I am presently seeking representation and hope to secure it prior to further briefing. I hope that my presentation of the issues is sufficient for the Court to understand and allow this matter to move forward. I hereby certify under the penalty of Perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge

Respectfully submitted by,



Dated this April 29, 2010

Robert James Simpson

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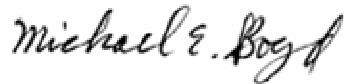
**CERTIFICATE OF SERVICE**

Case Name Robert Simpson

v.

United States Environmental Protection Agency,  
United States Environmental Protection Agency Administrator  
Lisa Jackson In her official capacity,  
North Coast Unified Air Quality Management District,  
Pacific Gas and Electric Corporation,  
Bay Area Air Quality Management District,  
Calpine Corporation, California Energy Commission, and  
California Public Utilities Commission  
9th Cir. Case No.: 10-71396

I certify that on April 30, 2010 I sent a copy of the Petition for Review and Petitioner's Informal Brief and any attachments was served, either by e-mail or by US mail, on the persons so listed below.



---

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**By E-mail Service Only:**

**California Energy Commission  
Attn: Docket No. 06-AFC-07**

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE  
STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR THE  
HUMBOLDT BAY GENERATING STATION  
BY PACIFIC GAS AND ELECTRIC COMPANY**

**Docket No. 06-AFC-7  
PROOF OF SERVICE**

**(Revised 3/21/2008)**

**INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR  
2) mail one original signed copy AND e-mail the document to the web address below, AND  
3) all parties shall also send a printed OR electronic copy of the documents that shall  
include a proof of service declaration to each of the individuals on the proof of service:**

California Energy Commission  
Attn: Docket No. 06-AFC-07  
1516 Ninth Street, MS-4  
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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric  
Company for Expedited Approval of the  
Amended Power Purchase Agreement for the  
Russell City Energy Company Project (U39E).

Application 08-09-007  
(Filed September 10, 2008)

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