

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

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In re:)	
)	
Pio Pico Energy Center)	Appeal Nos. PSD 12-04, PSD 12-05,
)	and PSD 12-06
PSD Permit No. SD 11-01)	
_____)	

EPA REGION 9’S STATUS UPDATE

In an order dated April 5, 2013 (“Order”), the EPA Environmental Appeals Board (“EAB” or “Board”) requested that EPA Region 9 (“Region 9”) submit additional information in the instant case no later than April 15, 2013 as a result of the California Public Utilities Commission’s (“CPUC”) decision issued March 22, 2013 denying an application from San Diego Gas & Electric (“SDG&E”) for the approval of authority to enter into a power purchase tolling agreement (“PPTA”) with Pio Pico Energy Center, LLC (“PPLLC”) for power from the Pio Pico Energy Center (“PPEC”). PPLLC’s application for a Clean Air Act Prevention of Significant Deterioration (“PSD”) permit for the PPEC is the subject of the instant proceeding before the EAB.

The Order also directed the parties to this proceeding to participate in a Status Conference with the Board on April 11, 2013. During that Status Conference, Region 9 made an oral motion for an extension of time to submit additional information in accordance with the Board’s Order. The Region 9 asked for an extension until April 29, 2013 to provide the additional information, based on the following two grounds: (1) that the Region should logically have the opportunity to review and consider PPLLC’s additional submittal to the Board, also due

on April 15, 2013, regarding the status and nature of the PPEC following the CPUC's decision, prior to filing the Region's own submittal addressing the questions directed to Region 9; and (2) the fact that counsel for Region 9 was scheduled to report for jury duty starting April 15, 2013 and thus could be unable to immediately review PPLLC's filing and prepare Region 9's response to the Board's questions. The Board expressed reservations about granting an extension of more than a week, and said it would take the matter under advisement. The Board asked Region 9 for a status update concerning counsel's jury service as soon as possible.

Counsel for Region 9 was first informed mid-day on Monday, April 15, 2013 that she is not required to report for jury service at this time and that she is now excused from jury service. Region 9 maintains that having the opportunity to review PPLLC's detailed response to the questions posed to it by the Board's Order and any accompanying documentation supporting that response is a logical prerequisite to Region 9's answering the questions posed to the Region in the Order. The Region's responses to the questions posed to it concerning whether the BACT analysis should be remanded, and whether changes to the permit are necessary, in light of the CPUC's recent action, are necessarily related to, and will be better informed by, PPLLC's detailed responses concerning the likelihood of its commencing construction in a timely manner and whether the purpose, nature, and design of PPEC facility will remain as described in the terms of the PSD permit.

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However, now that it is clear that Region 9's counsel will be available this week, Region 9 believes that the Board's proposed due date of April 22, 2013 for the Region's submittal of additional information consistent with the Board's Order should provide sufficient time for the Region to carefully review and consider PPLLC's filing and prepare the supplemental information requested by the Board.

Date: April 15, 2013

Respectfully submitted,

/S/ Julie Walters

Julie Walters
Office of Regional Counsel
EPA Region 9 (MC ORC-2)
75 Hawthorne St.
San Francisco, CA 94105
Telephone: (415) 972-3892
Facsimile: (415) 947-3570
Email: Walters.Julie@epa.gov

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of **EPA REGION 9'S STATUS UPDATE** in the matter of Pio Pico Energy Center, EAB Appeal Nos. PSD 12-04, PSD 12-05, and PSD 12-06, to be served by electronic mail upon the persons listed below.

Dated: April 15, 2013

/S/ Julie Walters

Julie Walters

David C. Bender
MCGILLIVRAY WESTERBERG
& BENDER LLC
211 S. Paterson Street, Ste 320
Madison, WI 53703
608.310.3560
608.310.3561 (fax)
bender@mwbattoorneys.com

SIERRA CLUB
Joanne Spalding
Travis Ritchie
85 Second Street
San Francisco, CA 94105
Phone: (415) 977-5725
Fax: (415) 977-5793
joanne.spalding@sierraclub.org
travis.ritchie@sierraclub.org

Rob Simpson
27126 Grandview Avenue
Hayward, CA 94542
Email: rob@redwoodrob.com
(510) 688-8166

Johannes Hubert Epke
Attorney for Helping Hand Tools
1108 Fifth Ave. Suite 202
San Rafael, CA 94901
jhepke@gmail.com
phone: (415) 717-5049
fax: (415) 482-7575

Jim Wedeking
Attorney for Pio Pico Energy Center, LLC
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8281
jwedeking@sidley.com

Kristi Smith
Air and Radiation Law Office
Office of General Counsel (MC 2344-A)
Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20460
Telephone: (202) 564-3068
Facsimile: (202) 564-5603
Email: Smith.Kristi@epa.gov