

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

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In re: )

Pio Pico Energy Center )

PSD Permit No. SD 11-01 )

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Appeal Nos. PSD 12-04, 12-05  
and 12-06

**PETITIONER SIERRA CLUB’S MOTION FOR LEAVE TO RESPOND  
TO PIO PICO ENERGY CENTER LLC’S MARCH 22, 2013 NOTICE OF  
SUPPLEMENTAL INFORMATION**

Petitioner, Sierra Club, respectfully requests leave to respond to the applicant, Pio Pico Energy Center LLC’s (PPEC) March 22, 2013 filing, captioned “Notice of Supplemental Information.” In support of this motion, Sierra Club states as follows:

1. This case involves a Prevention of Significant Deterioration (PSD) permit issued by Region 9 for the Pio Pico Energy Center (PPEC) in Otay Mesa, California.

2. One issue in this case is what the appropriate scope of a best available control technology (BACT) analysis is and, particularly, what if any effect the applicant’s contract terms with the San Diego Gas & Electric Company (SDG&E) should have. Many of the arguments in the previously-filed briefs referenced that contract, and both the Region and the applicant relied heavily on the purported<sup>1</sup> contents of that contract.

3. On March 22, 2013, the California Public Utilities Commission (“CPUC”) rejected the contract between SDG&E and PPEC. *See Decision Determining San Diego Gas & Electric Co.’s Local Capacity Requirement and Granting Partial Authority to Enter into Purchase Power Tolling Agreements* at 2, 14, 26 (attached to PPEC’s March 22, 2013, Notice of Supplemental Information, Docket # 19). PPEC submitted that decision to the Board, along with argument, on March 23, 2013.

4. Notwithstanding the prominence of the contract between SDG&E and PPEC in the Region’s purported rationale for the permit and the parties’ briefing, PPEC’s Notice of Supplemental Information purports, for the first time, that the contract is not consequential and

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<sup>1</sup> The contract is not in the record.

that it “may be operated as a merchant plant” now that the contract is effectively null. Notice of Supplemental Information at 1.

5. Sierra Club requests to provide a short response showing that the nullification of the contract between SDG&E and PPEC is conclusive on an important issue in this case because the Region and the applicant relied on it as the basis for excluding cleaner production processes from the BACT analysis.

6. Pursuant to 40 C.F.R. § 124.19(f)(2), Sierra Club has attempted to ascertain whether the other parties concur or object to this motion. Petitioner Rob Simpson does not object. The Region and the applicant, PPEC, both state that they do not object but may seek leave to file additional statements or briefs with the Board in reply. Mr. Epke, counsel for Helping Hand Tools, has not provided that petitioner’s position in response to an email from the undersigned on March 25, 2013.

7. A copy of Petitioner’s proposed response is being filed with this motion and both the motion and proposed reply are being served on the parties.

WHEREFORE, Sierra Club respectfully requests that the Board grant leave for Sierra Club to respond PPEC’s “Notice of Supplemental Information.”

Respectfully submitted, this 26th day of March, 2013.

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## CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing to be served by electronic mail upon the persons listed below.

Dated: March 26, 2013

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