

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

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 MOTION FOR LEAVE TO FILE RESPONSE**

Respondent U.S. Environmental Protection Agency (“EPA”) Region 9 (“Region 9”) respectfully moves the EPA Environmental Appeals Board (“Board”) for leave to file a short response to Pio Pico Energy Center, LLC’s (“PPLLC”) Notice of Supplemental Information dated March 22, 2013 and Petitioner Sierra Club’s March 26, 2013 response thereto. Region 9 is filing its proposed Response concurrently with this Motion. Region 9 has endeavored to submit this Motion and its proposed Response as soon as possible so as to avoid undue delay in the resolution of this proceeding.

Given the recent revisions to 40 C.F.R. Part 124 that became effective on March 26, 2013 with respect to the procedures governing Board proceedings, it is unclear to Region 9 whether a motion is necessary in order for the Region to submit its Response to the Board at this time; Region 9 is submitting this Motion out of an abundance of caution. Accordingly, the Region sent an email message to the other parties to this proceeding on the morning of Wednesday, March 27, 2013 inquiring whether the parties would oppose EPA’s submittal to the Board of a response to Sierra Club’s March 26, 2013 filing. Sierra Club responded via email that it did not oppose such a filing, although it reserved the right to seek further filings, if necessary, to the

extent new issues are raised by EPA. Counsel for PPLLC did not express opposition in a telephone discussion wherein Region 9 notified PPLLC of its intent to make such a filing.

Petitioner Rob Simpson responded, via an email message dated March 27, 2013, that he opposed the Region's proposed filing, stating the following:

As you pointed out in [] EPA Region 9's Opposition To Sierra Club's Motion For Leave To File Short Reply, "[t]he EAB has adopted a presumption against filing reply briefs in Board proceedings involving appeals of PSD and other NSR permits noting the time-sensitive nature of such proceedings" so yes consistent with the precedent that you set in this case I would oppose your filing of a reply brief.

Mr. Simpson's email did not provide other explanation regarding his opposition. As of the time Region 9 initiated the filing of this motion with the Board, Region 9 had not received a response from counsel for Helping Hand Tools to Region 9's email inquiry regarding its position on this matter.

In support of this Motion, Region 9 avers that Sierra Club's Response to PPLLC's Notice of Supplemental Information raises new issues concerning the potential impact of the California Public Utilities Commission's ("CPUC") March 21, 2013 decision to disapprove San Diego Gas & Electric's ("SDG&E") application for authority to enter into a Power Purchase Agreement ("PPA") for the PPEC on the Region's PSD permit decision for the PPEC. The Region has not previously had the opportunity to address these issues.

Specifically, Sierra Club appears to argue that CPUC's March 21, 2013 disapproval of SDG&E's application for authority to enter into the PPA for the PPEC affects the best available control technology ("BACT") analysis supporting the PSD permit decision for the PPEC project, and Sierra Club may also be suggesting that the CPUC decision raises a question concerning whether the project is needed. SC Response to PPLLC Notice of Supp. Information at 1-2. Sierra Club also argues that if the PPEC were to be operated as a merchant plant, rather than

pursuant to a PPA with SDG&E, the Region's permitting basis, public comments, response to comments, and the parties' arguments to the Board would have been entirely different, or the permit would have been entirely different. The Region has not had the opportunity to address these issues.

The Region believes that it is important to briefly clarify its position on these issues for the Board, and that the Region's reference in its Response to arguments made by the Region in earlier briefs in this matter on issues related to those raised in Sierra Club's Response to PPLLC's Notice of Supplemental Information will serve to facilitate and expedite resolution of this proceeding.

For the reasons stated above, Region 9 respectfully requests that the Board grant leave for the Region to file its Response Regarding Pio Pico Energy Center, LLC's Notice Of Supplemental Information and Sierra Club's Response.

Date: March 28, 2013

Respectfully submitted,

*/S/ Julie Walters*

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## CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of **EPA REGION 9'S MOTION FOR LEAVE TO FILE RESPONSE** and **EPA REGION 9'S [PROPOSED] RESPONSE REGARDING PIO PICO ENERGY CENTER, LLC'S NOTICE OF SUPPLEMENTAL INFORMATION AND SIERRA CLUB'S RESPONSE** 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: March 28, 2013

*/s/ Julie Walters*

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Julie Walters

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