

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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| IN RE:                      | ) |                                      |
|                             | ) |                                      |
|                             | ) | PSD Appeal Nos. 12-04, 12-05 & 12-06 |
| PIO PICO ENERGY CENTER, LLC | ) |                                      |
|                             | ) |                                      |
| PSD Permit No. SD 11-01     | ) |                                      |

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**MOTION FOR LEAVE TO INTERVENE**

Pursuant to 40 C.F.R. § 123.19 and section IV.D.4 of the Environmental Appeals Board’s Practice Manual, permittee Pio Pico Energy Center, LLC hereby moves for leave to intervene in the above-captioned appeals as a party. The petitions for review involve the issuance of a Prevention of Significant Deterioration (“PSD”) permit under the Clean Air Act by EPA Region IX for the Pio Pico Energy Center. See PSD Permit No. SD 11-01, EPA-R09-OAR-2011-0978 (issued November 19, 2012).

In support of its motion, Pio Pico Energy Center, LLC (“Pio Pico”) states the following:

1. The Pio Pico Energy Center is a planned power plant that will be constructed in Otay Mesa, California, San Diego County. The plant will consist of three 100 megawatt (nominal) natural gas-fired combustion turbine generators.
  
2. The Pio Pico Energy Center was developed in response to a June 2009 Request for Offer for Demand Response and Supply Resources by the San Diego Gas & Electric Company (“SDG&E”). In that Request for Offer, SDG&E sought a new local generation project that could provide between 100 to 400 megawatts of peaking and intermediate-class electricity generation. The Request for Offer required the new generation project to, among other things, be able to scale between 30% and greater than 98% of full load and provide flexible, quick start generation during morning and evening peak demand as well

as any other time as needed. This new facility would serve as a backup to SDG&E's renewable power generation assets which have uncontrolled variable output while also improving demand response and electrical system reliability.

3. Pio Pico proposed to construct a peaking/ intermediate facility consisting of three General Electric LMS100 simple cycle gas-fired combustion turbines that is the subject of this appeal. Together, these turbine models are capable of providing 100 megawatts (nominal) of electricity from a "cold start" within 10 minutes. This design was necessary to meet SDG&E's need for flexible, fast-dispatching peaking generation to meet demand. SDG&E accepted Pio Pico's proposal and executed a Power Purchase Agreement in February 2011.
4. Under the terms of the contract between SDG&E and Pio Pico, the Pio Pico Energy Center must use the General Electric LMS100 model combustion turbines and be available to dispatch into the grid on or before May 27, 2014.
5. Pio Pico subsequently applied for the necessary approvals and permits required for the Pio Pico Energy Center. This included filing an application for a PSD permit with EPA Region IX in April 2011. After Pio Pico responded to several requests for additional information over a 14-month period, EPA Region IX determined that the PSD permit application was complete on June 5, 2012.
6. EPA Region IX issued a draft PSD permit for public review and comment on June 20, 2012. The comment period closed on July 24, 2012. The Region then extended the public comment period until September 5, 2012 for the general public and until September 20, 2012 with respect to a single issue for commenter Robert Sarvey, who was omitted from

EPA Region IX's mailing list. EPA Region IX issued the final PSD permit for Pio Pico Energy Center, along with its response to public comments, on November 19, 2012.

7. The Sierra Club, Helping Hand Tools, and Mr. Robert Simpson filed separate petitions for review of the Pio Pico Energy Center's PSD permit on December 19, 2012. Collectively, they challenge several aspects of EPA Region IX's determinations in issuing the PSD permit. These involve highly technical issues related to the performance capabilities of the LMS-100 simple cycle turbines that will be used by Pio Pico (as required by its contract with San Diego Gas & Electric Company) as compared to different types of natural gas-fired turbines, the purpose and nature of Pio Pico's business relationship with San Diego Gas & Electric Company, and procedural matters related to EPA Region IX's review of Pio Pico's permit application.
8. Pio Pico, as the permit applicant and permittee, has a significant interest in these proceedings. Specifically, Pio Pico, as the project owner and operator of the permitted facility, has direct and vested interest in the PSD permit that is the subject of the petitions for review. Pio Pico has spent millions in non-recoverable funds in its development and permitting thus far and has nearly completed its construction financing, which will be in excess of \$400 million. The company is also bound by a 20 year Power Purchase Tolling Agreement with San Diego Gas & Electric Company that requires an initial delivery date of May 27, 2014 for the generation of electricity. Pio Pico must begin construction within the next few months in order to meet its contractual delivery date. As the project's owner and operator, Pio Pico bears all financial risks associated with the construction and operation of the permitted facility.

9. Pio Pico's participation in these proceedings will aid the Environmental Appeals Board ("EAB" or the "Board") in evaluating the petitions for review. Pio Pico, as the permittee, participated in the PSD permit review process below by providing air emission modeling, extensive technical information, and responses to both questions from EPA and public comments. As a party to these proceedings, it would aid the EAB by providing key legal analysis and record support that is directly relevant to assessing the technical aspects of the proposed facility, the PSD permit's provisions, and the issues raised by the petitions for review.
10. Pio Pico's participation will not delay the Board's ultimate resolution of these petitions for review. In fact, given the contractual deadline to begin the delivery electricity to San Diego Gas & Electric Company, Pio Pico Energy Center, LLC believes that resolving this appeal at the earliest moment is critical to the project's viability. Pio Pico Energy Center proposes to file its response to the petitions for review on February 6, 2013, at the same time as EPA Region IX will file its own response to the petitions. See In re Pio Pico Energy Center, PSD Appeal Nos. 12-04 through 12-06, Dkt. No. 6 (Jan. 8, 2013) (order granting EPA Region IX's request for an extension of time to file on February 6, 2013).
11. The Board generally grants petitions to intervene by permit applicants. According to the Board's Practice Manual, "[i]f the petition is filed by someone other than the permit applicant or permittee, the EAB will generally grant a request by the permit applicant or permittee to respond to the petition." EAB Practice Manual (June 2012) at 39; see also id. at 46 ("The Board typically allows permittees not already a party to the proceeding to participate as intervenors."); In re: Hess Newark Energy Center, PSD Appeal No. 12-02, Dkt. No. 4 (Nov. 2, 2012) (order granting permittee leave to intervene); In re: Christian

County Generating, LLC, PSD Appeal No. 12-01, Dkt. No. 8 (June 13, 2012) (same).

Given Pio Pico's direct interest in the timely affirmation of the PSD Permit and its ability to assist the EAB in its review of the petitions, there are no grounds to depart from this general practice here.

For the reasons stated above, Pio Pico requests that the Board grant it leave to intervene and respond to the above-captioned petitions for review.

DATED: January 22, 2013

Respectfully submitted,

/s/ James R. Wedeking

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of January 2013, copies of the foregoing Motion for Leave to Intervene were served by First Class mail to the following:

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