

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

In the Matter of La Paloma Energy
Center, LLC

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Appeal No. PSD 13-10

PSD Permit No. PSD-TX-1288-GHG

**RESPONSE FROM LA PALOMA ENERGY CENTER, LLC
TO THE PETITION FOR REVIEW OF THE PREVENTION OF
SIGNIFICANT DETERIORATION PERMIT ISSUED BY REGION VI FOR LA
PALOMA ENERGY CENTER, HARLINGEN, TEXAS**

Dated: December 27, 2013

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INTRODUCTION AND BACKGROUND

In 2007, the U.S. Supreme Court found that greenhouse gas emissions (“GHGs”) are air pollutants under Section 302(g) of the Clean Air Act (“CAA”), 42 U.S.C. § 7602(g). *Massachusetts v. EPA*, 549 U.S. 497 (2007). In response to that decision, on December 7, 2009, the United States Environmental Protection Agency (“EPA” or “Agency”) Administrator issued an endangerment finding that GHGs are reasonably anticipated to endanger the public health and welfare. 75 Fed. Reg. 31,514, 31,519 (June 3, 2010). Therefore, on June 3, 2010, EPA issued a tailoring rule for GHGs establishing a schedule whereby large stationary sources must obtain GHG permits. *See generally id.*

As a result of these actions, anyone who wants to build a new facility that is a major source of GHGs must obtain a Prevention of Significant Deterioration (“PSD”) permit before beginning construction. 42 U.S.C. § 7475(a)(4). The PSD program was designed to strike a balance that allows for economic development while also protecting human health, air quality, and sites of natural value. *See generally* 42 U.S.C. § 7401. Under the PSD regulations, new major sources must be reviewed by the permitting agency prior to construction to ensure that the new source will use the “best available control technology” (“BACT”) to limit emissions of regulated air pollutants to avoid causing or contributing to a violation of a national ambient air quality standard (“NAAQS”) or applicable PSD air quality increments. 40 C.F.R. § 52.21(b)(12). BACT is determined through a 5-step analytical process that EPA has outlined in its New Source Review Workshop Manual (Draft Oct. 1990) (“NSR Manual”).¹ This 5-step process concludes when an emission rate has been established for a

¹ “Although it is not accorded the same weight as binding Agency regulation, the NSR Manual has been considered by this Board to be a statement of the Agency’s thinking on certain PSD issues.” *In re ConocoPhillips Co.*, 13 E.A.D. 768, 772 (EAB 2008). In particular, this Board views the NSR Manual as a strong indicator of how BACT should be established for a given emission unit and closely scrutinizes those determinations that deviate from the 5-step BACT analysis outlined in the NSR Manual. *Id.*

given emission unit. *See NSR Manual* at B.5-B.54. There is no additional step 6 in EPA's PSD permitting process that requires a comparison of the BACT limit that has been individually set for a specific emission unit to that which may be appropriate for other units. *Id.*

La Paloma Energy Center, LLC ("LPEC") seeks to construct a new natural gas-fired combined cycle electric generating plant, La Paloma Energy Center ("La Paloma"), to be located in Harlingen, Cameron County, Texas. LPEC submitted a GHG PSD permit application to EPA Region 6,² Ex. 2,³ and that application was deemed complete on August 22, 2012. Ex. BB. EPA Region 6 prepared a Draft Statement of Basis, Ex. AA, and pursuant to the requirements under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* and 40 C.F.R. Part 124, EPA made the draft GHG PSD permit issued for the construction of La Paloma available on March 20, 2013 for public notice and comment. Ex. 3 at 3. Following the notice and comment period, which concluded on April, 19, 2013, EPA responded to significant comments, Ex. 3, and then issued a final permit for La Paloma on November 6, 2013. Ex. 1. The final permit that EPA issued for the La Paloma project included an emission limit for each of the three turbines/emission units under consideration by LPEC.⁴ *Id.*

On December 6, 2013, Sierra Club filed a Petition for Review of the final permit issued to La Paloma, challenging two specific issues: (1) whether EPA erred in permitting three alternative designs for the La Paloma project and establishing three different BACT limits - one for each of the

² In Texas, the Texas Commission on Environmental Quality ("TCEQ") is the PSD permitting authority for criteria pollutants. EPA Region 6 is responsible only for issuing PSD permits for GHGs for projects in the State of Texas.

³ Petitioner Sierra Club labeled the Exhibits to its Petition for Review using numbers. To easily distinguish between each party's respective exhibits, EPA labeled its exhibits using letters and LPEC shall use double letters.

⁴ LPEC is proposing to install natural gas turbines at the La Paloma facility for electric generation. Although the GHG PSD permit issued for the La Paloma project includes other associated emission units, Ex. 1, Sierra Club has not raised any issues with the associated emission units in its Petition for Review. *See generally* Petition for Review.

possible designs under consideration by the project developer and (2) whether it was error for the BACT analysis to not consider using solar thermal pre-heat. *See generally* Petition for Review. As further discussed below, EPA is not prohibited from permitting multiple alternative turbines/emission units that are under consideration in one PSD permitting action. Moreover, solar thermal pre-heat did not need to be included in the BACT analyses for the permitting alternatives. Therefore, LPEC urges that the Environmental Appeals Board (“EAB” or the “Board”) deny review of the Petition for Review in this case.

ARGUMENT

I. EPA REGION 6 DID NOT ERR BY ALLOWING LPEC TO SELECT A TURBINE THAT REFLECTS BACT AND THAT MEETS ITS BUSINESS NEEDS.

When conducting a BACT analysis, EPA must consider “all control options with potential application.” *In re Prairie State Generating Co.*, 13 E.A.D. 1, 15 (EAB 2006). EPA has interpreted this to mean consideration of inherently lower emitting processes and practices, add-on controls, and a combination of the two. *In re Masonite Corp.*, 5 E.A.D. 551, 568 (EAB 1994); *see also NSR Manual* at B.10. EPA properly conducted this analysis and developed a BACT limit requiring the implementation of many inherently lower emitting processes and practices for GHG emissions for each of the turbines under consideration.⁵ *See Ex.* AA at 13-20. In fact, with the exception of the solar preheat issue discussed in Section II, *infra*, the Petition for Review does not suggest that the individual BACT analyses performed by EPA Region 6 were actually deficient; rather, Sierra Club alleges that EPA was required to impose the BACT limit for the nominally lowest emitting

⁵ EPA also considered whether carbon capture and sequestration (“CCS”) was an appropriate add-on control option for each of the turbines/emission units under consideration. *Ex.* AA at 10-12. At this time, CCS is the only known and potentially feasible add-on control technology applicable to natural gas turbines for GHGs. *See Ex.* DD at 29, 32, 35. EPA properly determined that BACT would not require installation of CCS on any of the three proposed alternatives. *Ex.* AA at 12. Sierra Club did not challenge EPA’s decision on the application of CCS in its Petition for Review. *See generally* Petition for Review.

alternative turbine on the other turbines analyzed even though EPA used the 5-step BACT process to determine an individual BACT limit for each of the other turbines. *See* Petition for Review at 14 n.5. In effect, Sierra Club is asking for the Board to develop a new Step 6 in BACT analyses, which would require an additional analysis after the 5-step process is completed to compare a properly developed individual BACT limit to individually determined BACT limits for other turbines that may not be selected by the project developer. *See id.*

Nothing in the CAA, its regulations, EPA guidance, or decisions from this Board mandates that process. Similarly, nothing in any of the foregoing sources or authorities prohibits EPA from permitting several alternative designs and establishing BACT for the various makes and models of turbines/emissions sources that are under consideration by the permit applicant. As discussed below, to use the BACT process to force applicants to install a particular brand-name technology is contrary to the CAA, would improperly place EPA in a position of endorsing particular products, and would provide a monopoly to certain equipment manufacturers. Moreover, to mandate that LPEC must meet a more stringent BACT limit that is applicable to another turbine other than the one LPEC ultimately selects would defeat the goal of establishing a BACT limit based upon the particular emission source and would force LPEC to over-comply with the BACT requirement if it does not choose the lowest emitting alternative turbine/emission unit.

- a. BACT DOES NOT DICTATE WHAT EQUIPMENT THE PERMIT APPLICANT MUST PURCHASE AND INSTALL.
 - i. **Nothing in the PSD permitting program prohibits permitting authorities from temporarily including several alternative emission units in a single PSD permit to give permittees flexibility during the design process.**

Sierra Club has not challenged the process by which EPA Region 6 individually established BACT for each of the turbines. *See* Petition for Review at 7-8. Rather, Sierra Club is unhappy that “applicants are free to pick any turbine design they like, and the Region will simply devise a limit for

the applicant's chosen turbine. . . ." Petition for Review at 8. But the permittee is entitled to define the source as it sees fit and "EPA has not considered the BACT requirement as a means to redefine the design of the source when considering available control alternatives." *In re Hillman Power Co., L.L.C.*, 10 E.A.D. 673, 691 (EAB 2002). Further, BACT is not intended to mandate the installation of specific equipment. *Id.* (permittees "have flexibility to implement various pollutant control technologies, methods, or techniques to achieve their BACT limits, as long as those BACT limits are achieved."); *see also In re Three Mountain Power, LLC*, 10 E.A.D. 39, 54 (EAB 2001) ("BACT means an emission limitation, rather than a particular control technology").

Case law and EAB precedent do not support Sierra Club's attempt to restrict LPEC's ability to choose the most appropriate equipment for this project and its business needs. Nor has Sierra Club pointed to any precedent of this Board, anything in EPA guidance, or anything in the PSD regulations that requires only one emission unit to be analyzed in a PSD permitting process or that requires the permitting authority to limit or eliminate the permittee's flexibility to build a commercially viable project. Sierra Club could not point to any such precedent because BACT addresses "air pollution controls for **each emissions unit** or pollutant emitting activity subject to review." *See NSR Manual* at B.4 (emphasis added). The PSD regulations call for the EPA Administrator to review "application of a measurement methodology to a **particular emissions unit...**" 40 C.F.R. § 52.21(b)(12) (emphasis added). The EAB confirms this approach. *See, e.g., Masonite Corp.*, 5 E.A.D. at 557-558 ("the Region must give consideration to each individual emissions unit or pollutant emitting activity subject to review.") (citing the *NSR Manual*).

EPA's historic permitting practices have recognized that it is appropriate to set different BACT limits based upon alternative emission units under consideration. The RACT/BACT/LAER

Clearinghouse database⁶ contains numerous examples where permitting authorities have issued permits with alternative BACT limits in a single PSD permitting process.⁷ Those permits then stipulate that the permittee has the flexibility to choose one of the permitted emission units after issuance of the permit. For example, a recent final permit provides two turbine options for a natural gas fired source: two Mitsubishi Heavy Industries G-frame (MHI501G) generators or two General Electric Model 7FA (GE7FA) generators.⁸ *See* Stark Power Generation II Holdings, LLC, Permit No. PSD-TX-1110 (issued Mar. 3, 2010). Where EPA has set such alternative emission limits in the PSD permit, it has never then concluded that BACT for one of those units under consideration should be imposed on all of the units the permittee listed in its application. For the Board to find that a given unit must meet a limit that is more stringent than BACT as determined for that individual unit would be a major deviation from the PSD permitting requirements. *See generally* NSR Manual at B.1-B.75.

⁶ “EPA established the RACT/BACT/LAER Clearinghouse, or RBLC, to provide a central data base of air pollution technology information (including past [Reasonable Available Control Technology (“RACT”), BACT, and Lowest Available Emission Reduction (“LAER”) decisions contained in New Source Review] permits) to promote the sharing of information among permitting agencies and to aid in future case-by-case determinations. *See* EPA, Basic Information - RACT/BACT/LAER Clearinghouse, <http://www.epa.gov/ttn/catc/rblc/htm/welcome.html> (last visited Dec. 27, 2013); EPA, RACT/BACT/LAER Clearinghouse (RBLC), <http://cfpub.epa.gov/rblc/> (last visited Dec. 27, 2013).

⁷ Contrary to Sierra Club’s assertion, Petition for Review at 7, including a separate emission limit in PSD permits for each emission unit under consideration is not an “emergent practice.” Permitting agencies have a long-standing practice of permitting various alternatives and incorporating design flexibility into PSD permits. *See, e.g.*, Stark Power Generation II Holdings, LLC, Permit No. PSD-TX-1110 (issued Mar. 3, 2010); Texas Genco, Permit No. TX-00525 (issued Sept. 13, 2005); Western Midway Sunset Power Project, Permit No. CA-1052 (issued Dec. 12, 2003); Three Mountain Power, LLC, Permit No. CA-1051 (issued Oct. 10, 2003); Allegheny Energy Supply LLC, Permit No. AZ-0049 (issued Sept. 4, 2003); Genova Oklahoma LLC, Permit No. OK-0070 (issued June 13, 2002); Granite Power Partners II, LP, Permit No. FL-0203 (issued Aug. 4, 2000).

⁸ Specifically, the permit states that the source “[has] not selected the actual turbines that will be installed for this project” but “the selection has been narrowed down to... two options.” Stark Power Generation II Holdings, LLC, Permit No. PSD-TX-1110 (issued Mar. 3, 2010).

Region 6 subjected each turbine to a complete BACT analysis and determined that every one of the turbines would satisfy BACT and each turbine under consideration must meet an individual BACT limit if it is selected for this project. *See generally* Ex. 1; Ex. AA. Sierra Club seems to be dissatisfied with this result because it has a general policy objection against listing multiple turbines, each with their own BACT limit, in one permit. *See* Petition for Review at 8. However, Sierra Club's vague policy concern cannot overcome a validly supported BACT analysis for each of the alternative turbines conducted according to the long-established BACT setting practice of the Agency. Nothing in the PSD permitting program prohibits permitting authorities from temporarily including several alternative emission units in a single PSD permit to give permittees flexibility during the design process.

ii. The CAA and BACT grant permit applicants flexibility when selecting equipment and developing an industrial project.

The CAA focuses on creating “reasonable” solutions to pollution prevention. 42 U.S.C. § 7401(c) (“A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local government actions . . . for pollution prevention.”). BACT is no different – when determining BACT, permitting authorities must take into account “energy, environmental, and economic impacts and other costs.” 42 U.S.C. § 7479(3). As a former EPA Administrator has explained, the CAA “is, above all, a flexible, results-oriented law... the law was designed with the marketplace in mind. The Clean Air Act sets specific air quality standards, yet it also allows a great deal of latitude in deciding how to achieve these objectives.” William K. Reilly, *The New Clean Air Act: An Environmental Milestone*, EPA Journal, Jan./Feb. 1991, <http://www2.epa.gov/aboutepa/new-clean-air-act-environmental-milestone> (last visited Dec. 27, 2013); *see also* EPA, Building Flexibility with Accountability into Clean Air Programs, <http://www.epa.gov/air/caa/flexibility.html> (last visited Dec. 27, 2013) (“In designing clean air programs, EPA strives to provide companies with flexibility on ways to comply while ensuring accountability for environmental performance.”). The

D.C. Circuit has similarly concluded that the effective operation of the administrative process is enhanced where EPA provides flexibility based upon “circumstances peculiar to individual parties.” *Alabama Power Co. v. Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979). Allowing LPEC to consider the various turbines in the marketplace that meet all PSD permitting requirements, including BACT, as well as the project’s needs is consistent with the flexibility promised by the statute.

LPEC selected the three turbine options in its permit application based upon not only their efficiency in reducing emissions, but also based upon LPEC’s own business objectives. Ex. CC at ¶ 7. LPEC also considered what equipment it believed would be able to meet the State’s short- and long-term energy needs. *Id.* The turbines LPEC selected are among the leading turbines in the U.S. market. *Id.*; see also Ex. 3 at 7; Ex. AA at 12. The turbines are known for having good reliability, performance, and efficiency. See Ex. CC at ¶ 7; Ex. AA at 12.

As the project proponent, the permittee must retain the flexibility of determining what equipment to install and when to make that selection.⁹ Ex. CC. at ¶ 6. In order to construct a major source, a permittee must obtain a PSD permit in advance of construction. 42 U.S.C. § 7475(a)(4). As this Board is aware, historically, the PSD permitting process¹⁰ and subsequent appeals before this Board can take months or years to complete, as does the process of obtaining the requisite financing to commence construction of a new power plant. Ex. CC at ¶ 5. Because the PSD permitting process can take months or years to complete, the project developer generally does not select a particular turbine for a project until the final stages of project development. *Id.* at ¶¶ 5-6. Once a

⁹ The Petition for Review indirectly questions when the permittee must select which turbine to install. Presumably, if LPEC had already selected a specific turbine when it submitted its permit application, Sierra Club would not have disputed the BACT analysis conducted for this project.

¹⁰ EPA, Region 6 PSD Permitting Process, http://www.epa.gov/region6/6pd/air/pd-r/ghg_permit.html (last visited Dec. 27, 2013) (“The process of preparing the draft permit may take from six months to a year from the time the application is deemed complete.”). In LPEC’s case, it took 19 months from LPEC’s initial submission of a permit application before EPA issued a permit. See Ex. AA; Ex. 1.

turbine is selected, the project developer is locked in to a certain price and a turbine delivery schedule. *Id.* To force the project developer to prematurely make such high stakes and irreversible commitments could adversely impact the project's development, pricing, and contract negotiations. *Id.* For example, if the project developer were forced to make a binding selection of a specific turbine at the permit application stage, the turbine vendor would be able to dictate the terms of not only the purchase agreement for that turbine, but also the emissions guarantees – meaning that the turbine supplier could potentially draft terms that might be unacceptable to EPA, the project developer, investors, and lenders who would be locked into using that turbine. *Id.* It is also imperative for project developers to retain flexibility of when to select a given turbine because turbine technology and availability may not stay stagnant during the permitting process. *Id.* at ¶ 6. Thus, in order to obtain the most cost effective and efficient turbines available for a given project, it is uncommon for project developers to select the turbine they will install until they are within a few months of commencing construction – approximately 12-18 months after the permit applications have been submitted. *Id.*

Recognizing this need for flexibility is not new to the Board. The EAB has acknowledged that the permittee should be allowed to exercise judgment during the top-down BACT analysis when there are multiple alternatives that achieve essentially equivalent air emissions. *See Prairie State*, 13 E.A.D. at 35-36. It “is not EPA’s intent to encourage evaluation of unnecessarily large numbers of control alternatives for every emissions unit.” *Id.* Here, too, the permittee should have the flexibility to select between several models within the same category of control technology where they provide comparable control efficiency¹¹ and those models are capable of meeting a limit established through an individual BACT analysis.

¹¹ *See Ex. 3* at 6 (noting that the differences between the efficiencies of the three turbines under consideration are within the manufacturers’ tolerances and test uncertainties); *see also id.* at 7 (“we

iii. EPA cannot endorse equipment because to do so would create monopolies for particular categories of equipment, horribly distorting the marketplace.

As noted above, Sierra Club challenges whether “applicants are free to pick any turbine design they like. . . .” Petition for Review at 8; *see also* Ex. 4 at 3 (“the top-down BACT analysis requires Ecology [sic] to select the lowest emitting technology as the basis for setting the BACT emission limit.”). By demanding that EPA set BACT at a level that applies to equipment other than that selected by the permittee, Petition for Review at 14 n.5, Sierra Club is coyly asking EPA to limit the permittee’s ability to consider its own business objectives and needs when selecting equipment. In other words, Sierra Club would have EPA endorse which turbine is best in class and then mandate either that all turbines meet that standard (even though that would mean all other units would be subject to a more stringent limit than the BACT limit derived for each individual unit) or that all projects install the EPA endorsed model. *See* Petition for Review at 8.

This demand goes too far because EPA does not endorse particular products, manufacturers or processes. The BACT process should not place permitting authorities in a position to pick market winners and losers. By asking this Board to prohibit the installation of particular turbine models that have properly been through the BACT process, or by asking this Board to determine that an emission unit meet a more stringent limit than a specific BACT limit derived from a properly conducted BACT analysis, Sierra Club is essentially requesting that federally issued PSD permits endorse particular vendors and specific models of emission units being permitted.

have no record basis to consider these turbine models to be ‘poor-to-average’ performers among available turbine models in the size class. As we noted in our prior response, an emission limit based on the installation of the GE 7FA model has been selected as BACT in at least two other permitting decisions. Accordingly, we do not feel it is necessary to dictate selection of a particular turbine model or turbine capacity among three with comparable performance in the circumstances of this permit.”).

EPA has rejected these types of endorsements in other environmental programs so that industry cannot utilize EPA endorsement as a marketing tool. For example, in Energy Star, which is a voluntary labeling program, EPA states that “[u]nder no circumstances may the [ENERGY STAR] logo or name be used in a manner that would imply EPA or DOE endorsement.” 65 Fed. Reg. 17,554, 17,555 (Apr. 3, 2000). In WaterSense, another voluntary labeling program, EPA does not allow business partners to “construe, claim, or imply that its participation in the EPA WaterSense program constitutes federal government (EPA) approval, acceptance, or endorsement of anything other than the partner’s commitment to the program.” EPA WaterSense, Partnership Agreement: Promotional Partners, http://www.nwpa.us/pdfs/watersense_partnership_form.pdf (last visited Dec. 27, 2013). Rather than endorsing products, EPA publicly disclaims any endorsement of WaterSense products. EPA, WaterSense Product Search, http://www.epa.gov/watersense/product_search.html (last visited Dec. 27, 2013) (“Disclaimer of Endorsement: Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government.”). EPA also disclaims endorsement in the Environmental Preferable Purchasing Program, noting that “[a]s a federal governmental agency, neither EPA nor its programs can endorse any products or services.” EPA, Environmentally Preferable Purchasing Frequent Questions, <http://www.epa.gov/epp/pubs/about/faq.htm> (last visited Dec. 27, 2013).

As these examples show, EPA does not want to endorse a certain product and establish a monopoly that benefits one particular manufacturer over all others. Endorsing a given make, model, or manufacturer of equipment would enable a given vendor to dictate the terms of the purchase agreements, including the price, equipment guarantees, delivery schedule, and any other terms. Ex. CC at ¶ 6. A select group of manufacturers should not be given endorsement or

preferential treatment from EPA that would allow them to dictate contractual terms in a manner that leaves project developers, investors, and lenders without recourse to seek other options if those contract terms are unacceptable. *Id.*

b. IMPOSING A MORE STRINGENT LIMIT THAN BACT IS INCONSISTENT WITH THE CAA AND GOES BEYOND THE REQUIREMENTS IN PSD PERMITTING.

In a footnote, Sierra Club stated: “To be clear, Sierra Club does not suggest that the permit require the applicant to install the Siemens SGT6-5000F(4). Only that it meet the BACT limit associated with that turbine design regardless of which turbine it ultimately installs.” Petition for Review at 14 n.5. Regardless of whether Sierra Club is requesting that LPEC install a specific turbine or if Sierra Club is requesting that this Board impose a limit more stringent than the appropriate BACT limit for a particular turbine, PSD requires BACT – nothing more and nothing less. By asking that any turbine installed at the La Paloma project meet the lowest individual BACT limit of the various turbines considered, Sierra Club is asking for the Board to require LPEC meet an emission standard more stringent than BACT (unless LPEC selects the turbine for which the lowest limit was established). In other words, Sierra Club is asking the Board to create a new step 6 in the Agency’s BACT analysis whereby EPA would compare individual BACT limits against the limits established for other equipment that is available. BACT does not include such a step. *See In re Christian County Generation, LLC*, 13 E.A.D. 449, 454 (EAB 2008) (citations omitted) (BACT results in “the selection of an emissions limitation that represents application of control technology...”); *see generally NSR Manual* at B.5 – B.55.

Sierra Club implies that its approach is sound because BACT limits include a compliance or safety factor.¹² *See* Petition for Review at 14 n.5. However, “[t]here is nothing inherently wrong

¹² By raising this issue in a footnote, *see* Petition for Review at 14 n.5, Sierra Club has not properly raised the issue of compliance margins in its Petition for Review. *See In re Encogen Cogeneration Facility*,

with setting an emissions limitation that takes into account a reasonable safety factor.” *In re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 15 (EAB 2000) (“*Knaf II*”). “PSD permit limits are not necessarily a direct translation of the lowest emissions rate that has been achieved by a particular technology at another facility, but [] those limits must also reflect consideration of any practical difficulties associated with using the control technology.” *In re Newmont Nev. Energy Inv., LLC*, 12 E.A.D. 429, 441-42 (EAB 2005) (quoting *In re Cardinal FD Co.*, 12 E.A.D. 153, 170 (EAB 2005)). Thus, the Board has “long recognized that permit writers must retain discretion to set BACT levels that ‘do not necessarily reflect the highest possible control efficiencies but, rather, will allow permittees to achieve compliance on a consistent basis.” *Prairie State*, 13 E.A.D. at 54 (quoting *In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 188 (EAB 2000)). Compliance margins are necessary because “setting the emissions limitation to reflect the highest control efficiency would make violations of the permit unavoidable.” *Masonite Corp.*, 5 E.A.D. at 560.

An appropriate emission limit (which includes a compliance or safety margin) must be set through a fact- and case-specific analysis. *See In re Vulcan Construction Materials, LP*, PSD Appeal No. 10-11, slip op. at 31 (EAB Mar. 2, 2011); *see also Prairie State*, 13 E.A.D. at 55 (explaining that the safety factor takes “into account test method variability, location specific technology variability, and other practical difficulties in operating a particular technology.”). As the Draft Statement of Basis

8 E.A.D. 244, 259-60 (EAB 1999) (general allegations lacking specificity do not provide the sufficient information or specificity from which the Board could conclude that the permit issuer erred in establishing a permit condition). Furthermore, the Agency extensively responded to Sierra Club’s concerns about the compliance margins in its Response to Comments document, Ex. 3 at 11-21, and Sierra Club has not explained why that response was insufficient. *See In re Sutter Power Plant*, 8 E.A.D. 680, 687-88 (EAB 1999) (petitions must address why EPA’s response was clearly erroneous). Moreover, Sierra Club’s footnote does not address why it would be appropriate for a given turbine make or model of turbine to be forced to meet a lower BACT limit that was set for another unit and, as a result, be subject to higher risk of noncompliance. *See* Petition for Review at 14 n.5. Sierra Club has provided no information or data to substantiate that reducing this limit would ensure that the permit that is ultimately issued would “allow LPEC to comply with an appropriate BACT limit on a consistent basis.” *See Ex. 3* at 19.

explains, BACT for each of the turbines was based on the turbine’s design base load net heat rate. Ex. AA at 15. Then, EPA considered “reasonable degradation factors that may foreseeably reduce efficiency under real-world conditions.”¹³ *Id.*

Overall, the basis for the compliance margin was well documented in the permitting record. *See, e.g., Ex.* 3 at 11-18. Furthermore, EPA Region 6 has allowed similar compliance margins for other projects and has also “seen similar margins utilized by other EPA Regions and State permitting authorities.” Ex. 3 at 12. In fact, both the Deer Park and Channel Energy GHG PSD permits used the same compliance margins as those that were proposed for the La Paloma project. *Id.* at 12-13. The record also provides several other examples of projects that utilized comparable safety margins. *Id.* at 13.

As Region 6 concluded, “the proposed limits for LPEC are comparable to the limits established for LCRA, Calpine Deer Park, Calpine Channel Energy Center, Pioneer Valley Energy Center [PVEC], and PacifiCorp Energy Lake Side Power Plant.” *Id.* at 17. EPA explained why there were some disparities between those different projects and LPEC. *Id.* (e.g., “PVEC is more likely to operate at base load conditions, whereas LPEC will operate as a load cycling unit.”).

Finally, as Region 6 explained, none of the models LPEC included in its application are “poorly designed or non-representative of the efficiency capabilities of the technology category.”

¹³ “Due to characteristics of individual plant processes, we recognize that application of identical technology may not yield identical emission limits.” *In re Knauf Fiber Glass, GMBH*, 8 E.A.D. 121, 143 (EAB 1999) (“*Knauf I*”). EPA Region 6 also accounted for real-world conditions when assessing the emission limits by reviewing the emission data for facilities “located in Texas, Louisiana, Mississippi, and Alabama” because these states “are likely to have similar meteorological, elevation, and other conditions (i.e., salty gulf air) to LPEC. . . .” Ex. 3 at 10; *see also id.* at 17 (explaining that the data Sierra Club provided showing that other turbines were able to achieve lower emission rates than the emission limitations proposed for LPEC do not establish that those rates are appropriate emissions limitations for the La Paloma project because data from a select number of facilities do not reflect the impact of anticipated ambient conditions like humidity on turbine efficiency, output, and heat rate at the site of the La Paloma project).

Ex. 3 at 6. “[T]he three turbine models under consideration are some of the most efficient [combined cycle gas turbines (“CCGTs”)] based on their lower heat rate in comparison to other models.” *Id.* at 6-7 (citing Draft Statement of Basis, Ex. AA at 12). “It bears noting that the GE 7FA turbine model that the commenter has characterized as being the ‘least efficient,’ and therefore unacceptable, model for consideration as a ‘Candidate BACT Technology’ is precisely the turbine model contemplated for use in the permits recently issued for the 570 MW Palmdale Hybrid Power Project and the 590 MW LCRA Thomas Ferguson Plant.” *Id.* at 7. “The commenter elsewhere touts the BACT limits established for those projects without taking issue with the turbine models being installed.” *Id.*

* * *

For all of the foregoing reasons, the EAB should deny review of this issue.

II. REGION 6 DID NOT ERR BY EXCLUDING SOLAR PREHEAT FROM STEP 1 OF THE BACT ANALYSIS

The EAB “has consistently upheld permitting decisions that appropriately apply the Agency’s policy against requiring permit issuers to consider alternatives that would redesign the source proposed by a permit applicant.” *In re City of Palmdale (Palmdale Hybrid Power Project)*, PSD Appeal No. 11-07, slip. op. at 41 (EAB Sept. 17, 2012). Because permitting authorities “have broad discretion in determining whether a control option would redefine the source, the Board reviews such determinations under an abuse of discretion standard.” *Id.* at 44. Thus, when the Board assesses this second issue in the Petition for Review, it must assess “whether the Region clearly erred or abused its discretion.” *Id.* at 34-35. The petitioner “bears the burden of demonstrating that review is warranted.” *Id.* at 9. As further explained below, Sierra Club has failed to meet this burden.

a. STEP 1 OF EPA'S BACT ANALYSIS IDENTIFIED ALL AVAILABLE CONTROL TECHNOLOGIES.

EPA Region 6 followed the traditional top-down analysis and included an extensive and comprehensive list of potential control technologies.¹⁴ Ex. AA at 8-9. Specifically, the BACT analysis included a discussion and consideration of the following options:

- Combustion Turbine
 - combustion turbine design
 - periodic burner tuning
 - reduction in heat loss
 - instrumentation and controls
- Heat Recovery Steam Generator
 - heat exchanger design considerations
 - insulation
 - minimizing fouling of heat exchange surfaces
 - minimizing vented steam and repair of leaks
- Steam Turbine
 - use of reheat cycles
 - use of exhaust steam condenser
 - efficient blading design and turbine seals
 - efficient steam turbine generator design
- Other Plant-wide Efficiency Features
 - fuel gas preheating
 - drain operation
 - multiple combustion turbine/HRSG trains
 - boiler feed pump variable speed drives
- Carbon Capture and Sequestration

The foregoing are all the known control options at this time that are consistent with the basic design of a natural gas-fired electric generating plant. LPEC was not required to consider other alternative

¹⁴ *Contra Knauf I*, 8 E.A.D. at 134 (concluding that “it is impossible to know if Knauf really adopted the most stringent option available as BACT” because the permittee did not follow EPA’s traditional top-down BACT analysis. Specifically, the permit application did “not include a listing of all possible control options, a discussion of emission control technologies and limits for fiberglass manufacturing facilities other than the Knauf plant in Alabama, or a technical feasibility analysis.”).

designs that would have redefined the source. *See Knauf I*, 8 E.A.D. at 136 (“EPA has not generally required a source to change (i.e., redefine) its basic design.”).

b. REGION 6 DID NOT ERR IN FINDING THAT APPLYING SOLAR PRE-HEAT WOULD REDEFINE THE SOURCE.

When making a redefining the source determination, permitting authorities should “begin their analyses of potentially available control technologies by examining how the permit applicant defines the proposed facility’s ‘purpose’ or ‘basic design,’ which typically is set forth in the permit application and related documents.” *In re Sierra Pacific Indus.*, PSD Nos. 13-01, 13-02, 13-03, & 13-04, slip op. at 59 (EAB July 18, 2013). The permit issuer then “takes a ‘hard look’ at which design elements are ‘inherent’ to the applicant’s purpose and which design elements could possibly be altered to achieve pollutant emissions reductions without disrupting the applicant’s ‘basic business purpose’ for the proposed facility.” *Id.*

While BACT permit conditions such as control technologies may indeed have an effect on the viability of a proposed facility, “the conditions themselves are not intended to redefine the source.” *In re Pennsauken County*, 2 E.A.D. 667, 673 (Adm’r 1988). Put differently, “the source itself is not a condition of the permit.” *Id.* Utilizing this logic, the Administrator has held that it would be redefining a source to require a project to switch its fuel source to a combination of other fuels.¹⁵ *Id.* (concluding that switching the fuel source from 100% refuse derived fuel to a “mixture of 20% refuse derived fuel and 80% coal at existing power plants” would be redefining the source). Similarly, the EAB has concluded that switching the fuel source from low sulfur coal to high sulfur

¹⁵ By way of contrast, *Desert Rock* did not constitute redefining the source because there the petitioner alleged that the permittee failed to consider a technology that used the same fuel source - coal. *In re Desert Rock Energy Co., LLC*, PSD Appeal Nos. 08-03, 08-04, 08-05 & 08-06, slip op. at 57 (EAB Sept. 24, 2009). As the EAB noted, the Region “did not provide any factual information in its Response to Comments that would distinguish the various coal-fired power plants.” *Id.* at 69 n.72. The Region also failed to “discern which design elements were inherent to that purpose and which design elements could be changed to achieve pollutant emission reductions without disrupting Desert Rock’s basic business purpose.” *Id.* at 69.

coal also constitutes redefining the source.¹⁶ *Prairie State*, 13 E.A.D. at 28. The EAB has reached the same conclusion when evaluating whether an applicant proposing to construct a coal-fired utility must consider constructing a natural gas-fired plant. *See, e.g., Hillman Power Co.*, 10 E.A.D. at 691 (“Historically, EPA has not considered the BACT requirement as a means to redefine the design of the source when considering available control alternatives. For example, applicants proposing to construct a coal-fired electric generator have not been required by EPA as part of a BACT analysis to consider building a natural gas-fired electric turbine although the turbine may be inherently less polluting per unit product (in this case electricity).” (citing *NSR Manual* at B-13)); *In re Hawaiian Commercial & Sugar Co.*, 4 E.A.D. 95, 99-100 (EAB 1992) (same). In sum, a permitting authority “need not consider” an alternative fuel source even if the result “would be inherently less polluting” than the proposed unit. *Knauf I*, 8 E.A.D. at 136.

The EAB has developed a simple test to determine whether fuel switching constitutes redefining the source:

the permit issuer appropriately looks to how the applicant, in proposing the facility, defines the goals, objectives, purpose, or basic design for the proposed facility. Thus, the permit issuer must be mindful that **BACT, in most cases, should not be applied to regulate the applicant’s objective or purpose for the proposed facility**, and therefore, the permit issuer must discern which design elements are inherent to that purpose, articulated for reasons independent of air quality permitting, and which design elements may be changed to achieve pollutant

¹⁶ Contrary to Sierra Club’s assertions, the 7th Circuit does not “hold” that “there must be some adjustment allowed to an applicant’s design or the BACT definition’s requirement to consider cleaner processes, fuels, and methods to reduce pollution would be rendered meaningless.” Petition for Review at 24. Rather, the 7th Circuit *upheld* EAB’s decision in *Prairie State*. *Sierra Club v. EPA*, 499 F.3d 653 (7th Cir. 2007). The *Sierra Club* Court deferred to and upheld EPA’s decision to “exclude redesign” from the definition of control technology, *id.* at 655, explaining that because receiving a different type of fuel “would require *Prairie State* to reconfigure the plant . . . this reconfiguration would constitute a redesign.” *Id.* at 657. *Contra In re Northern Michigan Univ. Ripley Heating Plant*, PSD Appeal No. 08-02, slip op. at 25, 27-28 (EAB Feb. 18, 2009) (rejecting an argument that switching from high sulfur coal to low sulfur coal would redefine the source because the record was “silent as to why other coal sources, whether more distant or more proximate, were not considered” and the permit application suggested that the unit was able to burn low sulfur coal).

emissions reductions without disrupting the applicant's basic business purpose for the proposed facility.

Prairie State, 13 E.A.D. at 23 (emphasis added). Thus, the EAB has rejected broadening the project's purpose to "the production of electricity, from coal [the selected fuel for the given project]." *Id.* at 25. Sources are entitled to define the business purpose for their facility as they see fit - and the EAB will uphold permit decisions that explore controls "consistent with [the] basic design" of a facility. *Id.* at 28.

In fact, the EAB has already addressed the question of whether solar power constitutes a fundamental fuel change that redefines the source in two different cases. In *Palmdale*, the petitioner asked the EAB to review a permit issued for a project that had a business purpose that included 50 MW of solar thermal power, arguing that the Region should have considered "alternative, unspecified solar power configurations." *Palmdale*, PSD Appeal No. 11-07, slip. op. at 34. Thus, the EAB was asked to consider whether changing a project from partial solar to a 100% solar plant would be redefining the source and whether incrementally increasing the generation from solar would constitute redefining the source.¹⁷ *Id.* at 45. The EAB emphatically concluded it would constitute redefining the source. *Id.* at 46-47 (concluding that it was "eminently reasonable" to reject "using a BACT analysis to require fundamental changes in the fuel design of electric power generating stations."). The Board reached a similar conclusion in 2013, rejecting the petitioner's suggestion to add solar preheat to a renewable project that utilized biomass. *Sierra Pacific Ind.*, PSD Appeal Nos. 13-01, 13-02, 13-03 & 13-04, slip. op. at 62 (concluding that burning "fewer tons of wood waste" in order to "generate solar power or burn more natural gas instead would plainly disrupt the project's 'basic business purpose' of using as much surplus biomass as possible . . .").

¹⁷ Although *Palmdale* seems to squarely resolve the issue that Petitioner Sierra Club raises regarding whether solar preheat is redefining the source, the Petition to Review does not cite or refer to the EAB's decision in *Palmdale*. See generally Petition for Review.

i. Solar thermal generation is not consistent with the business purpose of the La Paloma project.

Here, LPEC had a very specific business purpose: to generate 637 - 735 megawatts (MW) of gross electrical power near the City of Harlingen in an efficient manner using reclaimed water from the City of Harlingen as cooling water and nearby pipeline natural gas as the fuel source. Ex. 2 at 11. LPEC's business purpose did not include the generation of any energy through renewable sources. *Id.* Mandating the inclusion of solar thermal power into the project would be equivalent to broadening LPEC's business purpose to "the production of electricity." *See Prairie State*, 13 E.A.D. at 25. Distorting LPEC's business purpose in this manner is not sustainable. *Id.*

In order to successfully incorporate solar thermal preheat into this project, LPEC would need to relocate the entire project, which would be contrary to the project purpose. The nearest high solar potential field is not located in Texas. Ex. CC at ¶ 9. Relocating the project to be closer to the nearest high solar potential field would mean the project would not serve the electricity market that LPEC has been designed to serve. *Id.* LPEC carefully sited this project to take advantage of nearby natural gas pipelines and easy access to transmission lines. *Id.* at ¶ 4. In contrast, the Palmdale project did not have similar siting obstacles because its project purpose originally included solar generation. *See Ex. 6* at 1. Therefore, the Palmdale project was sited in one of the best areas of the country for solar availability. *See Ex. CC-1.*

EPA Region 6 explained the critical difference in the business purpose of the La Paloma plant as compared to the Palmdale plant:¹⁸

the solar component was part of [Palmdale] as defined in the permit application. Therefore, the permit's requirement that [Palmdale] construct the solar component as a requirement for BACT did not fundamentally redefine the source. In this case, the permit applicant did not include renewable generation in its project purpose, so

¹⁸ *Contra* Petition for Review at 26 (stating that "the Region provided no explanation of how it determined that the auxiliary heat input would redefine the applicant's purpose").

we are not required to consider the various ways in which solar thermal generating equipment could possibly be integrated into the plans for LPEC.

Ex. 3 at 21. Thus, EPA explained and took a “hard look” at why LPEC need not consider an entirely different fuel source than it proposed both by comparing LPEC to other projects and by explaining that renewable generation is not the basic business purpose of LPEC.¹⁹ *Id.*

ii. Solar thermal generation will not work at the La Paloma site.

BACT determinations are “tailor-made for each pollutant emitting facility.” *Christian County Generation*, 13 E.A.D. at 454 (citations omitted). EPA acknowledges that the “case-specific nature of the BACT analysis indicates that the particular characteristics of each facility are an important aspect of the BACT determination.” *In re East Kentucky Power Cooperative, Inc.*, Petition IV-2006-4, Order Responding to Petitioner’s Request that Administrator Object to Issuance of State Permit, and Denying in Part and Granting in Part Petition for Objection to Permit at 36 (EPA Adm’r, Aug. 30, 2007).

LPEC cannot simply switch its fuel source from nearby pipeline natural gas, Ex. 2 at 11, to nearby pipeline natural gas plus solar. Requiring LPEC to suddenly incorporate solar thermal preheat into this natural gas-fired electric generation project would redefine its business purpose.²⁰ In particular, integrating solar thermal power into the footprint of La Paloma would be difficult because the area is not well-suited for solar and there is limited space available to accommodate

¹⁹ Although Region 6 did not expressly mention the Victorville project by name in its Response to Comments document, Ex. 3, Victorville is not a GHG permit. *See generally Ex. 9*. Regardless, the Region’s explanation for rejecting solar thermal equipment applies equally to Victorville because Victorville purposefully and intentionally implemented solar energy. Ex. EE at 2-1.

²⁰ *Contra In re Hibbing Taconite Co.*, 2 E.A.D. 838, 1989 WL 266539 *4 (Adm’r 1989) (requiring consideration of natural gas as a fuel source instead of pet coke because the source was “already equipped to burn natural gas [and the switch] would not require a fundamental change to the facility.”); *In re Cash Creek Generation, LLC*, Petition Nos. IV-2008-1 & IV-2008-2, Order Responding to Issues Raised in January 31, 2008 and February 13, 2008 Petitions, and Denying in Part and Granting in Part Requests for Objection to Permit at 8 (EPA Adm’r, Dec. 15, 2009) (requiring consideration of exclusive use of natural gas where a plant had been designed to operate using both natural gas and syngas).

solar. Ex. CC at ¶ 9. At La Paloma, there are potentially 20 acres available after construction of the gas-fired power plant for an on-site solar field. *Id.* By way of contrast, the Palmdale project utilized 251 acres of parabolic solar-thermal collectors for its preheat system. Ex. 7 at 3. In other words, LPEC has less than 10% of the acreage available that Palmdale required for its solar thermal collectors. As the EAB concluded in *Palmdale*, there is no need for the permitting authority to take a harder look at incorporating solar into a project where “it would be infeasible to generate additional solar power in any significant amount at the proposed site due to space constraints.” *Palmdale*, PSD Appeal No. 11-07, slip. op. at 48 (emphasis added). Therefore, “even if the Region’s analysis was lacking with respect to the compatibility of a larger solar component with the plant’s purpose, a more fulsome explanation would not alter the fact that no more space is available at the site.” *Id.* at 49.

Furthermore, the site’s close proximity to the Gulf Coast prevents solar thermal generation from being a good option for this project. Harlingen is located in the heart of the Rio Grande Valley in south Texas and is approximately 30 miles from the Gulf Coast. Ex. CC at ¶ 9. This region of the country is regularly subject to high humidity and the risk of hurricane-force winds. *Id.* The general lack of any solar thermal projects to date in this area of Texas is reflective of these poor conditions. *See* Ex. CC-1.

For these reasons, LPEC was not required to consider solar at this project.²¹ *See Palmdale*, PSD Appeal No. 11-07, slip. op. at 48-49.

²¹ LPEC estimates that even if it attempted to incorporate solar into this project, a solar field would generate less than 1% of the plant thermal energy. Ex. CC at ¶ 9. Such a small quantity of solar energy could not meaningfully alter the BACT analysis, even if it were appropriate to consider solar power at a facility that is not designed to incorporate solar power.

iii. Solar preheating is not a control technology.

Solar thermal preheat is not an add-on control technology. Interpreting solar preheat to be an available control technology, rather than a fundamental change in the fuel source stretches the meaning of “control technology” too far. The 7th Circuit has held that ordering a fossil fuel plant to “explore the possibility of damming the Mississippi to generate hydroelectric power, or to replace coal-fired boilers with wind turbines . . . would stretch the term ‘control technology’ beyond the breaking point . . . of the statute.” *Sierra Club*, 499 F.3d at 655. The EAB rejects “using a BACT analysis to require fundamental changes in the fuel design of electric power generating stations.” *Palmdale*, PSD Appeal No. 11-07, slip op. at 47. “Solar power in particular would displace the applicant’s proposal with an alternative energy source that” would redefine the source. *See Sierra Pacific*, PSD Nos. 13-01, 13-02, 13-03, & 13-04, slip op. at 62.

Sierra Club alleges that solar preheat would be a lower-emitting process. Petition for Review at 16. But EPA suggests that lower-emitting processes should be considered based only on “demonstrations made on the basis of manufacturing *identical or similar* product from *identical or similar* raw materials or fuels.” *NSR Manual* at B.10. The EAB confirms that a “control technique should not even be considered ‘potentially applicable’ unless the determination is ‘based on demonstrations made on the basis of manufacturing identical or similar products from identical or similar raw materials or fuels.’” *Cardinal FG Co.*, 12 E.A.D. at 165-66 (citing *NSR Manual* at B.10). Unlike the projects cited by Sierra Club, LPEC is not designed to provide renewable energy to the grid using solar power as a fuel input. Ex. CC at ¶ 9. BACT does not require permitting authorities to compare processes at two entirely different types of facilities. *See, e.g., Pennsauken County*, 2 E.A.D at 673; *Prairie State*, 13 E.A.D. at 28. Because solar preheat would fundamentally alter the fuel source at LPEC, and because it is a process that has only been demonstrated at facilities specifically seeking to

provide renewable energy to the grid, Region 6 was not required to evaluate it as a control technology for this project.

c. SIERRA CLUB DID NOT PROVIDE ADEQUATE SPECIFICITY IN ITS COMMENTS.

The EAB has previously rejected comments that “effectively [call] upon the Region to analyze a myriad of potential solar configurations for [a] proposed plant.” *Palmdale*, PSD Appeal No. 11-07, slip op. at 47. The EAB has also recognized that

[e]ngaging in such an exercise would impose a heavy burden on the Region that goes well beyond the permitting authority’s obligations to consider and respond to public comments and to satisfy statutory and regulatory obligations in setting a BACT emissions limit that protects public health and the environment. The permit process cannot work efficiently or as designed by Congress if the permit issuer is obliged to anticipate and analyze multiple permutations or variations of conceivable options that an overbroad and vague question can invoke.

Id. at 47-48.

Sierra Club provided one page of comments²² suggesting only that “given the greater efficiencies identified at the EPA Palmdale and Victorville 2 facilities with the use of solar hybrid technology in lieu of duct burners, the Region should include a solar hybrid configuration in its BACT analysis for LPEC.” Ex. 4 at 18. Sierra Club cited two permits – the Palmdale permit and the Victorville 2 permit.²³ *Id.* Merely citing entire permit applications in a footnote without further explaining how those permit applications logically connect to the proposed project cannot be

²² The heading of this section in Sierra Club’s comments on the LPEC permit is: “Solar Thermal Auxiliary Preheat Must be Considered in the BACT Analysis.” Ex. 4 at 18. This generic statement and the discussion that follows is not specific to LPEC. *See generally id.* Rather, it is recitation of a policy position held by Sierra Club. As *Palmdale* held, generic comments cannot “effectively [call] upon the Region to analyze a myriad of potential solar configurations for [a] proposed plant.” *Palmdale*, PSD Appeal No. 11-07, slip op. at 47.

²³ Sierra Club also claims that “[s]everal utilities in the United States are installing hybrid concentrated solar thermal technology to increase generation and increase efficiency of fossil fuel power plants” and that such systems “can decrease fuel use and thereby decrease emissions by 10 percent in a combined cycle power plant.” Ex. 4 at 18. But these bald assertions are not supported by any evidence and thus have not been raised with sufficient specificity.

sufficient. *ConocoPhillips Co.*, 13 E.A.D. at 801 (“it is not the Board’s responsibility to scour the record to determine whether an issue was properly raised below.”) (citations omitted). This is especially true given that Sierra Club’s comments were filed after the EAB issued its decision in *Palmdale*, concluding that requiring a fundamental change to the fuel impermissibly redefines the source. *Palmdale*, PSD Appeal No. 11-07, slip op. at 47. Yet the Petition for Review does not explain why the Palmdale project might be relevant to this project in light of the EAB’s decision. Similarly, the Petition fails to explain how consideration of solar thermal generation would align with LPEC’s business purpose. Nor does it provide any specific solar configurations that could apply to LPEC, as they must. *Id.* A single page of policy statements, readily distinguishable permits, and unsupported statements about the power industry does not a sufficient argument make. Therefore, the EAB should deny review of this argument.

CONCLUSION

For the reasons explained above, this Board should deny review of Sierra Club’s Petition for Review of the La Paloma PSD permit issued by EPA Region 6.

Respectfully submitted, this 27th day of December, 2013.

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STATEMENT OF COMPLIANCE

The foregoing complies with 40 C.F.R. § 124.19(d)(1)(iv) and (3). The length is 8,993 words, using the word count function in Microsoft Word.

DATED: December 27, 2013

/s/ Richard Alonso

Richard Alonso

BRACEWELL & GIULIANI LLP

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, electronically, the foregoing **RESPONSE FROM LA PALOMA ENERGY CENTER, LLC TO THE PETITION FOR REVIEW OF THE PREVENTION OF SIGNIFICANT DETERIORATION PERMIT ISSUED BY REGION VI FOR LA PALOMA ENERGY CENTER, HARLINGEN, TEXAS** through the Environmental Appeal Board's electronic filing system and by electronic mail to all persons on the service list (as listed below).

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I also certify that I have served a copy of the document and associated exhibits to the Environmental Appeals Board through the U.S. Postal Service.

Dated: December 27, 2013

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