

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

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

**[PROPOSED] RESPONSE TO PIO PICO ENERGY CENTER LLC’S  
NOTICE OF SUPPLEMENTAL INFORMATION**

Central to the permit, and to the issues in this case, is whether the particular brand, make, model and design of the Pio Pico Energy Center LLC’s (“PPEC”) proposed combustion turbines, and their particular startup times and ramp rates included in PPEC’s contract with San Diego Gas and Electric (SDG&E), prevent consideration of cleaner production processes in a best available control technology (BACT) analysis. *See e.g.*, Fact Sheet at 16 (Dkt # 3.02) (describing the “purpose” of the project as “to meet the specific objectives of SDG&E’s 2009 Request for Offers (RFO) and the resulting contract[.]”); Response to Comments (Dkt #3.03) at 28 (“The Project is appropriately defined at this time, and for our current purposes, by the applicant’s ultimate contractual obligation and its proposal to meet that obligation..”), 30 (rejecting cleaner production processes that may result in a different size plant as inconsistent with SDG&E’s RFO); Sierra Club Pet. (Dkt # 3) at 4-5, 7; Region’s Response (Dkt # 11) at 13-14 (arguing that the plant’s proposed combustion turbine technology is “necessary in order to meet the specific objectives of the 2009 Request for Offers... by... (SDG&E) and resulting contractual requirements in the Power Purchase Agreement (PPA) between SDG&E and PPEC LLC”), 14 (arguing that the contract requirements include the need to support renewable generation), 16-17 (arguing that the particular requirements of SDG&E dictate the applicant’s “business purpose”); PPEC Response (Dkt # 13) at 1 (“Pio Pico will be constructed to satisfy a request by... (“SDG&E”) for new peaking generation.”), 5-6 (arguing that the plant “was developed in response to a [RFO] by SDG&E to support renewable power” and that the particular brand and model of turbine is to address specific SDG&E requirements).

Sierra Club's Petition noted that on November 20, 2012, a hearing examiner proposed that the California Public Utilities Commission (CPUC) reject the contract between SDG&E and PPEC. (S.C. Pet. at 2). On March 21, 2013, the CPUC did reject that contract. *See Decision Determining San Diego Gas & Elec. 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, Dkt # 19). In addition to finding that the PPEC plant is not needed in the near term (if ever), and contrary to what the Region and applicant argue, the CPUC rejected the idea that the PPEC plant was needed to support integration of renewable generation. *Id.* at 18 ("the Commission has yet to determine the particular operational characteristics of resources that are needed to support renewable resources integration or to set procurement targets for them").

PPEC asserts that the CPUC's decision rejecting its contract with SDG&E is inconsequential because the plant "may be operated as a merchant plant," instead of pursuant to the contract with SDG&E and the particular startup, ramp rates, or renewable-supporting details of that contract that the Region and PPEC relied on. PPEC Notice (Dkt # 18) at 1; Region Response (Dkt # 11) at 13-14; PPEC Response (Dkt # 13) at 5-6 (same). If the plant as permitted was unrelated to a contract with SDG&E (i.e., a merchant plant), the Region's permitting basis, public comments, the response to comments, and the parties' arguments to the Board would have been entirely different. Or, the permit would have been entirely different. Thus, even if the PPEC plant could theoretically operate as a "merchant plant"—SDG&E's RFO and the resulting PPA cannot still serve to define applicant's purpose or what is technically feasible for that purpose. At a minimum, the permit and comment period must be reopened. *In re Indeck-Elwood LLC*, 13 E.A.D. 126, 147-48 (EAB 2006) (remanding a permit decision where the permitting authority changed a permit condition which could affect the underlying bases for the permit decision).

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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