



EPA's Proposed Permit or Fact Sheet. The attachments do not contain any actual comments on EPA's Proposed Permit or Fact Sheet for PPEC, nor has the commenter explained with any specificity the attachments' relevance to EPA's PSD permit decision. Therefore, EPA cannot provide a detailed response.

We also note that the commenter did not author any of the documents he submitted as attachments to those emails, with the exception of two letters, both dated January 18, 2012, which were submitted by the commenter and his attorney to SDACPD. These comment letters were issued long before EPA issued the Proposed Permit and Fact Sheet in this action, and constitute comments on SDAPCD's Preliminary Determination of Compliance for the project. However, the letters do not address or comment on the Proposed Permit and Fact Sheet, nor has the commenter explained with any specificity the letters' relevance to EPA's PSD permit decision. Accordingly, EPA cannot provide a detailed response to these letters.

The EPA chose a strategy to ignore my comments and feign ignorance of their relevance. It does not matter if I initially addressed my comments to the air district or the Pope. It does not matter when I wrote the comments, it matters that I timely submit them to the EPA as comments on the draft permit. Notably an attorney for Helping Hand Tools Johannes Epke reiterated some of my comments in his comments on this action and the EPA declined to consider them because they were originally written by me. They speak squarely to the issuance of this PSD permit and the EPA should have responded to them. The comments reference Federal PSD rules, Alternatives, and BACT. I believe that it is not an issue of who received the comments. First, the EPA is not some scorned prom date who received a second hand corsage. They are expected to be a responsible government agency and, at least, make a good faith effort to respond to comments. The real issue is not the salutation on the comments. It is who made the comments. I

have been prejudiced in this proceeding, probably for prior challenges of EPA actions. The tactic is to defer my comments to the EAB, change the standard of review, and put the comments on trial instead of the response to comments. Instead of comments, response, and appeal, if I do not agree with the response; the EPA sidestepped the whole response duty and in their silence believe that I cannot prove that they erred in issuing the permit. The EAB should simply remand the permit and instruct the EPA to respond to comments.

The EPA further prejudiced me when it extended an exclusive comment period to another member of the public. The EPA cannot pick and choose who it opens its comment periods to. I am a member of the public and I require the same rights as other US citizens. The EPA admitted giving preference to another commenter; “EPA was extending to him two additional weeks (until September 20, 2012) to comment only on the EJ Analysis for the Proposed Permit. EPA noted that it was not extending the public comment period for the Proposed Permit for the PPEC generally.” RTC 44. I require a reopening of the comment period for all members of the public.

The EPA stated “We also note that the commenter did not author any of the documents he submitted as attachments to those emails, with the exception of two letters, both dated January 18, 2012, which were submitted by the commenter and his attorney to SDACPD” RTC 74 No Other party is held to a standard that they must author all submissions themselves or that their submissions require some particular salutation.

In Palmdale the EPA complained that I did not provide adequate data for an alternatives analysis or a no project alternative, so this time I submit an Engineers (Bill Powers) robust testimony and report supporting no project and superior alternative technologies. Yet the EPA claims “The commenter does not provide information or analysis supporting his assertion that there is no need for the Project.” RTC 73

The EPA acknowledged my submissions, notably each submission was attached to emails which stated; “Attached please find my initial Pio Pico PSD comments Pio Pico PSD comments” including “a document entitled “Standardized Planning Assumptions (Part 1) for System Resource Plans” that was submitted to the California Public Utilities Commission” RTC 74 The Email that it was attached to also states; “This attachment supports a no project alternative as the project is not needed.”

The EPA acknowledged “two scholarly articles by Jacobson (“On the causal link between carbon dioxide and air pollution mortality” and “Enhancement of Local Air Pollution by Urban CO2 Domes”) RTC 74. The email that the documents were attached to also states; These attachments relate the Jacobson Effect and to localized effects of CO2 and other pollutants. My comment states; The District should study the localized effects of GHG’s They form a sort of dome around emitters that concentrate other emissions in the area. Please consider the Jacobson effect (attached) Comment 7.

My comments state The District should consider solar and wind assistance and alternatives.” Comment 5. I supported the conclusion with a need analysis, reports, attachments, and extensive engineer’s testimony. The EPA declined to respond. The EPA clearly erred because it failed to consider comments that disclosed superior alternatives that would limit the environmental damage associated with the pollution units. There is ample space on the site for, at least, solar augmentation of the source. This is an inherently lower emitting technology that would reduce all emissions. This should have been required in the BACT analysis for GHG and other pollutants.

The EPA identified my “document (presentation) prepared by a consultant entitled “San Diego Smart Energy 2020” a comprehensive need assessment that the EPA failed to consider.

The EAB should remand the permit to allow the EPA to consider all of my comments.

In Palmdale the EPA complained that I did not tell them that there were storage technologies for solar energy for when the sun does not shine. This time I submit; “a document (presentation) prepared by a consultant called “Energy Storage for Flexible Peaking Capacity” RTC 74, which demonstrates that energy generated by solar and wind can be stored to satisfy the business purpose of the project with preferred resources.

The EPA claimed in regard to the CEC proceeding; “the commenter has not provided enough specificity in the comment to indicate any specific details of those proceedings or the information developed therein that affect the Region’s PSD permit decision.” RTC 72

I provided exactly the information that I wished considered; “CEC document entitled “Rebuttal Testimony of Bill Powers” RTC 74

I rose to the EPA challenge of submitting more comprehensive comments. Instead of responding to my comments the EPA chose a route which is unbecoming of a Federal Agency. The EPA chose a cowardly tactic to evade its duty for this permit; to ignore germane comments and defer to the EAB. If the EAB allows this strategy it can expect the EPA to decline to respond to comments regularly until the courts correct this defect.

The EPA concludes; “As with the letters commenting on SDAPCD’s PDOC, the commenter has not explained with any specificity these documents’ relevance to EPA’s PSD permit decision, and therefore EPA cannot provide a detailed response. My 12 year old child can see the relevance and references to PSD in the comments, admittedly he is pretty sharp, but the EPA and any judge in the country should see the relevance.

The EPA stated; “We note, however, that while EPA has not conducted a detailed needs analysis for the PPEC, available information in the record for EPA’s permit decision indicates that there is, in fact, need for the Project – see Section 7.13 of the Fact Sheet, page 16. The applicant has a 20-year Power Purchase Agreement with San Diego Gas & Electric (SDG&E). The purpose of this project is to meet the specific objectives of SDG&E’s 2009 Request for Offers and the resulting contractual requirements contained in the PPA.” RTC 73. The EPA’s finding of fact regarding the need for the project is misplaced. The question of need is not a question of if 2 companies need to make money. It is a question of if the public benefit of the electricity exceeds the damage done by the pollution. The EPA stated; “We are not deferring in this case to any agency's specific determination of need for the PPEC, (*instead they deferred to two private companies*) and the commenter did not point to any specific information related to any such determination that we should consider. Rather, we have recognized that the State agencies in California are better suited than EPA to assess California's energy needs in general” RTC 73. While I did cite specific information on the subject at the time of the comment opportunity, the PUC had not issued its proposed decision. Now it has. On November 20, 2012 The PUC has proposed to deny the project and associated proposed PPA. The EAB should consider the new information to conclude that the project is not needed, and remand the permit.

The proposed PUC decision states; “This decision denies San Diego Gas & Electric Company authority to enter into purchase power tolling agreements with Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Power” 2. “we no longer find a need for additional resources to meet local and system resource adequacy” 14. “We cannot, on this record, find that the PPTAs are needed to meet SDG&E’s resource requirements” 16. “SDG&E asserts that the generation resources represented by the PPTAs are needed to support renewable

resources integration. (SDG&E opening brief at 23-25.) To the contrary, 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.” 11

### **Findings of Fact**

2. There is no LCR (*local capacity requirement*) need until 2018 under any scenario or forecast in the record of this proceeding.

**IT IS ORDERED** that:

1. San Diego Gas & Electric Company’s request for authority to enter into power purchase tolling agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power is denied without prejudice. 20

The underlying basis for concluding that simple cycle was needed for the project was the proposed PPA that is now being rejected by the state. The EPA’s GHG and other analysis which relies on this PPA should be moot. The EPA should not saddle the state with an inferior unneeded pollution source. The EPA should at least rely on the state if it is to fail and do its own analysis or consider the analysis that I provided.

The EPA replied to another commenter; “The commenter asserts that the advent of these faster starting combined cycle turbines has permitting implications. Because “simple-cycle turbines are inherently less efficient than combined-cycle turbines,” they emit much higher GHG emissions per megawatt and also have much higher criteria air pollutant emissions per megawatt and consume much more natural gas per megawatt. It is no longer necessary to sacrifice efficiency for shorter start-up times. The final permit needs to address these factors in the permitting analysis....As we discussed in our Fact Sheet, it is a necessary element of the Project

to operate over a wide range of loads and the unit suggested by the commenter is not capable of satisfying that objective. RTC 54. The EPA ignored my comments on the matter; even without the PUC proposed decision review of my comments would have demonstrated that the EPA should have required a combined cycle configuration.

The EPA failed to utilize the correct monitor. Bewilderingly the EPA allowed the applicant to utilize a distant monitor instead of the nearly adjacent ones including the one at the prison.

The EPA failed to require adequate mitigation, as detailed April Sumer' comment the Air pollution credits are invalid.

#### Conclusion

The permit should be remanded so that the EPA has the opportunity to respond to comments and consider new information.

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(Proposed CPUC decision attached)