

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 [PROPOSED] RESPONSE
REGARDING PIO PICO ENERGY CENTER, LLC’S
NOTICE OF SUPPLEMENTAL INFORMATION
AND SIERRA CLUB’S RESPONSE**

Respondent U.S. Environmental Protection Agency (“EPA”) Region 9 (“Region 9”) submits this response to Pio Pico Energy Center, LLC’s (“PPLLC”) Notice of Supplemental Information and Sierra Club’s response thereto. 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 Pio Pico Energy Center (“PPEC”) provides no basis for the remand or reopening of Region 9’s PSD permit decision for the PPEC, as explained below.

First, the CPUC’s final decision concerning the PPA was issued in a separate State law proceeding, under California public utilities law, well after the Region’s final PSD permit decision for the PPEC. As explained in Region 9’s Response to Petitions for Review in this case with respect to the CPUC’s November 20, 2012 *proposed* decisions to deny SDG&E’s application for approval of the PPA for the PPEC, there is no reason to reopen the PPEC PSD permit based on new information concerning this CPUC decision, which is not in the

administrative record. *See* Region 9’s Response to Petitions for Review (EAB PPEC Docket No. 11) at 22.

Second, even if it were appropriate to consider this new CPUC decision at this late stage of the PSD permit proceeding, it still remains unclear at this time what, if any, impact the CPUC’s decision will have on the PPEC project. *See id.* at 33 (noting that even if final CPUC decision were to disapprove the PPA, “it is possible that parties may appeal the CPUC’s decision or may submit a somewhat modified PPA or a PPA with different supporting information that would result in CPUC approval”). We note that PPLLC has stated that it is conferring with SDG&E to consider available options, and that it does not need a PPA to proceed with construction and operation of the PPEC project, as it could be operated as a merchant plant. PPLLC’s Notice of Supp. Information at 1.

Third, if Sierra Club is suggesting that the CPUC’s March 21, 2013 decision calls into question the need for the Project, this issue does not warrant review or reopening of the permit. As discussed in detail in Region 9’s Response to Petitions for Review, Region 9 reasonably determined that it would not conduct a comprehensive and detailed, resource-intensive needs analysis in this case. The CPUC’s recent disapproval of SDG&E’s application for authority to enter into the PPA at this time does not call into question the Region’s reasonable determination in this regard. *See* Region 9’s Response to Petitions for Review at 31-34.

Fourth, to the extent that Sierra Club is arguing that the CPUC’s decision not to approve SDG&E’s application for authority to enter into the PPA at this time somehow changes the fundamental purpose and design of the PPEC, and that the Region’s BACT analysis that considered this purpose and design was therefore erroneous or should be revisited, such argument is baseless. Most critically, as stated above, it remains unclear at this time what, if

any, impact the CPUC's decision will have on the PPEC project. In addition, as discussed in prior briefing in this matter, while the PPEC Fact Sheet's BACT determination includes information from the PSD permit application that originated in the PPA and SDG&E's related Request for Offers ("RFO") providing details concerning the nature of PPLLC's project purpose and operation as a peaking and load-shaping facility, in order to inform the BACT analysis' consideration of the technical feasibility of combined-cycle gas turbines ("CCGT") for the PPEC, regardless of the PSD permit application's reliance on information from the PPA¹ and RFO, it is clear that the substantive issue under consideration by Region 9 in its BACT determination was whether a CCGT was a feasible technology considering the Project's business purpose as a peaking and load-shaping facility. *See generally* Region 9's Response to Petitions for Review at 13-23; EPA Region 9's Opposition to Sierra Club's Motion For Leave to File Short Reply (EAB PPEC Docket No. 17) at 4-5. As the Region has previously noted, the overall design elements of the peaking and load-shaping facility that was proposed by PPLLC are consistent with the purpose and design of peaking and load-shaping power plants in general as well as the nature and purpose of the PPEC in particular. Region 9's Response to Petitions for Review at 17. Therefore, even if one were to assume that the PPEC might be operated as a merchant plant for some period of time, it does not follow that the fundamental nature and purpose of the project that has been permitted -- *i.e.*, a peaking and load-shaping facility with certain fundamental design elements consistent with that purpose -- would change absent an approved PPA. In sum, the CPUC's action disapproving SDG&E's application for authority to enter into the PPA for the PPEC at this time does not change the fundamental peaking and load-

¹ As noted previously by Region 9 and the Sierra Club, the administrative record for Region 9's PSD permit decision for the PPEC did not include the PPA itself.

shaping purpose and associated design elements of the facility that is under consideration in this PSD permit proceeding.

In conclusion, the CPUC's March 21, 2013 decision to disapprove SDG&E's application for authority to enter into a PPA for the PPEC does not provide a basis for the remand or reopening of Region 9's PSD permit decision for the PPEC.

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Respectfully submitted,

/s/ Julie Walters

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