

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

In re:)
)
Palmdale Energy, LLC's)
Palmdale Energy Project) PSD Appeal No. 18-01
)
PSD Permit No. SE 17-01)
)

PETITIONERS' MOTION FOR LEAVE TO FILE A REPLY BRIEF

Pursuant to 40 C.F.R. § 124.19(c)(1) Petitioners respectfully request leave to file the attached Reply Brief. In support of this request, Petitioners state the following:

In EPA Region 9's Response to Petition for Review (Response or R9 Br.), Region 9 raises numerous procedural arguments about the level of detail which must be in comments and what was raised and not raised. Petitioners have never had an opportunity to address these procedural arguments and need to do so in a Reply Brief. Region 9 also offers numerous new analyses and arguments to try to fix or prove harmless numerous errors which Petitioners identified in their Petition. It is necessary for Petitioners to respond to these new arguments and analyses as

they are wrong, but Petitioners have never had an opportunity to address these before.

Specifically, as to Best Available Control Technology (BACT) analysis, Region 9 claims in its Response, for the first time, that it rejected batteries systems replacing duct burners at Step 1 of its BACT analysis for greenhouse gases (GHG) because the use of batteries systems to replace duct burners would redefine the source. R9 Br. at 5, fn. 3. It is necessary for Petitioners to reply to this argument because it is new, inconsistent with the fact that Region 9 included a “back of the envelope” GHG BACT review in the Response to Comments, and Petitioners have never had a chance to address it before.

Similarly, Region 9 argues that Petitioners failed to raise in their comments the issue of using batteries systems to replace duct burners in a GHG BACT analysis. R9 Br. at 14. It is necessary for Petitioners to reply to this argument because it is new and Petitioners have never had a chance to address it before.

With regard to Step 2 of the BACT analysis, Region 9 offers a new procedural argument that the Board cannot consider information Region 9 placed in the record about existing and planned batteries systems because Region 9 put this evidence in the record for a reason other than a Step 2 BACT analysis of batteries systems replacing duct burners. R9 Br. at 7-9. Region 9 also offers a new substantive argument about lack of evidence about potential technical barriers from

the operational pairing of utility scale batteries and combined cycle combustion turbines. R9 Br. at 9. Again, it is necessary for Petitioners to reply to these arguments because they are new. Petitioners have never had a chance to address them before.

As to Step 3 of the BACT analysis, Region 9 offers a new argument to get around the legal error in the analysis in the Response to Comments, which assumed batteries systems would have to purchase electricity at retail prices. R9 Br. at 11. Region 9 also changes the “not measurable” term found in the Response to Comments to “not meaningful,” admits that the reductions in nitrogen oxides and carbon monoxide emissions are actual twice as much as in the Response to Comments, incorrectly claims that the reductions in carbon dioxide (CO₂) are significantly less than in the Response to Comments, and offers a new analysis based on these *post hoc* change. *Id.* R9 Br. at 11-12. Once again, it is necessary for Petitioners to reply to these arguments because they are new. Petitioners have never had a chance to address them before.

The same holds true for Step 4 of the BACT analysis. The Response has new calculations and analysis that Petitioners have never seen before, much less had an opportunity to respond to. Therefore, Petitioners need a reply brief to respond.

Region 9 uses the same new calculation of CO₂ reductions from Step 3 in Step 4 because Region 9 claims in its Response that the CO₂ emission reduction calculation in the Response to Comments was wrong. Region 9, for the first time, uses an **average** wholesale price for electricity purchased from the grid. R9 Br. at 16. Region 9 admits that the Step 4 analysis in the Response to Comments failed to consider capital costs savings from not building duct burners and for the first time, in the Response, offers a capital cost that even Region 9 describes as “dubious.” R9 Br. at 18. Similarly, Region 9 admits that the Response to Comments failed to consider cost savings from buying fewer carbon credits and offers, again for the first time, a value for that. R9 Br. at 19.

As to the ambient impact analysis, Region 9 argues that these are highly technical issues to which the Petitioners bear a heavy burden. R9 Br. at 20. This mischaracterized the Petitioners issue. The issue is largely over the definition of “ambient air”. Petitioners should be able to reply to clarify what they are arguing.

Region 9 also claims that Petitioners are raising new arguments about public access to Palmdale Regional Airport and failure to include emissions from jet engines. R9 Br. at 26, 31. These are new procedural arguments for which Petitioners can only address in a reply brief.

As to the merits of this issue, Region 9 offers a new interpretation of what it assumed with regard to transient aircraft. Petitioners need to respond to this newly announced assumption.

Therefore, for the reasons explained above, Petitioners respectfully request for leave to file the accompanying Reply Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I had the above Motion served on June 29, 2018 on the following:

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