

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

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In re:	)	
	)	
Palmdale Hybrid Power Plant	)	PSD Appeal No. 11-07
	)	
PSD Permit No. SE 09-01	)	
_____	)	

**MOTION FOR 60-DAY STAY OR EXTENSION OF TIME  
TO FILE RESPONSE TO PETITION FOR REVIEW**

EPA Region 9 respectfully requests that the Environmental Appeals Board (“EAB” or “Board”) stay this proceeding for 60 calendar days or, in the alternative, grant a one-week extension of time to Region 9 to file its response to the petition for review in the instant case.

In a letter dated November 22, 2011, the EAB set a deadline of December 13, 2011 for Region 9’s response in this matter. See letter from EAB Clerk Eurika Durr to Nancy J. Marvel re: Palmdale Hybrid Power Plant, Appeal No. PSD 11-07 (Nov. 22, 2011). On the same day, the Board also sent to counsel for EPA Region 9 and Petitioner Rob Simpson, and copied to the Permittee, the City of Palmdale, a letter inviting the parties to participate in the EAB’s pilot Alternative Dispute Resolution (“ADR”) program. See letter from EAB Clerk Eurika Durr to Nancy J. Marvel and April Rose Sommer re: Palmdale Hybrid Power Plant, Appeal No. PSD 11-07 (Nov. 22, 2011). Subsequently, all the parties to this proceeding, including Petitioner, Region 9, and Permittee, which has moved to intervene in this proceeding, have requested participation in the pilot ADR program.

The EAB's November 22, 2011 letter to Region 9 and Petitioner discussing the pilot ADR program states that if all parties agree to participate in the program, the matter will be stayed for a limited period of time, while noting that in limited circumstances, the Board may determine that use of the ADR program is not appropriate. The EAB's Pilot Alternative Dispute Resolution Program Information Sheet, which was enclosed with this November 22, 2011 letter, states that following all parties' request to participate in the pilot ADR program, and the Board's assignment of a settlement judge and possibly settlement counsel, the Board will issue an order notifying the parties of the assignment and staying the proceedings for 60 calendar days, unless the Board determines that a shorter stay is appropriate due to time constraints or that ADR is not appropriate. See EAB Pilot ADR Information Sheet at 2.

In this case, the EAB has not yet issued a formal order in response to the parties' request for ADR, but the EAB's ADR coordinator, David Heckler, has contacted the parties to schedule an initial ADR conference call. Region 9 believes that this matter is appropriate for ADR given the expressed interest of all the parties, and that a 60-day stay of this proceeding is warranted at this time, for the reasons discussed below.

When all parties, including the Permittee, requested to participate in the ADR program, they believed that ADR would be in their interest with the understanding that the proceeding would likely be stayed for 60 days if ADR were to proceed, in accordance with the Board's prior statements concerning the implementation of the pilot ADR program.

When considering participation in the pilot ADR program, Region 9 considered the following benefits as important incentives for participating in the program: (1) potentially avoiding the significant resources entailed with fully briefing the issues raised in the petition for review, and (2) having time to focus its efforts on settlement through the ADR process rather

than on litigation. However, these benefits can only be realized if the proceeding is stayed; without a stay, the Region will expend significant resources briefing the case that ultimately may prove unnecessary should the matter be resolved through the ADR program, and will have to focus initially on briefing, rather than settling, the case. Similar benefits would also accrue to the Permittee in this case if a stay is issued by the Board; counsel for the Permittee has informed Region 9 that the Permittee continues to support a 60-day stay of the proceedings in this case, for the reasons stated above, and that Permittee intends to file papers with the Board so stating.<sup>1</sup>

Alternately, if the Board determines that a stay is not appropriate in this case, Region 9 requests a one-week extension of the deadline for filing its response to the petition for review, with a new deadline of December 20, 2011. The Region has spent a significant amount of time that would otherwise have been devoted to work on the response brief following up on Petitioner's request for ADR, both in internal discussions within various EPA offices, and in discussions with the Permittee, whom Region 9 believed would be a necessary party in order for the ADR process to be effective. This coordination took away from the time available and necessary to fully address the numerous issues raised in the petition for review, including the time needed to consult with offices within EPA Headquarters with an interest in the matters raised in the petition. The time spent on this additional coordination was especially detrimental in light of the fact that Region 9 was first notified of the Petition for Review during the week of Thanksgiving; numerous Agency staff assigned to this matter had prior family commitments associated with the holiday that week which precluded their devoting significant resources to this matter during that time.

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<sup>1</sup> We also note that should Permittee or any other party to this case determine in the future that the ADR process is resulting in undue delay in the proceedings, the party can at that time decline further participation in the ADR process, in which case the matter would be returned to the EAB's active docket. See EAB Pilot ADR Information Sheet at 3.

As noted above, counsel for the Permittee informed Region 9 by telephone, on December 7 and 8, 2011, that the Permittee supports this motion for a 60-day stay (or, in the alternative, a one-week extension of time for responsive briefing) and intends to file papers with the Board to that effect. In addition, counsel for Petitioner notified Region 9 by email dated December 7, 2011 that Petitioner will not oppose a motion for a stay or any extension of time sought.

In conclusion, Region 9 believes a 60-day stay of this case is appropriate (or, in the alternative, a one-week extension of time for responsive briefing) and respectfully requests the Board's attention to this matter at the Board's earliest convenience.

Date: December 8, 2011

Respectfully submitted,

*/S/ Julie Walters*

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## CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached **MOTION FOR 60-DAY STAY OR EXTENSION OF TIME TO FILE RESPONSE TO PETITION FOR REVIEW** to be served by electronic mail upon the persons listed below.

Dated: December 8, 2011

*/S/ Julie Walters*

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Julie Walters

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