

**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] SIERRA CLUB’S RESPONSE TO PIO PICO ENERGY CENTER
LLC’S JUNE 11, 2013 NOTICE OF SUPPLEMENTAL INFORMATION**

Sierra Club hereby submits this unopposed response to the Notice of Supplemental Information submitted by Pio Pico Energy Center, LLC (“PPEC”) on June 11, 2013. PPEC filed a nearly completely redacted document titled the “Sixth Amendment to the Power Purchase Tolling Agreement” (“Sixth Amended PPTA”). (Dkt. #32.01) Sierra Club asserts the document is not relevant to the issues in this proceeding because the PPTA does not become effective unless and until the California Public Utilities Commission (“CPUC”) approves an application from San Diego Gas & Electric Company (“SDG&E”), which has not happened. PPEC’s submission also raises concern because the heavily redacted document does not provide any context or substantive evidence whatsoever. The Board should not consider the submission of the Sixth Amended PPTA as relevant to the issues in this proceeding.

PPEC agrees that the Sixth Amended PPTA is not effective at this time because the California Public Utilities Commission (“CPUC”) must approve any power purchase agreement before it becomes effective. Cal. Pub. Util. Code § 454.5(c)(3) (“The commission shall...either approve or reject the individual contracts submitted by the electrical corporation”). The CPUC has already rejected a previously proposed PPTA between PPEC and SDG&E on the grounds that there was no need for the facility until 2018 at the earliest. The Board already provided PPEC an opportunity to address this issue at the April 11, 2013 prehearing conference and again in PPEC’s April 15, 2013 Supplemental Brief (Dkt. #23). Counsel for PPEC already informed the Board during the status conference on April 11, 2013 that it was in the process of negotiating an amended PPTA that would be completed by the end of April. (Dkt. #31, p. 14) Sierra Club

asserts that the Sixth Amended PPTA does not provide any new information to the Board other than the fact that the parties completed these negotiations six weeks behind schedule.

Sierra Club is also concerned about the submission of confidential documents in this proceeding that PPEC will not allow other parties to review. PPEC declined to provide an unredacted copy of the Sixth Amended PPTA to Sierra Club. PPEC's counsel assured Sierra Club by phone that the redacted portions of the document do not contain any information pertinent to the disposition of this case, such as a direct reference to the operational characteristics of the Pio Pico facility. In this instance and for the sake of efficiency in this proceeding, Sierra Club takes counsel at his word regarding the contents of the redacted document. However, the Board should not condone the practice of one party submitting confidential documents in a proceeding without allowing other parties to review those documents. If the Board relies on any aspect of the redacted portions of PPEC's filing, Sierra Club requests the opportunity to review those portions and to provide comment.

Respectfully submitted, this 18th day of June, 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: June 18, 2013

s/ David C. Bender
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