



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

Frank Tavakoli
Environmental Engineer
CalPeak Power LLC
7365 Mission Gorge Road, Suite C
San Diego, CA 92120

Dear Mr. Tavakoli:

This letter represents U.S. EPA's formal determination of applicability under §72.6(c) of the Acid Rain regulations in response to your letter of February 8, 2005 requesting that U.S. EPA "exempt" the following CalPeak Power LLC ("CalPeak") units in California: Border (ORISPL 55510) Units GT-1 and GT-2, in Chula Vista; El Cajon (ORISPL 55512) Units GT-1 and GT-2, in El Cajon; Enterprise (ORISPL 55513) Units GT-1 and GT-2, in Escondido; Panoche (ORISPL 55508) Units GT-1 and GT-2, in Firebaugh; and Vaca Dixon (ORISPL 55499) Units GT-1 and GT-2, in Vacaville.

Background

According to your letter, CalPeak installed at each of the above mentioned sites 2 simple combustion turbines, each of which serves a single generator with nameplate capacity of 49.5 MW. Each of the combustion turbines burns only natural gas meeting the requirements set by the California Public Utility Commission, and each commenced commercial operation during October 2001-May 2002. Since each of the combustion turbines burns natural gas, each is "fossil fuel-fired" and a "unit" as those terms are defined in §72.2 of the Acid Rain Program regulations. Since each of the units began generating electricity for sale on or after November 15, 1990, each unit is also a "utility unit" and a "new unit," also as defined under §72.2.

EPA's Determination

CalPeak states that all of the units should be exempt from the Acid Rain Program because each combustion turbine: (1) is a low emitter of SO₂ and NO_x, (2) operates a low number of hours annually, and (3) complies with the monitoring and reporting requirements of each facility's respective local air permitting authority. U.S. EPA rejects the petitioner's conclusion that these conditions serve as a valid basis for concluding that CalPeak's units should not be subject to the Acid Rain Program. The

provisions of the Acid Rain Program regulations addressing applicability (i.e., §§72.6 and 72.7) set the criteria for determining whether a unit is subject to the Acid Rain Program and do not provide for the consideration of a unit's actual annual SO₂ or NO_x emissions, its annual hours of operation, or compliance with a permitting authority's monitoring requirements.¹

Moreover, CalPeak does not assert that any of its units meet the criteria for an exemption from the Acid Rain Program under §72.6(b) or §72.7. In fact, none of the units meet these criteria. For example, §72.6(b) establishes exemption criteria for a simple combustion turbine commencing commercial operation before November 15, 1990 and for certain cogeneration units or independent power production facilities, while §72.7 establishes exemption criteria for certain new units serving generators that are 25 MW or less. Clearly, CalPeak's units do not qualify for exemptions under any of these provisions. Since each of CalPeak's 10 combustion turbines are "new units," and "utility units," each combustion turbine is also an "affected unit" under §§72.2 and 72.6(a)(3)(i). Therefore, the owners and operators must ensure that each of the combustion turbines complies with all applicable requirements of the Acid Rain Program, including the requirement to apply for and receive an Acid Rain permit (under part 72), to monitor and report emissions (under part 75), and to hold allowances to cover sulfur dioxide emissions (under parts 72 and 73).

EPA's determination in this letter relies, and is contingent, on the accuracy and completeness of the representations in your letter, and is appealable under part 78. The applicable regulations require you to send copies of this letter to each owner or operator of the affected units. See §72.6(c)(1). If you have any further questions regarding the Acid Rain Program, please contact Robert Miller of EPA's Clean Air Markets Division at (202) 343-9077.

Sincerely,

/s/ (April 6, 2006)

Sam Napolitano, Director
Clean Air Markets Division

cc: Richard Smith, San Diego County APCD
David Crow, San Joaquin Valley APCD
Larry Greene, Yolo-Solano AQMD
Steve Frey, U.S. EPA Region 9
Robert Baker, U.S. EPA Region 9

¹ The exemption under §72.8 for permanently retired units obviously does not apply to CalPeak's units.