



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

OFFICE OF
AIR AND RADIATION

J. Alan Hines
Carson Energy Group
8580 Laguna Station Rd.
Elk Grove, CA 95758

Dear Mr. Hines:

The Acid Rain Division has received your request for an applicability determination for the Carson Ice-Gen Project under 40 CFR 72.6(c). This letter represents EPA's official determination of applicability for Carson Ice-Gen which commenced commercial operation in May, 1992 (ORIS code 7527).

According to the description in your letter and supporting information, Carson Ice-Gen is an independent power production (IPP) facility consisting of two gas turbines headered to one heat recovery steam generator. The cogeneration facility has a nominal rating of 54 MWe.¹ In addition, the facility has a 41 MWe peaking turbine. The facility has a power sales agreement with the Sacramento Municipal Utilities District (SMUD) for 91 MWe. The power sales agreement arose from SMUD's March 1990 Request for Proposals, which was a bid solicitation to the general public. Carson Energy Group submitted its proposal to SMUD in April 1991. SMUD selected the Carson Ice-Gen Project proposal for final negotiations in August 1991. Carson Energy Group and SMUD executed the power sales agreement in February 1992.

Based on the information above, the units (both gas turbines and the peaking turbine) are affected units under the Acid Rain Program. As of November 15, 1990, the Carson Ice-Gen project did not have the necessary qualifying power purchase commitments, as required by 40 CFR 72.6(b)(6)(i). The term "qualifying power purchase commitment" is defined in §72.2 as a "power purchase commitment in effect as of November 15, 1990." 40 CFR 72.2 (emphasis added). A "power purchase commitment" is, in relevant part, a "utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder." Id. (emphasis added). Together these two definitions require the Carson Ice-Gen project to have resulted in being selected as the winning bidder by November 15, 1990. Similarly, as of November 15, 1990, Carson Ice-Gen did not have any of the other types of "power purchase commitments" under the §72.2 definitions (i.e., a power sales agreement or an order requiring SMUD to enter such an agreement or a letter of intent from SMUD to purchase power from Carson Ice-Gen). As of that date, Carson Energy Group had not even submitted a proposal in response to the SMUD bid solicitation. SMUD did not select the Carson Energy Group proposal

¹Carson Energy Group does not claim that Carson Ice-Gen qualifies as an unaffected cogeneration facility under 40 CFR 72.6(b)(4).

as a project for final negotiations until August 1991. In the case of the Carson Ice-Gen project, the power purchase commitment with SMUD was not "in effect as of November 15, 1990." 40 CFR 72.2.

You suggest that because the bid solicitation in question eventually "resulted" in the selection of the Carson Ice-Gen project by SMUD, somehow a "power purchase commitment," in retrospect, can be deemed to have been "in effect as of November 15, 1990." This claim is inconsistent with the language of not only the regulations, but also title IV itself. The statutory provision creating the exemption for certain IPP facilities provides that title IV of the Clean Air Act (CAA) "shall not apply to a `new independent power production facility'... if, as of the date of enactment, ... the facility has been selected as a winning bidder in a utility competitive bid solicitation." 42 U.S.C. 7651d(g)(6)(iv). This provision requires the selection of the facility under the bid solicitation to have taken place by November 15, 1990.²

The purpose of the exemption for certain IPP facilities was to provide relief to sources that, as of November 15, 1990, were locked into agreements that did not enable them to pass on the costs of compliance. 58 FR 15634, 15638 (March 23, 1993); see also 136 Cong. Rec. S3027-28 (March 22, 1990 remarks of Sen. Wirth discussing the purpose of the amendment that was the predecessor of CAA §405(g)(6)). Prior to submitting a bid in April 1991, in no sense was Carson Energy Group committed (consistent with §405(g)(6)) to generate electricity at a fixed price and unable to pass through the costs of Title IV compliance. Treating the SMUD - Carson Ice-Gen project as having a commitment meeting the requirements for the IPP exemption would be contrary to the purpose of the statutory provision as well as the language of the statute and regulations.

This determination is based solely on the representations made in your letter of April 8, 1994 and is appealable under 40 CFR part 78. The applicable regulations require you to send copies of this letter to each owner or operator of Carson Ice-Gen. 40 CFR 72.6(c). If you have further questions regarding the Acid Rain Program, please contact Robert Miller of my staff at (202) 233-9077.

Sincerely

/s/ (August 6, 1996)

Brian J. McLean, Director
Acid Rain Division

cc: Chris Oh, OECA
Martha Larson, Region 9

²Assuming arguendo that the relevant regulatory provisions are ambiguous on this point, such ambiguity must be resolved in a manner that is consistent with the plain language of the statute.