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February 7, 2011

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VIA PERSONAL DELIVERY

Ms. Melissa Jones, Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814



**Re: Pio Pico Energy Center Project (11-AFC-1)
Application for Designation of Confidential Record**

Dear Ms. Jones:

On behalf of Pio Pico Energy Center LLC ("Applicant"), we submit this Application for Designation of Confidential Record ("Application") with respect to information regarding the Pio Pico Energy Center Project ("PPEC"). This Application requests confidential designation of a record under Title 20, California Code of Regulations, section 2505. Applicant understands that, pursuant to Title 20, California Code of Regulations, sections 2505(a)(2) and 2505(a)(3)(B), the attached information will not be publicly disclosed while this Application, or any appeal of the California Energy Commission's (the "Commission") determination on such Application, is pending.

Applicant provides the following in support of this Application:

(a) Description/Separation of the Confidential Records

The record, identified as "Enclosure A" submitted under seal with this Application and marked "Confidential" (hereinafter "Submitted Information"), is the subject of this Application. The Submitted Information is a confidential record related to Applicant's strategy and plans to secure Emission Reduction Credits ("ERCs"). The record constitutes trade secret information pursuant to California law, as is further discussed below.

(b) Specific Indication of Those Parts of the Record to be Kept Confidential

Applicant requests the Commission designate the Submitted Information as confidential in its entirety.



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(c) *The Length of Time the Record Should be Kept Confidential*

Due to the proprietary and trade secret nature of the Submitted Information, Applicant requests the Submitted Information be kept confidential in perpetuity or, in the alternative, until publication of the San Diego Air Pollution Control District's release of its Preliminary Determination of Compliance ("PDOC").

(d) *Provisions of Law Allowing the Commission to Keep the Documentation Confidential*

The Submitted Information is a trade secret under California law and the Commission should, therefore, maintain its confidentiality pursuant thereto.

A trade secret is information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (Civ. Code § 3426.1(d).) To determine whether certain information is a trade secret, one must evaluate whether the matter sought to be protected is information (1) which is valuable because it is unknown to others, and (2) which the owner has attempted to keep secret. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1454.) A company's strategic plans and information related to competitive pricing are considered trade secrets by California courts. (*Id.* at 1455-1456.)

The Submitted Information is a trade secret under the above standards. Applicant's negotiation strategies regarding ERCs derive independent economic value from not being disclosed to the public or to competitors because of the competitive nature of the ERC market. The release of such information could hinder the process by which Applicant and other companies negotiate within the ERC market, particularly with regards to ERC pricing. Given these facts, the Submitted Information is a trade secret and Applicant therefore seeks confidential treatment thereof.

In addition to the foregoing, Government Code section 6254.15 exempts corporate proprietary information, including trade secrets, from disclosure under the California Public Records Act ("PRA"). Government Code section 6255 also permits public agencies to withhold any public record where the public interest served by not disclosing the record outweighs the public interest



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served by disclosure of the record. These provisions govern the Commission's treatment of the Submitted Information in relation to a PRA request. Both Government Code section 6254.15 and section 6255 allow the Commission to protect the Submitted Information from disclosure to the public. First, as a trade secret, the Submitted Information is protected from disclosure under section 6254.15. In addition, pursuant to section 6255, the public interest is best served by keeping information related to Applicant's negotiation strategies regarding ERCs confidential due to the competitive nature of the ERC market in California.

The Submitted Information, presented in a sealed envelope concurrently herewith, may be opened only if the Executive Director determines it can be designated confidential pursuant to the aforementioned provisions. If the Executive Director determines the Submitted Information does not qualify for confidential treatment, Applicant requests the Submitted Information be returned to this office in the sealed envelope.

(e) Aggregation and Masking of the Confidential Information

The Submitted Information has been distilled from the broader business strategy that Applicant has developed for PPEC and represents the maximum extent to which the information can be aggregated and masked.

(f) The Submitted Information is Presently Confidential

The Submitted Information has been presented under seal to the San Diego Air Pollution Control District (the "District"). The Applicant intends to submit the same record to the District and request that the District maintain the confidentiality of the Submitted Information in perpetuity, or in the alternative, until publication of the District's PDOC. Applicant anticipates the District will approve Applicant's request and treat the Submitted Information as trade secret pursuant District Rule 176(b). Besides the District, Applicant will not disclosed the Submitted Information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting Applicant in its efforts related to the pending AFC. Furthermore, Applicant has not released any of the Submitted Information to any member of the public and has prohibited its employees, affiliate employees, consultants, and attorneys from releasing any portion of the Submitted Information to the public at any time.

I certify under penalty of perjury that the information contained in this Application for confidential designation is true, correct, and complete to the best of my knowledge. As attorney



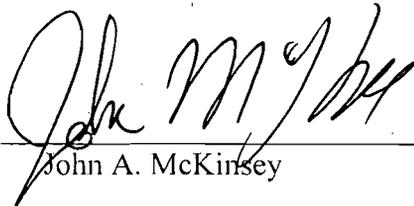
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for Pio Pico Energy Center LLC, I am authorized to make this certification and submit this Application on behalf of the Applicant.

Dated: _____

Stoel Rives LLP

By: 

John A. McKinsey