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February 7, 2011

BY HAND DELIVERY

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

ORIGINAL

COMPLETED

**Re: Pio Pico Energy Center (11-AFC-1)
 Application for Designation of Confidential Paleontological Resources Records**

Dear Ms. Jones:

Pio Pico Energy Center, LLC ("PPEC") submits this Application for Designation of Confidential Records ("Application") with respect to the attached information pertaining to Paleontological Resources (Attachment A). PPEC is submitting this Application as part of its Application for Certification of the Pio Pico Energy Center, which addresses the topic area of Paleontological Resources in detail.

Through this letter, PPEC requests confidential designation of the attached information under Title 20, California Code of Regulations, section 2505. In addition, PPEC understands that pursuant to Title 20 California Code of Regulations sections 2505(a)(2) and (a)(3)(B) the attached information will not be publicly disclosed while this Application for Confidential Designation, or any appeal of the Commission's determination regarding this Application, remains pending. PPEC also understands that the Commission intends to execute a memorandum of understanding incorporating similar terms with the paleontological resources information centers associated with the PPEC project.

PPEC provides the following in support of its Application:

- (a) *Description/Separation of the Confidential Records.*

Attachment A, which is marked "Confidential," is the subject of this Application and pertains to paleontological resources within the Project area, and which may be impacted by the Project. This information includes confidential maps of paleontological resources sites and confidential results of a field survey, literature search, and archival research regarding potential paleontological resources.



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

With respect to Attachment A, PPEC requests that the Commission designate the records as confidential in their entirety. A summary of the paleontological resources in the Project area and an analysis of potential impacts to those resources are presented in Section 5.8 and in the non-confidential Appendix L of the Application for Certification.

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

Attachment A should be kept confidential permanently. The information attached hereto assists in identifying potential locations of paleontologically sensitive resources in the Project area. Accordingly, disclosure of such information could heighten the risk of unauthorized excavation of such resources, and/or unauthorized removal of the same from locations of potential resources referenced in the report. This concern would still exist with respect to the general vicinity around the Project even after the conclusion of this siting procedure and construction of an approved facility on the proposed site pursuant to a certificate to construct and operate.

(d) Provisions of Law Allowing the Commission to Keep the Documentation Confidential: Disclosure of the Information is Against Public Interest.

Attachment A contains information that assists in identifying any paleontological resources that might be present in and around the area of the proposed Project site. Evidence Code section 1040 sets forth a privilege entitling public entities to refuse to disclose official information acquired in confidence by a public employee in the course of his or her duties, when disclosure of the information is against the public interest because there is a necessity to preserve the confidentiality of the information that outweighs the need for disclosure in the interest of justice. Evidence Code section 1040 applies here to protect this information from disclosure in order to guard against potential unauthorized excavation and/or removal of cultural and/or paleontological resources. In addition, the California Public Records Act protects the confidentiality of any records that are exempted from disclosure under provisions of the Evidence Code relating to privilege, such as Evidence Code section 1040. (Gov't. Code § 6254(k).)

(e) Aggregation and Masking of the Confidential Information.

Masking is not necessary because, as discussed above, the paleontological resources potential, the review undertaken, and the mitigation measures identified are contained within Section 5.8 of the Application for Certification.



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(f) *The Submitted Information is Presently Confidential.*

PPEC has not disclosed Attachment A to anyone other than its employees, affiliate employees, consultants, and attorneys assisting PPEC with its efforts related to the Application for Certification filed concurrently herewith. Furthermore, PPEC has not released any of the information contained in Attachment A to any member of the general public and has prohibited its employees, affiliate employees, consultants, and attorneys from releasing to the public any portion of Attachment A at any time.

I certify under penalty of perjury that the information contained in this Application is true, correct, and complete to the best of my knowledge. As an attorney for PPEC, I am authorized to make the above certification and to submit this Application on the behalf of PPEC.

Dated: February 7, 2011

Stoel Rives LLP

By: 
John A. McKinsey