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May 25, 2011

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VIA PERSONAL DELIVERY

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

COMPLETED

DOCKET
11-AFC-1
DATE 5/27/11
RECD. 5/25/11

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 the California Independent System Operator's ("CAISO") Cluster Phase I Interconnection Study for PPEC. 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.

(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. The content of the Submitted Information is maintained in confidence by CAISO pursuant to CAISO Tariff Appendix Y, Section 13.1. The Submitted Information contains trade secret information related to PPEC's technology, research and development, business affairs, and/or pricing. The content of the Submitted Information derives value from not being disclosed to the public or to competitors because of the competitive nature of the energy market. The release of such information could hinder the process by which Applicant and other companies facilitate the generation of energy within the State of California. 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 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



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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 confidential the Submitted Information related to the interconnection and grid requirements for PPEC.

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

As noted in part (d), *infra*, the Submitted Information is currently confidential pursuant to the CAISO interconnection study process. Besides the CAISO, Applicant will not disclose 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 for Pio Pico Energy Center LLC, I am authorized to make this certification and submit this Application on behalf of the Applicant.

Dated: 5/25/11

Stoel Rives LLP

By: Melissa A. Foster
Melissa A. Foster