

**DOCKETED**

**11-AFC-1**

TN # 66410

AUG 01 2012

**STATE OF CALIFORNIA**  
**Energy Resources Conservation**  
**and Development Commission**

**In the Matter of:**

**The Application for Certification for the**  
**PIO PICO ENERGY CENTER, LLC**

**Docket No. 11-AFC-01**

**PIO PICO ENERGY CENTER, LLC'S**  
**POST-HEARING BRIEF RE NOISE**  
**RELATED TO THE JULY 23, 2012 EVIDENTIARY HEARING**

August 1, 2012

John A. McKinsey, Esq.  
Melissa A. Foster, Esq.  
Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
Phone: (916) 447-0700  
Facsimile: (916) 447-4781  
Attorneys for Pio Pico Energy Center, LLC

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

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**I. INTRODUCTION**

On Monday, July 23, 2012, California Energy Commission Staff and Applicant Pio Pico Energy Center, LLC ("PPEC") participated in a publicly-noticed workshop in an effort to resolve noise and vibration issues as such relates to Staff's proposed Condition of Certification ("COC") NOISE-4 as published in the Final Staff Assessment ("FSA") for the Pio Pico Energy Center Project ("PPEC"). While Staff and Applicant resolved issues related to monitoring at LT-1 and LT-2, Staff and Applicant did not resolve issues related to the noise limit applicable at the PPEC property line during the workshop. Thus, after considering evidence and hearing testimony from Applicant's expert and the County of San Diego during the evidentiary hearing on the same date, the Committee ordered the parties to provide legal briefs on or before August 1, 2012 regarding COC NOISE-4. The Committee further instructed the parties that any reply briefs shall be filed on or before August 6, 2012.

**II. BACKGROUND**

Staff published the Preliminary Staff Assessment ("PSA") on February 22, 2012. COC NOISE-4, as presented in the FSA, was not included in the PSA. Specifically, the PSA did not

include noise operating limitations other than at monitoring locations LT-1 and LT-2, which are deemed as sensitive receptors. On May 22, 2012, Staff published the Final Staff Assessment (“FSA”). Therein, Staff presented revisions to NOISE-4, which restricted noise limits during operations at a level not “to exceed 62.5 dBA Leq between 7 a.m. and 10 p.m. and 60 dBA Leq between 10 p.m. and 7 a.m. measured at EMDF.” (Ex. 200, FSA, at pp. 4.6-14-16.) Applicant reviewed the condition, researched the requisite County of San Diego planning policies and programs, zoning ordinance, noise ordinance, and relevant County regulations and standards (“LORS”) applicable to PPEC and EMDF, and determined that the limitations imposed by NOISE-4 are far more restrictive than LORS and the limits contained therein are not consistent with LORS. As such, Applicant expressed its position and provided proposed revisions to NOISE-4 in its Opening Testimony submitted June 26, 2012.<sup>1</sup>

At the July 9, 2012 noticed prehearing conference (“PHC”), the parties were encouraged to make every attempt to resolve the issues related to noise prior to the evidentiary hearing. In fact, the Hearing Officer ordered a workshop to be held on the morning of the evidentiary hearing, July 23, 2012, to facilitate such resolution. After two weeks of near daily communications between CCA and Applicant, CCA and Applicant resolved their concerns and determined that a 75 dBA Leq limit at Applicant’s property line would present no impacts to EMDF. Thus, on Sunday, July 22, 2012, Applicant docketed and served to the parties correspondence relaying this information and proposed revised language for NOISE-4 to which CCA noted its concurrence. (*See* Ex. 131.)

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<sup>1</sup> Immediately after Applicant submitted its Opening Testimony, CCA filed a petition to intervene. While Applicant opposed CCA’s petition due to its late filing, the Committee granted the petition, thus allowing CCA to file testimony on this topic. CCA timely submitted testimony related to the topic of noise on June 29, 2012. Applicant filed and served rebuttal testimony to further support its position related to NOISE-4 on July 6, 2012, as did Staff and CCA.

On July 23, 2012, the parties participated in the publicly noticed workshop in an effort to resolve the NOISE-4 issues. While CCA stated it concurrence with Applicant's requested changes to NOISE-4, Staff only agreed to Applicant's changes regarding limits at monitoring locations LT-1 and LT-2.

### **III. ARGUMENT**

On July 31, 2012, Jeff Murphy, Deputy Director, Department of Planning and Land Use, County of San Diego, emailed a letter ("County Correspondence") to the Hearing Officer and the Siting Committee noting the County's concurrence with the proposed revised version of NOISE-4 docketed by Applicant on July 22, 2012 [Ex. 131].<sup>2</sup> In the County's Correspondence, the County confirmed that a 75 dBA noise limit as measured at the PPEC property line is the applicable noise limit for PPEC and that the County would not oppose NOISE-4 as proposed by Applicant. The County's Correspondence was docketed with the Commission Docket Unit on July 31, 2012. (*See* Docket Unit TN 66398.)<sup>3</sup>

Below Applicant sets forth the LORS that support revised proposed NOISE-4 [Ex. 131].

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<sup>2</sup> A copy of the County's Correspondence and email transmission to the Hearing Officer and the Siting Committee is attached hereto as Exhibit A.

<sup>3</sup> Applicant is confident the Committee will admit the County's Correspondence into the evidentiary record. Nevertheless, to ensure the record is complete and the County's interpretation of its LORS is included as evidence in this proceeding, Applicant requests the Committee take official notice of the County's Correspondence. (*See* 20 Cal. Code Regs. § 1213 (the Committee may take official notice of "any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state."); *see also* Evid. Code §§ 452(c) (noting that permissive notice may be taken of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."), § 452(h).) Because the County has set forth its official position and presented it to the Siting Committee, the County's act is not reasonably subject to dispute and is capable of immediate and accurate determination.)

**A. A 75 dBA Leq Noise Limit At the PPEC Property Line Is Consistent With LORS**

As noted above, CCA and Applicant resolved their concerns related to noise prior to the evidentiary hearing and concurred on a revised COC NOISE-4 wherein a 75 dBA Leq (one hour) noise limit is applied to the PPEC project as measured after the PPEC facility reaches a sustained output of 90% or greater of rated capacity.

There are three applicable planning documents for the proposed PPEC site and detention facility site: the County's General Plan, the Otay Subregional Plan, and the East Otay Mesa Business Park Specific Plan ("East Otay Mesa Specific Plan" or "Specific Plan"). In the land use hierarchy, the County's General Plan is at the top, then any Subregional Plan, then the applicable Specific Plan, then zoning ordinances. Further, any "land use regulations" applicable to the specific plan area need to be consistent with the specific plan. (*See Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540-541.) According to the Otay Subregional Plan, "the Otay Mesa represents an unusual opportunity to plan a major regional and international industrial center in a comprehensive manner." (Otay Subregional Plan at p. 6.) The Otay Subregional Plan also specifies that because the area proposed for industrial development is located near the international border and maintaining a certain quality and cohesiveness of development will make the area more attractive and marketable, all proposed industrial development should comply with the design criteria in the M56 use regulations. (Otay Subregional Plan at pp. 6-7.)

The County of San Diego General Plan and Otay Subregional Plan identify the Project site and surrounding area as zoned Specific Plan (S88). As set forth in Chapter 2888(c) of the County's Zoning Ordinance, all uses established pursuant to an applicable specific plan shall be subject to all of the conditions and restrictions set forth in the specific plan, and specific plan

conditions and restrictions concerning uses shall prevail over the Zoning Ordinance regulations to the extent of any conflict between them. The PPEC site is governed by the East Otay Mesa Specific Plan, which establishes standards for development, environmental conservation, and public facilities to implement the objectives of the County of San Diego General Plan and Otay Mesa Subregional Plan. (Ex. 123 [East Otay Mesa Specific Plan] at pp. 11-12.) The intent of the Specific Plan is to promote development of the area into a comprehensive industrial and business district with more refined guidelines than available in the General Plan. In fact, the objectives of the Specific Plan include: “Provide an area for heavy industrial uses such as auto salvage and recycling that will not interfere with development and operation of more sensitive industrial park development.” (See Ex. 123 at p. 1.) To further the overall goals and objectives of the County, the Specific Plan designated 2,110 acres for a variety of industrial, commercial, rural residential and conservation land uses and a focused 292 acres for Heavy Industrial use. The East Otay Mesa Specific Plan states that the policies and procedures set forth therein “shall apply to all areas within the East Otay Mesa Specific Plan. The use and employment of land, buildings or structures, and the construction, reconstruction, alteration, expansion, or relocation of any building, structure or use upon the land, shall conform to these regulations.” (Ex. 123 at pp. 13-14 (emphasis added).)

According to the East Otay Mesa Specific Plan, all uses within Heavy Industrial and Mixed Industrial land use districts shall comply with applicable portions of section 6300 *et seq.* of the County Zoning Ordinance. Regarding noise measurements, uses in the Heavy and Mixed Industrial areas shall comply with section 6310(e), which provides that the noise level limit for zones subject to heavy industrial use regulations is 80 dBA.

Although the County Zoning Ordinance sets a limit of 80 dBA for uses in heavy and mixed industrial areas, the County’s Noise Ordinance specifies limits for M56 or M58 uses as 75 dBA. (County Noise Ordinance § 36.404.) While the Noise Ordinance is a land use regulation that is subordinate to the Specific Plan, there is ambiguity in the Specific Plan about whether it incorporates both the Zoning Ordinance noise limits as well as the County’s Noise Ordinance. Thus, Applicant designed the project for, and continues to stand by its position that, 75 dBA is the applicable noise limit for PPEC as measured at the PPEC property boundary.<sup>4</sup> As noted above, both the County of San Diego and CCA do not oppose a 75 dBA noise limit as measured at the PPEC property line. (Ex. 131.)

**B. The Noise Limit Averaging Method Set Forth in the County’s Noise Ordinance Does Not Apply to Uses Within the Same Zone**

The FSA incorrectly assigns a noise limitation of 60 dBA (night) and 62.5 dBA (day) to the PPEC “as measured at EMDF.” (Ex. 200 [FSA] at p. 4.6-15.) The basis for this limit appears to be section 36.404(e) of the County’s Noise Ordinance, which provides that “the sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones.” (Emphasis added.) As previously noted, the entire East Otay Specific Planning area is zoned S88. In addition, the East Otay Mesa Specific Plan includes a Land Use Element and Land Use Plan that identifies land use designations within the boundaries of the Specific Plan. (Ex. 123 at pp. 28, 31, 32 (Fig. 2.1-1).) In fact, the County of San Diego Staff Land Use Analysis for the EMDF stated two critical points about that proposed facility:

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<sup>4</sup> Consistent with the County’s Correspondence, the AFC analyzed the PPEC as an M58 land use. As noted in the AFC, “[t]he noise limit for an M58 land use is 75 dBA Leq [and] [b]ased on Noise Element standards for residential uses, the maximum exterior acceptable CNEL value would be 65 dBA at residential building locations or at group-use outdoor areas and the conditionally acceptable CNEL value would be 75 dBA.” (Ex. 1 at p. 5.12-6.) The AFC fully analyzed any potential noise impacts of the PPEC based on a 75 dBA noise limit at the PPEC property line and concluded that the PPEC would not have any significant adverse noise impacts. (Ex. 1 at § 5.12; see pp. 5.12-29, 5.12-33 – 5.12-40.)

(1) Regarding “Harmony in Scale, Bulk, Coverage, and Density,” the Land Use Analysis states that the proposed EMDF is not a residential use; and

(2) Regarding “Suitability of the Site for the Type and Intensity of Use,” the Land Use Analysis concludes:

The proposed site is designated Heavy Industrial. Major Impact Services and Utilities are permitted in the Heavy Industrial designation with a Major Use Permit. The site was previously graded pursuant to an approved grading plan, leaving a flat pad suitable for development. The project will therefore only require fine grading prior to construction of the proposed facility. The site is located on the easternmost portion of the East Otay Mesa Specific Plan, which is suitable for the most intensive industrial uses. The project will be a less intensive use than what is planned for the site. Therefore, the type use and its intensity are suitable for the project site.

(See Ex. 125 [County Major Use Permit Findings for EMDF, Attachment F] at pp. 5-6; 9.)

These two points are important in light of the fact that the original 1994 EIR for the Specific Plan states that the only conflicts from a land use or noise perspective within the planning area would be with residential use or sensitive biological resources. The County’s Land Use Analysis correctly recognizes that EMDF is not a residential facility and is being sited in a Heavy Industrial designation that is compatible with the proposed use. Thus, the PPEC site and the proposed site of the CCA detention facility both fall within the Heavy Industrial land use designation. The FSA, however, incorrectly treats the term “zone” and the term “use” as being interchangeable, when such terms are distinct and different land use classification types. (See Ex. 200 at p. 4.6-4.)

The FSA first incorrectly describes the zoning and use designation of the EMDF as “S88, with a Civic use designation for this facility.” In fact, the zoning designation for EMDF is S88, with a Heavy Industrial Land Use designation for the proposed EMDF site. (Ex. 123 at Fig. 2.1-1, page 32.) As noted above, a civic use type is allowed within a Heavy Industrial use area with



a Major Use Permit. (Ex. 123 at Table 3.1-1, page 85.) There is a significant difference, however, between a civic use type being allowed within a Heavy Industrial use area and an area being designated for “civic use.” The San Diego County Zoning Code classifies uses into certain use types. A power plant is considered a Major Impact Services and Utilities Use (San Diego County Alphabetical List of Individual Uses prepared pursuant to Zoning Ordinance, § 1220) and is classified as a civic use type. (San Diego County Zoning Ordinance § 1350). Major Impact Services and Utilities uses are permitted in the heavy industrial land use designation of the Specific Plan upon issuance of a Major Use Permit from the County. (Ex. 123 at Table 3.1-1.) The EMDF is also a Major Impact Services and Utilities use type. (See Ex. 125 at p. 9.) The FSA, however, fails to acknowledge the EMDF designation and use type, a critical error in determining the applicable noise limits for the PPEC. Here, it is the fact that EMDF, a Major Impact Service and Utilities use type, is an allowed use within the Heavy Industrial land use designation that it shares with the Project site. In fact, PPEC and EMDF are both proposed in the same zone (S88), with the same use designation (Heavy Industrial), and are the same use type (Major Impact Service and Utilities).

The FSA then erroneously applies section 36.404(e) and conducts an arithmetic mean of two noise limitations, the first being the inaccurate levels of 45 dbA (night) and 50 dbA (day) for EMDF and the other a level of 75 dbA applicable to the Project Site. (FSA at p. 4.6-9.) The arithmetic mean, however, is only required when two zones are adjacent to each other. As noted above, here there is one zone, one use designation, and the same use type. Thus, the averaging provision simply does not apply.

The FSA also fails to consider or acknowledge the original Noise Analysis Report prepared for the EMDF facility in August 2010 and instead relies on a more recent “draft”

Report. (See Ex. 124 [Kimley-Horn Report (Aug. 25, 2010) (“Report”)]; see also Ex. 200 at p. 4.6-4.) The Report notes that the project site is zoned S88 and is located within the Specific Plan area. (See Ex. 124 at p. 9.) The Report then notes that the applicable noise limits set forth in the Specific Plan for Heavy Industrial designated properties, including the EMDF site, is 80 dBA. Then the Report states that “alternatively, the County Noise Ordinance sound level limits associated with an M58 zone could be applied to the project. The property line sound level limit for M58 zones is 75 dBA Leq at any time.” (*Id.* (emphasis added).) Lastly, the Report notes that alternatively, if the project is considered a civic land use, then a 45 dBA night and 50 dBA day limit would apply. The Report then evaluates the EMDF under those most restrictive limits “in the interest of a worst-case noise analysis.” (Ex. 124 at p. 9.) This worst case analysis was prepared specifically for the environmental analysis required under CEQA and is not an establishment of the proper noise level required under the Specific Plan and associated zoning for the EMDF facility. (*Id.* at 10.)

It appears that San Diego County staff relied on an arithmetic mean when evaluating proposed changes to the EMDF facility, but such an act does not change the clear and plain language of section 36.404(e) of the Noise Ordinance, which states that “the sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones.” (County Noise Ordinance § 36.404(e).) Instead, EMDF must accept that it is being proposed in a Heavy Industrial land use area that allows for heavy industry noise levels - 75 dBA pursuant to the Noise Ordinance for an M56 or M58 use – the same limit that Staff applied to the PPEC. Because both the PPEC and the EMDF are proposed in the same zone, with the same use designation, and are the same use type, section 36.404(e) simply does not

apply. As noted above, support of Applicant's position can be found in Exhibit A attached hereto and in Exhibit 131.

#### IV. CONCLUSION

Based on the foregoing, PPEC should have a 75 dBA noise limit as measured at the PPEC property line, as set forth in revised proposed NOISE-4 docketed by Applicant on July 22, 2012 (Exhibit 131). Applicant also believes that the record for this proceeding contains the information necessary for this Committee to prepare a Presiding Member's Proposed Decision that sets forth a comprehensive environmental analysis of the proposed Project, which will allow the full Commission to make a favorable decision for the Applicant and the citizens of the State of California.

Date: August 1, 2012

Stoel Rives LLP



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John A. McKinsey  
Melissa A. Foster  
Attorneys for Applicant  
PIO PICO ENERGY CENTER, LLC

**EXHIBIT A**

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## County of San Diego

ERIC GIBSON  
DIRECTOR

### DEPARTMENT OF PLANNING AND LAND USE

5201 RUFFIN ROAD, SUITE B, SAN DIEGO, CALIFORNIA 92123-1666  
INFORMATION (858) 694-2960  
TOLL FREE (800) 411-0017  
[www.sdcounty.ca.gov/dplu](http://www.sdcounty.ca.gov/dplu)

July 30, 2012

Mr. Raoul Renaud, Hearing Advisor  
Ms. Karen Douglas, Commissioner and Associate Member  
Ms. Carla Peterman, Commissioner and Presiding Member  
Energy Resources Conservation and Development Commission  
1516 9<sup>th</sup> Street  
Sacramento, CA 95814

#### **APPLICATION FOR CERTIFICATION FOR THE *PIO PICO ENERGY CENTER (11-AFC-1)***

Dear Mr. Renaud, Commissioner Douglas, and Commissioner Peterman:

On July 25, 2012, County staff met with representatives from the APEX Power Group (APEX) and their consultant, Brian Mooney regarding the application of the County's Noise Ordinance to the proposed Pio Pico Energy Center (PPEC) located in East Otay Mesa.

As a result of the meeting and further research, the County concluded that the proposed PPEC is a heavy industrial use type. The M-58 Use Classification (Heavy Industrial) under the County's Zoning Ordinance conditionally allows uses such as industrial plants, compounding of radioactive materials, and petroleum refining, which are uses similar to the proposed energy plant. The proposed site, which is governed by the East Otay Mesa Specific Plan, allows uses under the M-58 designation.

Subsection 6 of the County of San Diego Noise Ordinance Section 36.404 specifies that a dBA level of 75 is allowed in an M-58 Use Classification.

Furthermore, after discussion with Mr. Scott Williams with Corrections Corporation of America (CCA), the neighboring property owner, CCA is in agreement with the 75 dBA noise level at the Pio Pico Energy Center property line as specified in the attached revised noise condition. The County understands that the California Energy Commission is considering the revised condition, which was made part of the hearing

process, and will make an independent decision regarding the appropriate Condition of Certification related to noise for the PPEC.

While the County does not have permit authority over this project, given the above discussion and assuming that the California Energy Commission incorporates the condition changes, we do not contest the revised noise condition for this project.

Should you have any questions, please contact me at 858/694-3765 or via email at [Jeff.Murphy@sdcountry.ca.gov](mailto:Jeff.Murphy@sdcountry.ca.gov)

Sincerely,



JEFF MURPHY, Deputy Director  
Department of Planning and Land Use

ATTACHMENT

Letter from Stoel Rivers to Hearing Officer Raoul Renaud dated July 22, 2012

cc:

Michael King, APEX Power Group, LLC, 6229 White Adler Ct., Avon, IN 46123  
Brian F. Mooney, AICP, AES/Mooney Planning, Regional Director, Southern California, 427 C Street, Suite 407, San Diego, CA 92101  
Corrections Corporation of America, G. Scott Williams, Seltzer/Caplan/McMahon/Vitek, 2100 Symphony Towers, 750 B Street, San Diego, CA 92101  
Carla Peterman, Commissioner and Presiding Member, [cpeterma@energy.ca.gov](mailto:cpeterma@energy.ca.gov)  
Karen Douglas, Commissioner and Associate, Member, [kldougla@energy.ca.gov](mailto:kldougla@energy.ca.gov)  
Raoul Renaud, Hearing Adviser, [rrenaud@energy.ca.gov](mailto:rrenaud@energy.ca.gov)  
Eric Solorio, Siting Project Manager, [esolorio@energy.ca.gov](mailto:esolorio@energy.ca.gov)



500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

July 22, 2012

MELISSA A. FOSTER  
Direct (916) 319-4673  
mafoster@stoel.com

**VIA EMAIL**

Hearing Officer Raoul Renaud  
California Energy Commission  
1516 Ninth Avenue  
Sacramento, CA 95814

**Re: Pio Pico Energy Center Project (11-AFC-01)  
Condition of Certification NOISE-4**

Dear Hearing Officer Renaud:

For the past two weeks, Applicant Pio Pico Energy Center LLC ("Applicant") and Intervenor Corrections Corporation of America ("CCA") have diligently been working to resolve concerns related to Staff's proposed Condition of Certification NOISE-4. Applicant is pleased to report that Applicant and CCA have in fact resolved their dispute. Applicant and CCA each support a proposed Condition of Certification NOISE-4 that would impose a 75 dBA Leq (one hour) noise limit for the PPEC project along the northern boundary of the PPEC site as measured after the PPEC facility reaches a sustained output of 90% or greater of rated capacity.

Pursuant to the Evidentiary Hearing Order (July 12, 2012), Applicant herein provides the attached revised Condition of Certification NOISE-4 that reflects such resolution and highlights the recently agreed upon proposed changes to differentiate from the proposed revisions submitted by Applicant on June 26, 2012.

Respectfully submitted,

A handwritten signature in blue ink that reads "Melissa A. Foster".

Melissa A. Foster

MAF:jmw

cc: Proof of Service

#### NOISE-4

The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that the operation of the project will not cause the noise levels due to plant operation alone, during the four quietest consecutive hours of the nighttime, to exceed an average of ~~36~~**45** dBA Leq measured at or near monitoring location LT-1 and an average of ~~34~~**39** dBA Leq measured at or near monitoring location LT-2.

~~Also, the project design and implementation shall include appropriate noise mitigation measures adequate to ensure that the operation of the project will not cause the noise levels due to plant operation alone to exceed 62.5 dBA Leq between 7 a.m. and 10 p.m. and 60 dBA Leq between 10 p.m. and 7 a.m. measured at EMDF.~~

**The project shall also ensure that it includes any required noise mitigation measures to ensure it does not exceed 75 dBA at the project property line during plant operations.**

No new pure-tone components shall be caused by the project. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints.

- A. When the project first achieves a sustained output of 90% or greater of rated capacity, the project owner shall conduct a community noise survey at monitoring location LT-1 or at a closer location acceptable to the CPM. This survey shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been caused by the project.

During the period of this survey, the project owner shall conduct a short-term survey of noise at the monitoring location LT-2 or at a closer location acceptable to the CPM. The short-term noise measurements at this location shall be conducted continuously during the nighttime hours of 10:00 p.m. to 7:00 a.m.

~~Also during the period of this survey, the project owner shall conduct a short-term survey of noise at EMDF. The short-term noise measurements at this location shall be conducted continuously during the nighttime hours of 10:00 p.m. to 7:00 a.m. and also during the daytime hours of 7:00 a.m. to 10:00 p.m.~~

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. The character of the plant noise shall be evaluated at the



affected receptor locations to determine the presence of pure tones or other dominant sources of plant noise.

**Also during the period of the above survey, the project owner shall conduct a short-term survey of noise levels at several points on its property lines, including and, if the proposed detention facility has been constructed or is under construction, an emphasis on the North property line.**

- B. If the results from the noise survey indicate that the power plant noise at the affected receptor sites (LT-1 or LT-2) exceeds the above values during the four quietest consecutive hours of the nighttime, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits.
- C. If the results from the **property line** noise survey indicate that the power plant noise at ~~EMDF~~ exceeds the above values **75 dBA** during the measurement hours, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits.
- D. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

**Verification:** The survey shall take place within 45 days of the project first achieving a sustained output of 90% or greater of rated capacity. Within 15 days after completing the survey, the project owner shall submit a summary report of the survey to the CPM. Included in the survey report will be a description of any additional mitigation measures necessary to achieve compliance with the above listed noise limit, and a schedule, subject to CPM approval, for implementing these measures. When these measures are in place, the project owner shall repeat the noise survey.

Within 15 days of completion of the new survey, the project owner shall submit to the CPM a summary report of the new noise survey, performed as described above and showing compliance with this condition.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION  
FOR THE *PIO PICO ENERGY CENTER PROJECT***

**Docket No. 11-AFC-01  
PROOF OF SERVICE  
(Revised 7/10/2012)**

**APPLICANT**

Gary Chandler, President  
Pio Pico Energy Center  
P.O. Box 95592  
South Jordan, UT 84095  
[grchandler@apexpowergroup.com](mailto:grchandler@apexpowergroup.com)

David Jenkins, Project Manager  
Pio Pico Energy Center, LLC  
1293 E. Jessup Way  
Mooresville, IN 46158  
[djenkins@apexpowergroup.com](mailto:djenkins@apexpowergroup.com)

**APPLICANT'S CONSULTANTS**

Maggie Fitzgerald  
Sierra Research  
1801 J Street  
Sacramento, CA 95811  
[MFitzgerald@sierraresearch.com](mailto:MFitzgerald@sierraresearch.com)

**COUNSEL FOR APPLICANT**

John A. McKinsey  
Melissa A. Foster  
Stoel Rives, LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
[jamckinsey@stoel.com](mailto:jamckinsey@stoel.com)  
[mafoster@stoel.com](mailto:mafoster@stoel.com)

**INTERESTED AGENCIES**

California ISO  
*e-mail service preferred*  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

**\*Rob Simpson**  
***e-mail service preferred***  
[rob@redwoodrob.com](mailto:rob@redwoodrob.com)

**\*Gretel Smith, Esq.**  
**Attorney for Rob Simpson**  
**P.O. Box 152994**  
**San Diego, CA 92195**  
[gretel.smith79@gmail.com](mailto:gretel.smith79@gmail.com)

**\*Corrections Corporation of America**  
**G. Scott Williams, Esq.**  
**c/o Seltzer Caplan McMahon Vitek**  
**750 B Street, Suite 2100**  
**San Diego, CA 92101**  
[swilliams@scmv.com](mailto:swilliams@scmv.com)

**ENERGY COMMISSION –  
DECISIONMAKERS**

CARLA PETERMAN  
Commissioner and Presiding Member  
[carla.peterman@energy.ca.gov](mailto:carla.peterman@energy.ca.gov)

KAREN DOUGLAS  
Commissioner and Associate Member  
*e-mail service preferred*  
[karen.douglas@energy.ca.gov](mailto:karen.douglas@energy.ca.gov)

Raoul Renaud  
Hearing Adviser  
[raoul.renaud@energy.ca.gov](mailto:raoul.renaud@energy.ca.gov)

Jim Bartridge  
Presiding Member's Advisor  
[jim.bartridge@energy.ca.gov](mailto:jim.bartridge@energy.ca.gov)

Galen Lemei  
Associate Member's Advisor  
*e-mail service preferred*  
[galen.lemei@energy.ca.gov](mailto:galen.lemei@energy.ca.gov)

**ENERGY COMMISSION STAFF**

Eric Solorio  
Siting Project Manager  
[eric.solorio@energy.ca.gov](mailto:eric.solorio@energy.ca.gov)

Kevin W. Bell  
Staff Counsel  
[kevin.w.bell@energy.ca.gov](mailto:kevin.w.bell@energy.ca.gov)

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
*e-mail service preferred*  
[eileen.allen@energy.ca.gov](mailto:eileen.allen@energy.ca.gov)

**ENERGY COMMISSION – PUBLIC  
ADVISER**

Jennifer Jennings  
Public Adviser  
*e-mail service preferred*  
[publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)

## DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on August 1, 2012, I served and filed a copy of the attached **PIO PICO ENERGY CENTER, LLC'S POST-HEARING BRIEF RE NOISE RELATED TO THE JULY 23, 2012 EVIDENTIARY HEARING**. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/piopico/index.html](http://www.energy.ca.gov/sitingcases/piopico/index.html).

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

***(Check all that Apply)***

**For service to all other parties:**

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail service preferred."

**AND**

**For filing with the Docket Unit at the Energy Commission:**

- by sending one electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**

Attn: Docket No. 11-AFC-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

***OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:***

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[michael.levy@energy.ca.gov](mailto:michael.levy@energy.ca.gov)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

//Original Signed\\  
\_\_\_\_\_  
Kimberly J. Hellwig