

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 11-AFC-01
)	
PIO PICO ENERGY CENTER)	STAFF'S POST HEARING BRIEF
)	
PIO PICO ENERGY CENTER, LLC)	Re.: PROPOSED CONDITION OF
<hr/>)	CERTIFICATION NOISE 4

INTRODUCTION

On February 9, 2011, Pio Pico Energy Center LLC submitted an Application for Certification (AFC) to the California Energy Commission (Energy Commission) seeking permission to construct and operate a power generation facility, the Pio Pico Energy Center (PPEC), in the County of San Diego, adjacent to the existing Otay Mesa Generating Project. The PPEC is a proposed simple-cycle power generation project that consists of three General Electric LMS100 natural gas-fired combustion turbine generators (CTG). The total net generating capacity would be 300 megawatts, with each CTG capable of generating 100 megawatts.

On Monday, July 23, 2012, the evidentiary hearings were conducted in this matter at the Chula Vista City Council Chambers. Prior to the evidentiary hearings, a publicly noticed workshop was conducted to resolve issues regarding proposed Condition of Certification Noise 4. Participants in the workshop included representatives of the County of San Diego's Department of Planning and Land Use, intervenor California Corrections Association (CCA), the applicant, and Energy Commission Staff. While minor details were agreed upon at the workshop, the issue of the correct application of County of San Diego Noise Ordinance 36.404 remained unresolved. The parties then proceeded to participate in the evidentiary hearing, at which time testimony was offered by the applicant, staff, and the County of San Diego's Department of Planning and Land

Use. At the conclusion of the hearings, the parties were directed to submit briefs on the issue of the applicability of the relevant county ordinances to the PPEC.

ANALYSIS

The Committee Should Give Due Deference to the County of San Diego's Interpretation of its own ordinances and general plan.

In preparing its analysis of the project's ability to comply with Laws, Ordinances, Regulations and Standards (LORS), Energy Commission Staff consulted with the County of San Diego's Department of Planning and Land Use staff to understand that agency's interpretation and applicability of its ordinances affecting the project. The County staff previously offered an interpretation of the applicability of San Diego Noise Ordinance Section 36.404 that resulted in staff's Condition of Certification Noise 4 as submitted in the Final Staff Assessment.

At the Evidentiary hearings, two issues with respect to Condition Noise 4 remained in dispute: the use classification under the County Zoning Ordinance for the project site, and the correct application of the County of San Diego's Noise Ordinance at the project site. Representatives from the County of San Diego's Department of Planning and Land Use participated in the Hearing, and were asked to provide their opinion regarding these two disputed issues, but were unable to provide an answer at that time. At the conclusion of the Evidentiary Hearing, the Hearing Officer requested that the County submit a letter clarifying these issues.

On July 31, 2012, Jeff Murphy, the Deputy Director for the County of San Diego's Department of Planning and Land Use submitted a letter as requested. In that letter, Mr. Murphy noted that after the Evidentiary Hearing, the County has concluded that the project site falls under the County's M-58 Use Classification. Under the County's Zoning Ordinance, the project would be considered a heavy industrial use type. The proposed project site would be governed under the East Otay Mesa Specific Plan, which allows for uses under the M-58 designation. Secondly, Mr. Murphy noted that under current interpretation, County of San Diego Noise Ordinance 36.404 specifies a dBA level of 75,

a noise level at the property line between the project site and the adjacent CCA facility that is no longer contested by either the CCA or the County.

As section 1744, subdivision (e), in the Energy Commission's regulations states, "Comments and recommendations by an interested agency on matters within that agency's jurisdiction shall be given due deference by Energy Commission staff." (Cal. Code Regs., tit. 20, § 1744, subdiv. (e).) The County of San Diego's interpretation of its own laws, ordinances, regulations and standards must be accepted unless such an interpretation is "arbitrary, capricious, or entirely lacking in evidentiary support." *No Oil, Inc v. City of Los Angeles* (1987) 196 Cal. App. 3d, 223, 243.

Given the most recent interpretation of County of San Diego Noise Ordinance 36.404, by the County of San Diego's Planning and Land Use department, staff submits that the Committee can give due deference to the County's interpretations of its own ordinances. The County's interpretation is reasonable, and clarifies the ambiguity regarding the application of the Noise Ordinance in question. With this clarification, the County of San Diego, the applicant, CCA, and staff are now in agreement regarding the application of County of San Diego Noise Ordinance 36.404. Staff therefore recommends that the Committee adopt the attached revised Condition of Certification Noise 4 that is in conformance with the County's interpretation.

Date: August 1, 2012

Respectfully Submitted,

/s/ original signed by _____
Kevin W. Bell
Senior Staff Counsel

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 measure project noise levels at several points on its property lines, if the proposed detention facility has been constructed or is under construction, with an emphasis on the northern property line. These measurements shall be taken for a minimum of one hour.

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

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

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DECLARATION OF SERVICE

I, Pamela Fredieu, declare that on, August 1, 2012, I served and filed a copy of the attached STAFF'S POST HEARING BRIEF: re: PROPOSED CONDITION OF CERTIFICATION NOISE 4 dated August 1, 2012. 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.

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
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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:

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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.

/s/ original signed by
Pamela Fredieu-Legal Secretary
Chief Counsel's Office