

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

California Energy Commission

**DOCKETED  
11-AFC-1**

TN # 66956

AUG 27 2012

In the Matter of: ) Docket No. 11-AFC-01  
)  
PIO PICO ENERGY CENTER )  
)  
PIO PICO ENERGY CENTER, LLC )  
\_\_\_\_\_ )

**ENERGY COMMISSION STAFF'S RESPONSE AND COMMENTS TO THE  
PRESIDING MEMBER'S PROPOSED DECISION**

On February 9, 2011 Pio Pico Energy Center LLC submitted an Application for Certification (AFC) to the California 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. 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. On August 6, 2012, the committee assigned to hear this matter filed the Presiding Member's Proposed Decision (PMPD). Among other things, the PMPD recommends approval of the PPEC. Staff agrees with the recommendation that the PPEC should be approved, and agrees with the findings that the project will comply with all applicable LORS and will cause no significant environmental impacts with the imposition of staff's recommended conditions of certification. Staff offers the following comments, corrections, and editorial changes to reflect the information contained in the evidentiary record.

## STAFF PMPD COMMENTS

### ALTERNATIVES

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Staff submits the following proposed revisions to this technical section:

#### **Page 3-6**

*Editorial correction*

Alternatives Table 2 is out of place. It should immediately follow the subsection Biological Resources, under the heading and discussion titled “Alternative Site B” rather than where it is currently placed at the end of the Alternative, Site “A” discussion.

### TRANSMISSION LINE SAFETY AND NUISANCE

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#### **Page 5.5-7, last paragraph**

*Editorial correction, occurring twice in this paragraph*

Change “TLSN-5” to “TLSN-4”.

### AIR QUALITY

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Staff submits the following proposed revisions to this technical section:

#### **Page 6.2-7, second paragraph**

*Editorial correction*

**In April 2010, the U.S. EPA adopted a new one-hour  $\text{NO}_2$  standard of 0.100 ppm (188 ug/m<sup>3</sup>) based upon the 3-year average of the 98<sup>th</sup> percentile of the daily maximum 1-hour concentration.** in early 2010”

### BIOLOGICAL RESOURCES

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Staff submits the following proposed revisions to this technical section:

#### **Page 7.1-46, bullet 3, BIO-8 editorial correction**

*The edit in bullet 3 is recommended to ensure the Compliance Project Manager (CPM) receives weekly updates on nesting activity so actions can be recommended in a timely manner.*

If active nests are detected during the survey, a no-disturbance buffer zone (protected area surrounding the nest), the size of which is to be determined by the Designated Biologist in consultation with the CPM (in coordination with CDFG and USFWS) and monitoring plan shall be developed. Nest locations shall be mapped using GPS technology and submitted, along with a weekly report, stating the survey results, to the CPM, ~~in the Monthly Compliance Reports.~~

**Page 7.1-48, bullet 1 and bullet 3, BIO-10**

*The edit in bullet 1 is to clarify when surveys are required based on terms and definitions used in Energy Commission General Conditions of Certification. The edit in bullet 2 is recommended to reference the most recent California Department of Fish and Game Staff Report On Burrowing Owl Mitigation issued on March 7, 2012 which replaces the 1995 Staff Report. The edit in bullet 3 is recommended as the language conflicts with the Multiple Species Conservation Program (MSCP) requirements for burrowing owl detected during the breeding season. The measures required as a part of the MSCP for burrowing owl detected during the breeding season are included in bullet 2 above. The edit in the verification is recommended to ensure the eviction plan required by Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County included in the County of San Diego Report Format and Content Requirements – Biological Resources (CDS 2010) and included by reference in bullet 4 is submitted to the appropriate agencies.*

The project owner shall implement the following measures to manage their construction site, and related facilities, in a manner to avoid or minimize impacts to breeding and foraging burrowing owls.

1. A qualified biologist, approved by the CPM, shall conduct a pre-grading survey no more than 30 days before **pre-construction site mobilization, including any** initial brushing, clearing, grubbing, or grading of the project site, regardless of the time of the year.

2. Surveys shall take place in accordance with all requirements for Pre-Grading Surveys listed in Section 3.4 of the Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County included in the County of San Diego Report Format and Content Requirements – Biological Resources (CDS 2010) or most current Biological Mitigation Ordinances issued by the County of San Diego Department of Planning and Land Use (DPLU) and the Department of Fish and Game’s Staff Report on Burrowing Owl Mitigation (~~2012~~1995). This includes following all pre-grading survey guidelines, measures if burrowing owl are not found during pre-grading surveys, measures if burrowing owl are found during pre-grading surveys, pre-grading survey report, pre-construction meeting, and Best Management Practices listed in Section 3.4.3 of the Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County during construction. The results of the surveys shall be sent to the CPM for review and approval, in consultation with CDFG.
- ~~3. If burrowing owls are detected during the breeding season then construction shall occur outside of the breeding season (February 1 through August 31).~~
3. If burrowing owl are detected and it is not during the breeding season, the burrowing owl may be evicted following the requirements outlined in Section 4.5.4 of the Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County. Both passive translocation and eviction require approval from the CPM in consultation with the County of San Diego DPLU, CDFG, and USFWS.
4. If burrowing owls are to be evicted from the project site, artificial burrows shall be built following the requirements of Section 4.5.4 of the Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County. Long-
5. term monitoring requirements will be included in a resource management plan prepared in accordance with the requirements of Section 4.6 of the Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County and monitoring of the mitigation site will follow the requirements of Section 4.7 of the Strategy to Mitigate Impacts to Burrowing Owls in the Unincorporated County.

**Verification:** All avoidance and minimization measures related to burrowing owl shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported in the Monthly Compliance Reports by the Designated Biologist. The project owner shall immediately report the results of the pre-grading survey to the CPM and the County of San Diego Mitigation Monitoring Coordinator, CDFG and USFWS prior to grading and must be provided in writing. The written and signed pre-grading survey report shall be submitted within 14 days of the survey. If passive relocation or burrow closures are required **an eviction plan with the proposed methods and**

**locations of a report summarizing owl exclusions and burrow closures shall be submitted to and approved by the CPM, in consultation with the County of San Diego Department of Planning and Land Use (DPLU), CDFG, and USFWS prior to any work that may impact burrows. A report summarizing owl exclusion and burrow closures shall be submitted** within seven days of completing exclusions and burrow closures. If a resource management plan is required, the project owner shall submit a final management plan to the CPM that has been reviewed and approved by the CPM, in consultation with the County of San Diego DPLU, USFWS, CDFG and the land-owning city department (city of San Diego), if applicable, at least 60 days prior to the start of project construction.

## **LAND USE**

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Staff submits the following proposed revisions to this technical section:

### **Page 8.1-6**

*A discussion of the Land Use Designation should be included.*

The project site is designated Heavy Industrial within the East Otay Mesa Business Park Specific Plan. The text calls out the M56 Mixed Industrial which is contained within the Otay Subregioanal Plan.

### **Page 8.1-8**

*Editorial correction*

The initials EMDF should be spelled out – East Mesa Detention Facility/Corrections Corporation of America.

### **Page 8.1-10**

*Editorial correction*

Last paragraph above #3- Delete the word “city’s” before general plan and insert County.

**Page 8.1-11, 2<sup>nd</sup> paragraph**

*Editorial correction: the text referring to a 9.99 acre site was included in the FSA but is not accurate, in that PPEC is on a 9.99 acre site and the laydown area is approximately six acres on another separate 9.99 acre parcel.*

The proposed PPEC project laydown area would be located in an industrial area of unincorporated San Diego County. The power plant ~~and laydown area would~~ will be located entirely on private property, on a 9.99-acre site. **The laydown area is located on a separate property, and will utilize approximately 6 acres of that site.**

**Page 8.1-12, 1<sup>st</sup> paragraph**

*Editorial correction*

The initials MSCP should be spelled out – Multiple Species Conservation Plan.

**Page 8.1-17, Finding of Fact #4**

*Editorial correction. Condition of Certification LAND-1 and Condition of Certification LAND-2 address County of San Diego LORS and not cumulative impacts.*

4. With implementation of Conditions of Certification LAND-1 and LAND-2, the PPEC's ~~contribution to cumulative impacts of existing and proposed projects will not be cumulatively considerable.~~ **will comply with County of San Diego LORS.**

**SOCIOECONOMICS**

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Staff submits the following proposed revisions to this technical section:

**Page 8.3-1**

*Editorial correction*

**C. ~~SOCIOECONOMICS AND ENVIRONMENTAL JUSTICE~~**

This topic reviews pertinent demographic information within both a one-mile and six-mile radius of the project site and evaluates the effects of project-related population changes on local schools, **emergency** medical and ~~fire protection services, public~~

utilities and ~~other public services~~ **parks**, as well as the fiscal and physical capacities of local government to meet those needs. The public benefits of the project are also reviewed, including both the beneficial impacts on local finances from property and sales taxes as well as the potential adverse impacts upon public services.

### **Page 8.3-5**

#### *Editorial correction*

The San Diego RFPD requires new developments to be assessed a fire mitigation fee. The fee would generate additional funding required for RFPD fire protection needs, including the development of the planned new joint fire/sheriff facility at the intersection of Enrico Fermi Drive and Lone Star Road. The fee is considered a self-mitigation measure for developers to offset the additional fire service costs new development would pose. A rate of \$0.46 per square foot of covered and enclosed, non-residential space is applied. Implementation of Condition of Certification **SOCIO-1** would ensure payment of fees to San Diego County for disbursement to San Diego RFPD. (Ex. 200, p. 4.8-15.)

**The RFPD, with the cooperation of the San Diego County Sheriff Department, implemented a special tax district (Community Facilities District number 09-1) to fund the planned new joint fire/sheriff facility. The project property is within the boundaries of the San Diego RFPD CFD number 09-1. Therefore, the project property is subject to the levy of special taxes pursuant to the rate and method of apportionment as set forth in the Notice of Special Tax Lien recorded in the San Diego County Recorder's office. Once the site is developed, the special tax is applied to the property taxes. (Ex 200, p.4.8-15.)**

We conclude the project would not result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities in order to maintain acceptable service ratios, response times, or other performance objectives with respect to emergency medical service.

**Page 8.3-5,6, last paragraph beginning on page 5**

*Editorial correction*

The PPEC site is located within the San Ysidro Elementary School District (San Ysidro ESD) and the Sweetwater Union High School District (SUHSD). San Ysidro ESD provides pre-kindergarten through eighth grade education to regular and special education students. The district has a current enrollment of 5,141 students for the 2010/2011 school year. **SUHSD provides seventh grade through 12th grade education plus adult education. The district had an enrollment of 41,126 students for the 2010/2011 school year.** (Ex. 200, p. 4.8-17.)

**Page 8.3-10, 2<sup>nd</sup> paragraph**

*Editorial correction*

Based on this information, we find that the minority population exceeds 50 percent in the project vicinity. However, **we find the project would not cause significant socioeconomic impacts on local housing, schools, police, emergency medical services, and parks, and therefore have no socioeconomic** ~~since the record shows that the project's implementation of the conditions of certification in this Decision will mitigate all potential health and safety and environmental impacts onto levels below significance for any affected population;~~ we conclude that there are no disproportionate impacts on environmental justice populations.

**Page 8.3-11, 3<sup>rd</sup> and 5<sup>th</sup> paragraphs**

*Editorial corrections*

In a socioeconomics analysis, cumulative impacts could occur when more than one project in the same area has an overlapping construction schedule, thus creating a demand for workers that cannot be met locally, or when a project's demand for public services does not match a local jurisdiction's ability to provide such services. An influx of non-local workers and their dependents can strain housing, schools, parks and recreation, law enforcement, and **emergency** medical services.



The project site is in San Diego County and within one mile of the city of San Diego. Projects within a three-mile radius of the PPEC site plus projects of regional significance were considered part of the cumulative scenario. (Ex. 1, p. 5.18-3.)

The evidence shows that the proposed PPEC would not result in any significant and adverse cumulative impacts on population, housing, schools, parks and recreation, law enforcement, and emergency medical services. There is a more than sufficient workforce available for the PPEC plus other future planned projects. Therefore, we do not expect the construction or operation of the PPEC to contribute to any significant adverse cumulative socioeconomic impacts.

**Page 8.3-14, Finding of Fact #2**

*Editorial correction*

Construction workers ~~and permanent employees~~ who live within a two-hour commute to the site and permanent employees who live within a one-hour commute to the site are not likely to relocate to the project area.

**Page 8.3-14, Finding of Fact #4**

*Editorial correction*

The project is not likely to have a significant adverse effect upon local employment, housing, schools, ~~utilities,~~ recreational parks, emergency medical services ~~resources,~~ or ~~fire and~~ police protection

**Page 8.3-14 Finding of Fact #9**

*Editorial correction*

~~All potential health and safety and environmental impacts from the project will be mitigated to insignificant levels for all affected populations including minority populations.~~ No socioeconomic impacts would affect any population, including the environmental justice population identified within a six-mile radius of the project site.

**Page 8.3-15**

*As presented in staff's testimony, staff recommends the addition of the following condition of certification to conform with Education Code Section 17620*

**SOCIO-2 The project owner shall pay the one-time statutory school facility development fees to the San Ysidro Elementary School District and Sweetwater Union High School District as required by Education Code Section 17620.**

**Verification: At least 30 days prior to the start of project construction, the project owner shall provide to the Compliance Project Manager (CPM) proof of payment to the San Ysidro Elementary School District and to the Sweetwater Union High School District of the statutory development fee.**

**VISUAL RESOURCES**

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Staff submits the following proposed revisions to this technical section:

**Page 8.5-4**

*Editorial correction*

~~For the purposes of this evaluation, "scenic resources" include: a unique water features such as a waterfall; transitional water such as river mouth ecosystems, lagoons, coastal lakes and brackish wetlands; or, part of a stream, river or estuary~~ **For the purpose of this analysis, scenic resources include a unique water feature (waterfall, transitional water, part of a stream or river, estuary); a unique physical geological terrain feature (rock masses, outcroppings, layers or spires); a tree having a unique/historical importance to a community (a tree linked to a famous event or person, an ancient, old growth tree); historic building; or other scenically important physical features, particularly if located within a designated federal scenic byway or state scenic corridor.**

**Page 8.5-22**

*Editorial correction*

Findings of fact: 7. Add the words “**and glare**” after “reduce lighting” and before “impacts to surrounding uses”...

**SOIL AND WATER**

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Staff submits the following proposed revisions to this technical section to conform the PMPD to the evidentiary record. The FSA reflected a thirty day timeframe, and no evidence was introduced that would require a longer timeframe.

**Page 7.2-27 - Conditions of Certification SOIL&WATER-7 Verification, 2<sup>nd</sup> paragraph**

No later than ~~sixty (60)~~ **thirty (30)** days prior to delivery...

**CULTURAL RESOURCES**

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Staff submits the following proposed revisions to this technical section:

**Page 7-9. Native American Consultations, 3<sup>rd</sup> Paragraph, last sentence:**

*Editorial correction, providing clarification regarding what was intended and conveyed through staff's testimony.*

~~As of May 2012, Staff reports it has received no response from the local Native American representatives regarding the Energy Commission's requests for input. (Ex. 200, p. 27-29.)~~ **As of May 2012, Staff reports it has received limited response from two local Native American representatives regarding the Energy Commission's requests for input. The responses concern tribal requests for Native American monitoring. (Ex. 200, p. 27-29.) CUL 3, CRMMP Element 5 and CUL 6 Paragraph 3 accommodate those tribal requests. (Ex. 200, p. 52, 55-56.)**

## TRANSMISSION SYSTEM ENGINEERING

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Staff submits the following proposed revisions to this technical section:

### **Page 5.4-3**

*Editorial correction*

### ~~2. System Impact Study~~ **Phase II Interconnection Study**

### **Page 5.4-4, beginning 4<sup>th</sup> paragraph**

*Editorial correction*

The Power Flow study indicated that the C1C2 projects would cause overloads in the following areas and transmission lines using the 2014 heavy summer peak

load and the 2014 light load study cases **under Category B (N-1) operating conditions.**

- Otay Mesa Area
- Otay Mesa - Miguel 230-kV line #1
- Otay Mesa - Miguel 230-kV line #2
- Escondido – Palomar 230-kV line #1
- Escondido – Palomar 230-kV line #2
- Friars - Doublet Tap 138-kV line

The Power Flow study indicated that C1C2 projects would cause overloads in the following areas and transmission lines using the 2014 heavy summer peak load and the 2014 light load study cases **under Category C (N-2) operating conditions.**

- Otay Mesa Area
- Bernardo - Felicita Tap 69-kV line
- Mission - Old Town 230-kV line
- Cannon - San Luis Rey 138-kV line

**Page 5.4-5 and Page 5.4-6**

*Editorial correction: remove unnecessary bullets. The following section should read as follows:*

Under the Reliability Network Upgrades, installation of Special Protection System (SPS) measures are recommended to mitigate the following line overloads.

- Otay Mesa - Miguel 230-kV line #1 and #2.

Modify the existing SPS to drop generation in the Otay Mesa Substation area to mitigate Category B line overloads for outages on either the Otay Mesa - Miguel 230-kV line #1 or #2. Also, the modified SPS would mitigate Category C overloads for outages on both of the Otay Mesa - Miguel 230-kV lines. The SPS cost allocation for the PPEC is 100 percent which means that the PPEC is the primary responsible party.

- Bernardo - Felicita Tap 69-kV line.

Install SPS to protect the Bernardo - Felicita Tap 69-kV line for Category C contingency for outage on both Escondido - Palomar Energy 230-kV lines. The SPS cost allocation for the PPEC is 100 percent which means that the PPEC is the primary responsible party.

- Mission - Old Town 230-kV line.

Install SPS to drop some of the C1C2 generations to protect the Bernardo - Felicita Tap 69-kV line for Category C contingency. The SPS cost allocation for the PPEC is 100 percent which means that the PPEC is the primary responsible party.

- Cannon - San Luis Rey 138-kV line.

Install SPS to trip the San Luis Rey 138/69-kV transformer bank to protect the Cannon - San Luis Rey 138-kV line for the Category C contingency outage on both of the Encina - San Luis Rey 230-kV line and the Encina -

San Luis Rey - Palomar 230-kV line. The SPS cost allocation for the PPEC is 100 percent which means that the PPEC is the primary responsible party.

**Page 5.4-8, 3<sup>rd</sup> full paragraph**

*Editorial correction*

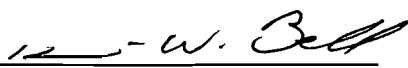
Thus, we find that the ~~System Impact Study-Phase II Interconnection Study~~ indicates that with the required mitigation in place, the California ISO system ~~the project interconnection~~ will comply with NERC/WECC planning standards.

**CONCLUSION**

The proposed Pio Pico Energy Center is consistent with all applicable Laws, Ordinances, Regulations, and Standards. The proposed project will have no significant unmitigated environmental impact in any of the relevant technical areas. Based on evidentiary record, the Commission should approve the project as proposed, subject to the Conditions of Certification identified for each technical area.

DATED: August 27, 2012

Respectfully submitted,

  
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**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 8/16/2012)**

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**DECLARATION OF SERVICE**

***I, Pamela Fredieu, declare that on, August 27, 2012, I served and filed a copy of the attached Energy Commission Staff's Response and Comments to the Presiding Member's Proposed Decision, dated August 27, 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](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 marked **\*\*\*hard copy required\*\*** or where no e-mail address is provided.

**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  
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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/  
Pamela Fredieu, Legal Secretary