

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



California Energy Commission

**DOCKETED**  
**11-AFC-1**

TN # 66987  
AUG 31 2012

August 31, 2012

Mr. Eric Porter  
United States Fish and Wildlife Service  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road  
Carlsbad, CA 92011

Subject: Comments on Draft Formal Section 7 Consultation for the Pio Pico Energy Center, San Diego County, California, FWS-SDG-10B0661-12F0275

Dear Mr. Porter:

On August 8, 2012 the U.S. Fish and Wildlife Service (Service) provided its draft biological opinion for the Pio Pico Energy Center Project (PPEC) 11-AFC-01, FWS-SDG-10B0661-12F0275, for review. Energy Commission staff appreciates the opportunity to provide comments on the draft biological opinion on the U.S. Environmental Protection Agency's (EPA) proposed issuance of a Prevention of Significant Deterioration (PSD) permit, as required by Part C of the Clean Air Act and regulations at 40 C.F.R. § 52.21, to the Pio Pico Energy Center, LLC (PPEC or Applicant) for the construction of the Pio Pico Energy Center.

Staff is submitting comments on the draft biological opinion for the PPEC to provide suggestions to ensure the biological opinion captures the contents of Energy Commission proposed condition of certification as included in the Presiding Member's Proposed Decision (PMPD) for the PPEC. At a hearing on September 12, 2012, the full Commission will consider the PMPD and consider whether the Energy Commission should adopt, modify, or reject the PMPD and Errata, if any. If adopted, the Commission will compile a Final Commission Decision combining the Errata, if any, the PMPD and any other changes made. Specifically, staff is providing comments related to Condition of Certification **BIO-13** (Weed Abatement Program Funding and/or Land Acquisition) which would be superseded by equivalent mitigation set forth in the PPEC's Biological Opinion provided by USFWS pursuant to Condition of Certification **BIO-14** (Federal Biological Opinion). Equivalent mitigation in the biological opinion would fully mitigate impacts under the California Environmental Quality Act (CEQA) and would fulfill the requirements of Condition of Certification **BIO-13**.

The suggested changes are shown below in ~~strikethrough~~ and **bold underline**. For the benefit of the reader, acronyms below are defined as follows: Carlsbad Fish and Wildlife Office (CFWO), California Department of Fish and Game (CDFG), and the County of San Diego Department of Planning and Land Use (DPLU).

Comment 1

Global change from "CEC" to "California Energy Commission Compliance Project Manager (CPM)" or "CPM".

PROOF OF SERVICE (REVISED 8/16/12) FILED WITH  
ORIGINAL MAILED FROM SACRAMENTO ON 8/31/12  
DLS

Comment 2

Page 4, paragraph 3, line 9

*An "Otay tarplant establishment plan" is described on page 6, paragraph 1, line 7. Energy Commission staff suggests the following change from "planting" to "establishment" to be consistent with the plan on page 6. Staff requests to be included as an additional approval entity for the Otay tarplant establishment plan as Otay tarplant is also a state listed species.*

If Otay tarplant establishment is necessary, PPEC will prepare an Otay tarplant **planting establishment** plan with quantifiable success criteria for approval by the CFWO **and California Energy Commission Compliance Project Manager (CPM)** prior to the start of project operation.

Comment 3

Page 5, paragraph 3, line 2, line 3, and line 8

*To be consistent with page 5, paragraph 1, line 1, Energy Commission staff requests the edits listed below.*

At least 60 days prior to the start of project operation, PPEC will submit a final weed management plan to the CEC that has been reviewed and approved by CFWO **and CPM (in consultation with CDFG and DPLU)**. No less than 30 days prior **to** the start of project operation, PPEC will provide written verification to CFWO **and CPM** that the endowment has been paid in full to the San Diego Foundation or other third-party approved by CFWO **and CPM**. The annual payment from the endowment can only be used to implement weed management and remediation actions (e.g., activities that support the continued survival of Quino, gnatcatcher, and Otay tarplant) at locations protected in perpetuity and approved by CFWO **and CPM** either within critical habitat or habitat that supports the biological needs for these species.

Comment 4

Page 5, paragraph 4, line 5

*Energy Commission staff requests the edit below in order to receive a copy of reports to document compliance.*

The PPEC will provide copies of reports to CFWO **and CPM** within 30 days of receipt.

Comment 5

Page 6, paragraph 1, line 4

*Energy Commission staff requests the edit below in order to review acceptability of lands prior to acquisition in coordination with CFWO.*

The parcel(s) will contribute to the conservation value of surrounding conserved land and will require approval from CFWO **and CPM** prior to acquisition.

Comment 6

Page 6, paragraph 1, line 6

*Energy Commission staff is unclear what program is referred to below. Please define which program is referred to below.*

If Otay tarplant is not present on the property but suitable habitat is present, Otay tarplant may be established through seeding as part of the program.

Comment 7

Page 6, paragraph 1, line 7

*Energy Commission staff requests the edit below in order to receive a copy of reports to review and approve in coordination with the CFWO.*

If Otay tarplant establishment is necessary, PPEC will prepare an Otay tarplant establishment plan with quantifiable success criteria for approval by CFWO **and CPM** prior to the start of project operation.

Comment 8

Page 6, paragraph 1, last sentence

*Edit is requested to be consistent with approval agencies as listed on page 4, bullet 1, last sentence.*

No less than 50 acres of habitat will be acquired unless approved in writing by the CEC **CPM, (in consultation with CDFG and DPLU)**, and CFWO, ~~and DPLU~~.

Comment 9

Page 6, paragraph 2, first sentence

*BIO-14 in the Presiding Member's Proposed Decision requires an appropriate endowment for management of the compensation habitat in perpetuity. Energy Commission staff requests a funding mechanism be added to the conservation measures.*

Under this scenario, the land will be transferred to an existing land management entity, and PPEC ~~will be responsible for ensuring that the~~ **will provide an endowment for the land will to** be managed for general wildlife values. **A Property Analysis Record (PAR) or PAR-like analysis will be prepared to establish the appropriate long-term fee to fund management of the lands in perpetuity.** There would be no species-specific land management obligations. The land will be transferred prior to the start of project operations.

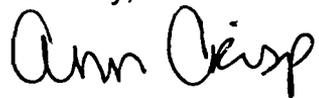
Comments on Pio Pico Energy Center, LLC (applicant) comments on the Draft Formal Section 7 Consultation for the Pio Pico Energy Center dated August 23, 2012

The applicant requested a global change from "The anticipated life of the facility is 30 years" to "The anticipated life of the facility is at least 20 years." The project description in the Energy Commission Presiding Member's Proposed Decision lists the anticipated life of the generation facility as 30 years. Energy Commission staff requests the language remain unchanged in the Service's biological opinion. If project facility closure occurs earlier than 30 years, staff suggests a stipulation be added to the

biological opinion that any unused funds for the weed abatement option may be returned to the project owner upon permanent facility closure with written approval from CFWO and the CPM.

If you have any questions, please contact me at (916) 651-3776, or by email at: [ann.crisp@energy.ca.gov](mailto:ann.crisp@energy.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Ann Crisp". The signature is written in a cursive, flowing style.

Ann Crisp  
Staff Biologist  
Siting, Transmission & Environmental Protection (STEP) Division



**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 8/16/2012)**

**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-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENOR**

Rob Simpson  
[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 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  
[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  
[galen.lemei@energy.ca.gov](mailto:galen.lemei@energy.ca.gov)

\*Jennifer Nelson  
Associate Member's Advisor  
[Jennifer.nelson@energy.ca.gov](mailto:Jennifer.nelson@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  
[kevinw.bell@energy.ca.gov](mailto:kevinw.bell@energy.ca.gov)

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
[eileen.allen@energy.ca.gov](mailto:eileen.allen@energy.ca.gov)

**ENERGY COMMISSION – PUBLIC  
ADVISER**

Jennifer Jennings  
Public Adviser  
[publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)

DECLARATION OF SERVICE

I, Diane L. Scott, declare that on August 31, 2012, I served and filed a copy of the **Staff's Comments on Draft Formal Section 7 Consultation for the Pio Pico Energy Center (11-AFC-01), San Diego County, CA, FWS-SDG-10B0661-12F0275**, dated August 31, 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 **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.

Originally Signed

Diane L. Scott

Siting, Transmission and Environmental Protection Division