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11-AFC-01

TN # 66103

JULY 05 2012

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

The Application for Certification for the
PIO PICO ENERGY CENTER PROJECT

Docket No. 11-AFC-01

PIO PICO ENERGY CENTER, LLC'S OPPOSITION TO
CORRECTIONS CORPORATION OF AMERICA'S PETITION FOR EXTENSION OF
DEADLINE FOR INTERVENTION AND PETITION TO INTERVENE

July 5, 2012

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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

**The Application for Certification for the
PIO PICO ENERGY CENTER PROJECT**

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CORRECTIONS CORPORATION OF AMERICA'S PETITION FOR EXTENSION OF
DEADLINE FOR INTERVENTION AND PETITION TO INTERVENE**

I. INTRODUCTION

On or about June 28, 2012, Corrections Corporation of America ("CCA" or "Petitioner") filed a Petition for Extension of Deadline for Intervention ("Extension Request"), Petition to Intervene ("Petition"), and Declaration of Scott Williams in Support Thereof ("Declaration") to in an effort to belatedly become a party to the Pio Pico Energy Center ("PPEC") Application for Certification proceeding. Applicant Pio Pico Energy Center, LLC ("Applicant") herein opposes the Petition and Extension Request on the grounds that Petitioner fails to satisfy the requirements of Title 20, California Code of Regulations, section 1207.¹

II. ARGUMENT

A. CCA's Petition Does Not Meet The Requirements of Section 1207(c)

Title 20, California Code of Regulations, section 1207(b) specifies that "the petition shall

¹ Applicant herein incorporates by reference the Opposition Applicant filed on July 27, 2012 to CCA's original Extension Request for extension of the deadline to file a petition for intervene. A copy of such Opposition is attached as Exhibit A hereto.

be filed no later than the Prehearing Conference or 30 days prior to the first hearing . . . , whichever is earlier.” Any petition filed after the deadline specified in section 1207(b) may only be granted upon a showing of good cause. (20 Cal. Code Regs. § 1207(c).) CCA’s Petition, Extension Request, and Declaration in Support Thereof lacks good cause and therefore should be denied.

On June 27, 2012, Applicant Pio Pico Energy Center, LLC received from Energy Commission Staff Project Manager, Eric Solorio, a forwarded email from Mr. Scott Williams, legal counsel for CCA. Therein, Mr. Williams, on behalf of CCA, requested an extension of the deadline to file a petition for intervention in this proceeding. Applicant immediately opposed the request (see Exhibit A attached hereto). Subsequently, on June 28, 2012, CCA filed the Petition, Extension Request, and Declaration at issue herein.

The Committee’s June 25, 2012 deadline for filing a petition to intervene is clearly set forth in the Committee’s June 15, 2012 Notice of Prehearing Conference and Evidentiary Hearing (“Notice”) as well as in section 1207(b). Specifically, the Notice provides the following regarding Petitions to Intervene:

The deadline to file a Petition to Intervene in this case is **5 p.m., Monday, June 25, 2012**. Petitions filed after that date and time extensions for new Intervenors to review case materials will be granted only upon a showing of good cause. Intervenors generally take the case as they find it at the time intervention is granted. For example, if the deadline for filing opening testimony has passed, the newly approved Intervenor may not be allowed to file opening testimony. Persons interested in obtaining intervenor status are encouraged to file their petitions as soon as possible.

(Notice at p. 4 (emphasis in original).) The Notice clearly states that any person interested in obtaining intervenor status should “file their petitions as soon as possible” and any petitions and time extensions for those granted intervenor status filed after June 25, 2012 will only be granted upon a showing of good cause. (*Id.*)

Mr. Williams and CCA have been well informed about the Pio Pico Energy Center Project's application for certification proceeding. In fact, Mr. Williams states in his June 27th email correspondence and in the Petition on behalf of CCA that he has reviewed the application for certification and the preliminary and final staff assessments. Moreover, Mr. Williams states he had several conversations with Mr. Solorio and counsel for PPEC, the first of which occurred on March 23, 2012. Mr. Williams even acknowledged that he was aware of the June 25, 2012 Petition for Intervention filing deadline. Thus, it is obvious that CCA has been aware of this proceeding for at least three months and has had ample access to all documents related to this proceeding. It is also clear that Mr. Williams was informed and aware of the deadline and instructions set forth in the Committee's June 15, 2012 Notice related to Petitions to Intervene.² The only basis that CCA provides in its Petition to explain its late filing is that "CCA had good cause to rely on the statements made to CCA's counsel [by CEC Staff]." (Petition at 3.)

CCA clearly lacks good cause for its late-filed Petition. The Final Staff Assessment ("FSA") was issued on May 22, 2012 and there is no regulatory public comment period after publication of an FSA. Once the FSA is issued, the Evidentiary Hearing phase begins. The Committee's June 15, 2012 Notice set forth the relevant deadlines for the Evidentiary Hearing phase. Applicant timely provided its comments on the FSA in the form of opening testimony in adherence to the June 26, 2012 filing deadline set forth in the Notice.³ Statements made by CEC Staff to CCA does not constitute good cause justifying a late-filed Petition. Further, receipt

² Mr. Williams' email states that he contacted Mr. Solorio and the Public Adviser on June 25, 2012 to determine whether he should file a Petition to Intervene on behalf of CCA. Rather than taking a chance of missing the deadline, Mr. Williams could have filed the Petition in an abundance of caution but instead waited and filed a request for an extension of time to file a Petition to Intervene.

³ Applicant is fully committed to maintaining the July 23, 2012 evidentiary hearing date and the preceding filing deadlines related thereto as set forth in the Notice.

of Applicant's opening testimony on June 26, 2012 does not constitute good cause for an extension to the Petition deadline or support the filing of a late Petition.

B. The Presiding Member Has Discretion To Deny the Petition

Although Title 20, California Code of Regulations, section 1207(c) states that the “presiding member may grant leave to intervene...,” section 1207 does not compel the presiding member or the Commission to grant every Petition to Intervene submitted in every proceeding. (20 Cal. Code Regs. §1207 (emphasis added).) In fact, for late-filed petitions, the Petition may only be granted if good cause is shown, and even if good cause exists (which it does not, as set forth above), the Presiding Member still has discretion to deny the Petition.

Thus, the Presiding Member has the express discretion pursuant to section 1207 to deny the Petition.

III. CONCLUSION

It is clear that CCA has reviewed the project documents and has been aware of the project for months, yet CCA failed to timely file a Petition to Intervene. In addition, CCA fails to provide good cause for its late-filed Petition. For the reasons set forth herein, CCA's Petition and Extension Request should be DENIED.

Date: July 5, 2012

Stoel Rives LLP



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



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 6/25/2012)

PIO PICO ENERGY CENTER, LLC
Applicant's Opposition to Corrections Corporation of America's
Petition to Intervene, dated July 5, 2012

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DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on July 5, 2012:

I deposited copies of the aforementioned document and, if applicable, a disc containing the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

OR

I transmitted the document(s) herein via electronic mail only pursuant to California Energy Commission Standing Order re Proceedings and Confidentiality Applications dated November 30, 2011. All electronic copies were sent to all those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

OR

On the date written above, I placed a copy of the attached document(s) in a sealed envelope, with delivery fees paid or provided for, and arranged for it/them to be delivered by messenger that same day to the office of the addressee, as identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

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

EXHIBIT A



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June 27, 2012

MELISSA A. FOSTER
Direct (916) 319-4673
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VIA EMAIL

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

**Re: Pio Pico Energy Center Project (11-AFC-01)
Objection and Opposition to CCA's Request for Extension**

Dear Hearing Officer Renaud:

On June 27, 2012, Applicant Pio Pico Energy Center, LLC received from Energy Commission Staff Project Manager, Eric Solorio, a forwarded email from Mr. Scott Williams, legal counsel for the Corrections Corporation of America ("CCA"). Therein, Mr. Williams, on behalf of CCA, requests an extension of the deadline to file a petition for intervention in this proceeding. The Committee's deadline for filing such a petition is clearly set forth in the Committee's June 15, 2012 Notice of Prehearing Conference and Evidentiary Hearing ("Notice") and that date was Monday, June 25, 2012. Mr. Williams requests in his email correspondence an extension of that deadline to July 6, 2012 – the very day final testimony is due from all parties for purposes of proceeding to evidentiary hearing. Applicant herein opposes Mr. Williams' request as it is untimely and lacks good cause.

Specifically, the Notice provides the following regarding Petitions to Intervene:

The deadline to file a Petition to Intervene in this case is **5 p.m., Monday, June 25, 2012**. Petitions filed after that date and time extensions for new Intervenor to review case materials will be granted only upon a showing of good cause. Intervenor generally take the case as they find it at the time intervention is granted. For example, if the deadline for filing opening testimony has passed, the newly approved Intervenor may not be allowed to file opening testimony. Persons interested in obtaining intervenor status are encouraged to file their petitions as soon as possible.



Raoul Renaud
June 27, 2012
Page 2

(Notice at p. 4 (emphasis in original).¹) The Notice clearly states that any person interested in obtaining intervenor status should “file their petitions as soon as possible” and any petitions and time extensions for those granted intervenor status filed after June 25, 2012 will only be granted upon a showing of good cause. (*Id.*)

Mr. Williams and CCA have been well informed about the Pio Pico Energy Center Project’s application for certification proceeding. In fact, Mr. Williams states in his June 27th email correspondence that he has reviewed the application for certification and the preliminary and final staff assessments. Moreover, Mr. Williams states he had several conversations with Mr. Solorio and counsel for PPEC, the first of which occurred on March 23, 2012. In his email, Mr. Williams even acknowledged that he was aware of the June 25, 2012 Petition for Intervention filing deadline. Thus, it is obvious that CCA has been aware of this proceeding for at least three months and has had ample access to all documents related to this proceeding. It is also clear that Mr. Williams was informed and aware of the deadline and instructions set forth in the Committee’s June 15, 2012 Notice related to Petitions to Intervene.²

CCA also lacks good cause for its request. The Final Staff Assessment (“FSA”) was issued on May 22, 2012 and there is no regulatory public comment period after publication of an FSA. Once the FSA is issued, the Evidentiary Hearing phase begins. The Committee’s June 15, 2012 Notice set forth the relevant deadlines for the Evidentiary Hearing phase. Applicant timely provided its comments on the FSA in the form of opening testimony in adherence to the June 26, 2012 filing deadline set forth in the Notice. Receipt of Applicant’s opening testimony on June 26, 2012 does not constitute good cause for an extension to the Petition deadline or support the filing of a late Petition.

¹ The Committee’s June 25, 2012 deadline is also consistent with 20 Cal. Code Regs. section 1207, which provides that “in a power plant siting case, the petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing . . . whichever is earlier.” (20 Cal. Code Regs. § 1207(b).) Petitions that are filed after that deadline may only be granted “upon a showing of good cause by the petitioner.” (*Id.* §(c).)

² Mr. Williams’ email states that he contacted Mr. Solorio and the Public Adviser on June 25, 2012 to determine whether he should file a Petition to Intervene on behalf of CCA. Rather than taking a chance of missing the deadline, Mr. Williams could have filed the Petition in an abundance of caution but instead waited and filed a request for an extension of time to file a Petition to Intervene.



Raoul Renaud
June 27, 2012
Page 3

CCA has reviewed the project documents and has been aware of the project for months yet CCA failed to timely file a Petition to Intervene. In addition, CCA fails to provide good cause for its extension request that was made after the close of the June 25, 2012 Petition filing deadline. Based on the foregoing, Applicant herein opposes CCA's request for extension.

Respectfully submitted,

Melissa A. Foster

MAF:jmw
Enclosure

cc: Proof of Service List
G. Scott Williams, Seltzer Caplan McMahon Vitek (via email)

From: Solorio, Eric@Energy [<mailto:Eric.Solorio@energy.ca.gov>]
Sent: Wednesday, June 27, 2012 12:27 PM
To: Bell, Kevin W@Energy; Davis, Chris@Energy; Ogata, Jeffery@Energy; Jennings, Jennifer@Energy
Cc: Khoshmashrab, Shahab@Energy; Maggie Fitzgerald
Subject: FW: Pio Pico Project (11-AFC-01) -- Request for Extension in Deadline for Intervention

[Fyi...I've also copied the applicant here.](#)

Eric

From: Williams, Scott [<mailto:swilliams@scmv.com>]
Sent: Wednesday, June 27, 2012 11:07 AM
To: Renaud, Raoul@Energy
Cc: Solorio, Eric@Energy; Williams, Scott
Subject: Pio Pico Project (11-AFC-01) -- Request for Extension in Deadline for Intervention

Mr. Renaud,

I am counsel for Corrections Corporation of America ("CCA"), which owns property immediately to the northeast of the site of the proposed Pio Pico Energy Center Power Project (Docket No. 11-AFC-01) in the East Otay Mesa portion of San Diego County. CCA has received a permit for the development of a 2,132-bed correctional facility on its property.

I am submitting this email to request an extension in the deadline to file a petition to become an intervenor in the Pio Pico proceeding. In support of this request, I provide the following summary of recent events:

I have reviewed the Application for Certification, Preliminary Staff Assessment and Final Staff Assessment on CCA's behalf as they became available. After reviewing the Preliminary Staff Assessment, I contacted the CEC Project Manager (Eric Solorio) and counsel for the Applicant to discuss two issues of concern relating to hazardous materials and noise impacts to CCA's facility. After several discussions, I was assured that my concerns would be addressed in the Final Staff Assessment and, in fact, Conditions of Certification Noise-4 and Hazmat-4 were included in the Final Assessment to address CCA's issues. With the June 25 deadline for intervention approaching, I contacted Mr. Solorio and attempted to contact counsel for the Applicant to determine whether there was any reason for CCA to incur the expense of intervention given the fact that the proposed Conditions of Certification were satisfactory to CCA. I was not able to speak with Applicant's counsel, but Mr. Solorio stated to me that the Applicant had assured him that it would not object to the proposed Conditions. I also spoke with Jennifer Jennings, the public adviser for the project, who stated that she did not think formal intervention was necessary given the fact that there was no suggestion of opposition to the proposed Conditions. On that basis, CCA elected not to submit a petition to intervene in the proceeding.

I have just been informed this morning by Mr. Solorio that the Applicant has objected to Condition Noise-4 (the relevant noise mitigation measure) in its June 26 filing of its Opening Testimony, Witness List, and Identification of Contested

Issues. I have not yet been able to obtain a copy of the Applicant's filing, but I understand that the Applicant is objecting that it are not subject to the relevant County noise standards, even though the County applied those standards to the CCA facility.

In light of these developments, it now appears necessary for CCA to formally intervene in the proceeding. Accordingly, CCA respectfully requests an extension until July 6 in the deadline to submit a petition to intervene in the proceeding. (I will use my best efforts to submit a petition to intervene before July 6, but I start an out-of-town vacation tomorrow and will need to coordinate the preparation of a petition to intervene with a colleague who is unfamiliar with this matter.)

Thank you for your consideration of this request. Please forward this request to any other CEC office or representative as necessary.

G. Scott Williams
Seltzer | Caplan | McMahon | Vitek
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Please read the [Legal Disclaimer](#) that governs this email and any attachments.



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 6/25/2012)

PIO PICO ENERGY CENTER, LLC
Applicant's Correspondence to Hearing Officer Renaud dated June 27, 2012

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DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on June 27, 2012:

I deposited copies of the aforementioned document and, if applicable, a disc containing the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

OR

I transmitted the document(s) herein via electronic mail only pursuant to California Energy Commission Standing Order re Proceedings and Confidentiality Applications dated November 30, 2011. All electronic copies were sent to all those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

OR

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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.

//ORIGINAL SIGNED\\

Kimberly J. Hellwig