

**DOCKETED**

**11AFC-01**

TN # 66107

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**  
**BILL POWERS' PETITION TO INTERVENE**

July 5, 2012

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

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**I. INTRODUCTION**

On July 4, 2012, at 2:19 p.m. Pacific Daylight Time, Applicant Pio Pico Energy Center, LLC ("Applicant") received email correspondence from Bill Powers attaching his Petition to Intervene ("Petition"). Mr. Powers' untimely Petition fails to meet this Committee's deadline for filing such a petition, as directed in the June 15, 2012, Notice of Prehearing Conference and Evidentiary Hearing ("Notice"). To that end, and for other reasons set forth herein, Applicant opposes Mr. Powers' Petition and strongly urges this Committee to deny Mr. Powers' Petition.

**II. ARGUMENT**

**A. Mr. Powers' Petition Does Not Meet The Requirements of Section 1207(c)**

Title 20, California Code of Regulations, section 1207(b) specifies that "the petition shall 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).) Mr. Powers' Petition

lacks good cause and therefore should be denied.

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, 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 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.

(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.* (emphasis added).)

Mr. Powers clearly lacks good cause for his 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. As Mr. Powers is well aware of the California Energy Commission's ("Commission") siting procedures, having participated as an intervenor in the Palomar Energy Project (01-AFC-24), and having testified as a witness in the Chula Vista Energy Upgrade Project (07-AFC-04) and the Ivanpah Solar Electric Generating System (07-AFC-5C), as well as and various other proceedings before the Commission. His decision not to participate in this proceeding prior to

this late date cannot rest solely on his lack of knowledge about the PPEC proceeding prior to July 4, 2012.

**B. The Petition Does Not Meet the Minimum Requirements of a Petition to Intervene**

Section 1207(a) sets forth the basic requirements for a petition to intervene. Specifically, a “petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.” Here, the Petition includes the grounds for the intervention and the name, address, and telephone number of the petitioner, Mr. Powers. But the Petition does not include information regarding the position and interest of Mr. Powers in the proceeding nor does it describe the extent to which Mr. Powers desires to participate in the proceedings.

Based on the foregoing, the Petition fails to meet the minimum regulatory requirements and, therefore, the Petition should be denied.

**C. 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 Mr. Powers’ Petition.

### III. CONCLUSION

It is clear that Mr. Powers has been aware enough of the PPEC project to have reviewed certain project documents, specifically the FSA – a document totaling 877 pages – yet he failed to timely file a Petition to Intervene. In addition, Mr. Powers fails to provide good cause for his late-filed Petition. For the reasons set forth herein, Mr. Powers' Petition should be DENIED.

Date: July 5, 2012

Stoel Rives LLP

A handwritten signature in blue ink that reads "Melissa A. Foster". The signature is written in a cursive, flowing style.

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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  
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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 Opposition to Bill Powers' 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