

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

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

California Energy Commission

**DOCKETED  
11-AFC-01**

TN # 66138

JULY 06 2012

In the Matter of:

PIO PICO ENERGY CENTER

PIO PICO ENERGY CENTER, LLC

Docket No. 11-AFC-01

STAFF'S OPPOSITION  
to Bill Powers'  
Petition to Intervene

**INTRODUCTION**

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.

The AFC for the PPEC was found data adequate on April 20, 2011, and a public Site Visit and Informational Hearing was held on May 16, 2011. The Preliminary Staff Assessment was issued on February 22, 2012, which was followed by the Final Staff Assessment issued on May 22, 2012.

On June 15, 2012, the Committee in this matter issued a Notice of Prehearing Conference and Evidentiary Hearing ("Notice"). Amongst other things, the Notice specifically set the deadline for intervention for 5 p.m., Monday, June 25, 2012.

On July 4, 2012, petitioner Bill Powers filed a Petition to Intervene in the above entitled matter. Staff hereby objects to this petition, and for the reasons set forth below, requests that the presiding member DENY the petition.

**ANALYSIS**

Title 20, California Code of Regulations, section 1207 provides as follows:

- (a) Any person may file with the Dockets Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceeding, and the name, address, and phone number of the petitioner.

July 6, 2012

Page 2

Historically, the Commission and staff both have actively encouraged public participation in our proceedings. Public participation is an integral part of the Commission's licensing proceedings. However, such participation must be timely.

Title 20, California Code of Regulations, section 1207(b) provides that a Petition to Intervene "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.

In the Notice filed by the Committee on June 15, 2012 clearly set the deadline to file a Petition to Intervene. The Notice provides as follows:

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.  
(Notice at p.4, emphasis as in original)

Here, Mr. Powers filed his Petition to intervene on July 4, 2012, well past the timeline specified in Title 20, California Code of Regulations, section 1207(b), and well past the deadline as set forth in the Notice. In his late-filed Petition, Mr. Powers failed to set forth *any* argument whatsoever demonstrating good cause justifying his belated request to be granted intervenor status.

On the afternoon of July 5, 2012, at 2:25 p.m., Mr. Powers sent an e-mail communication to several individuals, as well as to Dockets.<sup>1</sup> In that e-mail communication, Mr. Powers expanded on the reasons for his desire to intervene, and offered as good cause the following explanation for his late filing:

"I reviewed the FSA for Pio Pico ***earlier this week*** to understand the degree of analysis that the CEC is conducting of the local solar alternative in the Pio Pico proceeding as a preview to what could be expected in the Quail Brush CEC proceeding.... I did not anticipate that there would be no substantive discussion of the rooftop solar alternative...in the Pio Pico FSA." (Emphasis added.)

Staff notes that the AFC was filed on February 9, 2011; that the Preliminary Staff Assessment was issued on February 22, 2012; that the Final Staff Assessment was issued on May 22, 2012; and that the Notice was issued on June 15, 2012. Mr. Powers chose to not review the FSA (or, assumedly, any other document filed in this matter) until the week *after* the Petition to Intervene was due. It is with no small irony that the petitioner cites his unexplained failure to act in a timely manner as his sole justification to allow his late filing.<sup>2</sup>

---

<sup>1</sup> Staff noted that this e-mail communication has not been properly filed with Dockets, has not been properly served on the parties, and is not signed under penalty of perjury. Staff reserves the right to object on these grounds.

<sup>2</sup> An underlying theme of a petitioner that "I just didn't get around to it" does not constitute good cause.

July 6, 2012

Page 3

Section 1207 is a permissive statute, one that allows any person to petition to intervene in any proceeding before the commission. Indeed, staff encourages participation by all other potential parties where such participation is timely, or where good cause is shown for late intervention. However, section 1207 does not automatically confer party status on a person who files a Petition to Intervene, and any person who files a Petition to Intervene after the time set for intervention has the burden of not only justifying their intervention, but to show good cause why the late filed petition should be accepted.

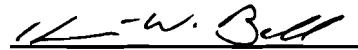
Here, Mr. Powers has failed to demonstrate good cause to justify his late-filed Petition to Intervene.

### CONCLUSION

Public participation is an integral part of the Commission's licensing process, and Commission staff actively encourages members of the public to participate in our proceedings, to review the reports and studies that are produced as a part of the Commission's environmental review, and to provide comment on those documents. However, such review, comment, and participation must be done in a timely manner. There is nothing in his Petition to Intervene that demonstrates that good cause exists to allow his late filed petition to be allowed. Based on the foregoing, Bill Powers' Petition to Intervene should be DENIED.

Date: July 6, 2012

Respectfully Submitted,

  
\_\_\_\_\_  
Kevin W. Bell  
Senior Staff Counsel



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-1  
PROOF OF SERVICE  
(Revised 3/19/2012)**

**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-mail service preferred*  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**PETITIONERS**

April Rose Sommer  
Attorney for Rob Simpson  
P.O. Box 6937  
Moraga, CA 94570  
*e-mail service preferred*  
[aprilsummerlaw@yahoo.com](mailto:aprilsummerlaw@yahoo.com)

**ENERGY COMMISSION –  
DECISIONMAKERS**

CARLA PETERMAN  
Commissioner and Presiding  
Member  
[cpeterma@energy.state.ca.us](mailto:cpeterma@energy.state.ca.us)

KAREN DOUGLAS  
Commissioner and Associate  
Member  
*e-mail service preferred*  
[kldougl@energy.state.ca.us](mailto:kldougl@energy.state.ca.us)

Raoul Renaud  
Hearing Adviser  
[rrenaud@energy.state.ca.us](mailto:rrenaud@energy.state.ca.us)

Jim Bartridge  
Presiding Member's Adviser  
[jbartrid@energy.state.ca.us](mailto:jbartrid@energy.state.ca.us)

Galen Lemei  
Associate Member's Adviser  
*e-mail service preferred*  
[glemei@energy.state.ca.us](mailto:glemei@energy.state.ca.us)

**ENERGY COMMISSION STAFF**

Eric Solorio  
Siting Project Manager  
[esolorio@energy.state.ca.us](mailto:esolorio@energy.state.ca.us)

Kevin W. Bell  
Staff Counsel  
[kwbell@energy.state.ca.us](mailto:kwbell@energy.state.ca.us)

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
*e-mail service preferred*  
[eallen@energy.state.ca.us](mailto:eallen@energy.state.ca.us)

**ENERGY COMMISSION – PUBLIC  
ADVISER**

Jennifer Jennings  
Public Adviser  
*e-mail service preferred*  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, **Pamela Fredieu**, declare that on, **July 6, 2012**, I served and filed a copy of the attached **California Energy Commission Staff's Opposition to Bill Powers' Petition to Intervene** dated **July 6, 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, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the 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.state.ca.us](mailto:docket@energy.state.ca.us)

**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  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

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 Assistant