



County of San Diego

ERIC GIBSON
DIRECTOR

DEPARTMENT OF PLANNING AND LAND USE

5201 RUFFIN ROAD, SUITE B, SAN DIEGO, CALIFORNIA 92123-1666
INFORMATION (858) 694-2960
TOLL FREE (800) 411-0017
www.sdcounty.ca.gov/dplu

California Energy Commission

DOCKETED
11-AFC-1

TN # 66398

JUL 31 2012

July 30, 2012

Mr. Raoul Renaud, Hearing Advisor
Ms. Karen Douglas, Commissioner and Associate Member
Ms. Carla Peterman, Commissioner and Presiding Member
Energy Resources Conservation and Development Commission
1516 9th Street
Sacramento, CA 95814

APPLICATION FOR CERTIFICATION FOR THE *PIO PICO ENERGY CENTER (11-AFC-1)*

Dear Mr. Renaud, Commissioner Douglas, and Commissioner Peterman:

On July 25, 2012, County staff met with representatives from the APEX Power Group (APEX) and their consultant, Brian Mooney regarding the application of the County's Noise Ordinance to the proposed Pio Pico Energy Center (PPEC) located in East Otay Mesa.

As a result of the meeting and further research, the County concluded that the proposed PPEC is a heavy industrial use type. The M-58 Use Classification (Heavy Industrial) under the County's Zoning Ordinance conditionally allows uses such as industrial plants, compounding of radioactive materials, and petroleum refining, which are uses similar to the proposed energy plant. The proposed site, which is governed by the East Otay Mesa Specific Plan, allows uses under the M-58 designation.

Subsection 6 of the County of San Diego Noise Ordinance Section 36.404 specifies that a dBA level of 75 is allowed in an M-58 Use Classification.

Furthermore, after discussion with Mr. Scott Williams with Corrections Corporation of America (CCA), the neighboring property owner, CCA is in agreement with the 75 dBA noise level at the Pio Pico Energy Center property line as specified in the attached revised noise condition. The County understands that the California Energy Commission is considering the revised condition, which was made part of the hearing

process, and will make an independent decision regarding the appropriate Condition of Certification related to noise for the PPEC.

While the County does not have permit authority over this project, given the above discussion and assuming that the California Energy Commission incorporates the condition changes, we do not contest the revised noise condition for this project.

Should you have any questions, please contact me at 858/694-3765 or via email at Jeff.Murphy@sdcountry.ca.gov

Sincerely,



JEFF MURPHY, Deputy Director
Department of Planning and Land Use

ATTACHMENT

Letter from Stoel Rivers to Hearing Officer Raoul Renaud dated July 22, 2012

cc:

Michael King, APEX Power Group, LLC, 6229 White Adler Ct., Avon, IN 46123
Brian F. Mooney, AICP, AES/Mooney Planning, Regional Director, Southern California, 427 C Street, Suite 407, San Diego, CA 92101
Corrections Corporation of America, G. Scott Williams, Seltzer/Caplan/McMahon/Vitek, 2100 Symphony Towers, 750 B Street, San Diego, CA 92101
Carla Peterman, Commissioner and Presiding Member, cpeterma@energy.ca.gov
Karen Douglas, Commissioner and Associate, Member, kldougla@energy.ca.gov
Raoul Renaud, Hearing Adviser, rrenaud@energy.ca.gov
Eric Solorio, Siting Project Manager, esolorio@energy.ca.gov



500 Capitol Mall, Suite 1600
Sacramento, CA 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

July 22, 2012

MELISSA A. FOSTER
Direct (916) 319-4673
mafoster@stoel.com

VIA EMAIL

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

**Re: Pio Pico Energy Center Project (11-AFC-01)
Condition of Certification NOISE-4**

Dear Hearing Officer Renaud:

For the past two weeks, Applicant Pio Pico Energy Center LLC ("Applicant") and Intervenor Corrections Corporation of America ("CCA") have diligently been working to resolve concerns related to Staff's proposed Condition of Certification NOISE-4. Applicant is pleased to report that Applicant and CCA have in fact resolved their dispute. Applicant and CCA each support a proposed Condition of Certification NOISE-4 that would impose a 75 dBA Leq (one hour) noise limit for the PPEC project along the northern boundary of the PPEC site as measured after the PPEC facility reaches a sustained output of 90% or greater of rated capacity.

Pursuant to the Evidentiary Hearing Order (July 12, 2012), Applicant herein provides the attached revised Condition of Certification NOISE-4 that reflects such resolution and highlights the recently agreed upon proposed changes to differentiate from the proposed revisions submitted by Applicant on June 26, 2012.

Respectfully submitted,

A handwritten signature in blue ink that reads "Melissa A. Foster".

Melissa A. Foster

MAF:jmw
cc: Proof of Service

NOISE-4

The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that the operation of the project will not cause the noise levels due to plant operation alone, during the four quietest consecutive hours of the nighttime, to exceed an average of ~~36~~**45** dBA Leq measured at or near monitoring location LT-1 and an average of ~~34~~**39** dBA Leq measured at or near monitoring location LT-2.

~~Also, the project design and implementation shall include appropriate noise mitigation measures adequate to ensure that the operation of the project will not cause the noise levels due to plant operation alone to exceed 62.5 dBA Leq between 7 a.m. and 10 p.m. and 60 dBA Leq between 10 p.m. and 7 a.m. measured at EMDF.~~

The project shall also ensure that it includes any required noise mitigation measures to ensure it does not exceed 75 dBA at the project property line during plant operations.

No new pure-tone components shall be caused by the project. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints.

- A. When the project first achieves a sustained output of 90% or greater of rated capacity, the project owner shall conduct a community noise survey at monitoring location LT-1 or at a closer location acceptable to the CPM. This survey shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been caused by the project.

During the period of this survey, the project owner shall conduct a short-term survey of noise at the monitoring location LT-2 or at a closer location acceptable to the CPM. The short-term noise measurements at this location shall be conducted continuously during the nighttime hours of 10:00 p.m. to 7:00 a.m.

~~Also during the period of this survey, the project owner shall conduct a short-term survey of noise at EMDF. The short-term noise measurements at this location shall be conducted continuously during the nighttime hours of 10:00 p.m. to 7:00 a.m. and also during the daytime hours of 7:00 a.m. to 10:00 p.m.~~

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. The character of the plant noise shall be evaluated at the

affected receptor locations to determine the presence of pure tones or other dominant sources of plant noise.

Also during the period of the above survey, the project owner shall conduct a short-term survey of noise levels at several points on its property lines, including and, if the proposed detention facility has been constructed or is under construction, an emphasis on the North property line.

- B. If the results from the noise survey indicate that the power plant noise at the affected receptor sites (LT-1 or LT-2) exceeds the above values during the four quietest consecutive hours of the nighttime, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits.
- C. If the results from the **property line** noise survey indicate that the power plant noise at ~~EMDF~~ exceeds ~~the above values~~ **75 dBA** during the measurement hours, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits.
- D. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

Verification: The survey shall take place within 45 days of the project first achieving a sustained output of 90% or greater of rated capacity. Within 15 days after completing the survey, the project owner shall submit a summary report of the survey to the CPM. Included in the survey report will be a description of any additional mitigation measures necessary to achieve compliance with the above listed noise limit, and a schedule, subject to CPM approval, for implementing these measures. When these measures are in place, the project owner shall repeat the noise survey.

Within 15 days of completion of the new survey, the project owner shall submit to the CPM a summary report of the new noise survey, performed as described above and showing compliance with this condition.



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 7/10/2012)**

APPLICANT

Gary Chandler, President
Pio Pico Energy Center
P.O. Box 95592
South Jordan, UT 84095
grchandler@apexpowergroup.com

David Jenkins, Project Manager
Pio Pico Energy Center, LLC
1293 E. Jessup Way
Mooresville, IN 46158
djenkins@apexpowergroup.com

APPLICANT'S CONSULTANTS

Maggie Fitzgerald
Sierra Research
1801 J Street
Sacramento, CA 95811
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
mafoster@stoel.com

INTERESTED AGENCIES

California ISO
e-mail service preferred
e-recipient@caiso.com

INTERVENORS

***Rob Simpson**
e-mail service preferred
rob@redwoodrob.com

***Gretel Smith, Esq.**
Attorney for Rob Simpson
P.O. Box 152994
San Diego, CA 92195
gretel.smith79@gmail.com

***Corrections Corporation of America**
G. Scott Williams, Esq.
c/o Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101
swilliams@scmv.com

**ENERGY COMMISSION –
DECISIONMAKERS**

CARLA PETERMAN
Commissioner and Presiding Member
carla.peterman@energy.ca.gov

KAREN DOUGLAS
Commissioner and Associate Member
e-mail service preferred
karen.douglas@energy.ca.gov

Raoul Renaud
Hearing Adviser
raoul.renaud@energy.ca.gov

Jim Bartridge
Presiding Member's Advisor
jim.bartridge@energy.ca.gov

Galen Lemei
Associate Member's Advisor
e-mail service preferred
galen.lemei@energy.ca.gov

ENERGY COMMISSION STAFF

Eric Solorio
Siting Project Manager
eric.solorio@energy.ca.gov

Kevin W. Bell
Staff Counsel
kevin.w.bell@energy.ca.gov

Eileen Allen
Commissioners' Technical
Advisor for Facility Siting
e-mail service preferred
eileen.allen@energy.ca.gov

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.ca.gov

DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on July 22, 2012, I served and filed a copy of the attached **Letter to Raoul Renaud dated July 22, 2012 re CCA and Applicant's NOISE-4 Resolution**. 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 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

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

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