



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

March 26, 2012

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

VIA EMAIL

Mr. Eric Solorio, Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
11-AFC-1	
DATE	MAR 26 2012
RECD.	MAR 26 2012

**Re: Pio Pico Energy Center Project (11-AFC-01)
Applicant's Comments on the Preliminary Staff Assessment**

Dear Mr. Solorio:

On February 21, 2012, California Energy Commission Staff published its Preliminary Staff Assessment ("PSA") for the Pio Pico Energy Center Project ("PPEC" or "Project") and requested comments in writing no later than March 26, 2012. In the meantime, on March 1, 2012, Staff held a PSA workshop in Chula Vista, California to discuss key topics, such as biological and water resources. Pio Pico Energy Center, LLC ("Applicant") participated in the workshop and reserved its opportunity to provide written comments on the whole of the PSA. To that end, Applicant provides such comments herein.

Applicant's review of the PSA did not reveal any critical issues relating to most resource topics. In fact, Applicant generally finds the proposed Conditions of Certification to be acceptable and appropriate, and more than sufficient to ensure that PPEC will be constructed and operated in compliance with all laws ordinances, regulations, and standards and without having any significant, unmitigated effects on the environment. However, there are proposed Conditions of Certification within the PSA that Applicant identified as requiring minor, but necessary, edits.¹ Nevertheless, Applicant emphasizes that the proposed minor edits will not require Staff to delay issuance of the Final Staff Assessment ("FSA").

¹ Applicant's proposed edits to Conditions of Certification are set forth in **bold, underlined** or ~~strickthrough~~ text.



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 2

I. COMMENTS ON THE PROJECT DESCRIPTION

Applicant has reviewed the Project Description prepared by Staff in the PSA for PPEC. We find the Project Description to be consistent with the Project as proposed in the Application for Certification. To that end, Applicant has no substantive comments on the Project Description section nor do we proposed any necessary changes thereto.

II. COMMENTS ON THE ENVIRONMENTAL ASSESSMENT

Applicant believes Staff has prepared a comprehensive environmental analysis of the Project and its effects on the environment. Applicant, however, provides the following comments on specific environmental resource area identified below.

Air Quality

Staff's assessment of the potential for air quality impacts is consistent with the findings of Applicant and the San Diego County Air Pollution Control District ("District") (see, for example, the District's Preliminary Determination of Compliance). Nevertheless, Applicant has identified the following portions of the text that require minor revisions.

- pp. 4.1-9 and 4.1-10. The PM_{2.5} 24-hour values in Air Quality Table 4 are 3rd highest (98th percentile) values. We suggest adding a footnote to Table 4, and making the following change to the text on page 4.1-10:

AIR QUALITY Table 4 summarizes the ambient PM_{2.5} data collected from the Chula Vista station. The national 24-hour average **NAQAQS of is met if the 3-year average of the 98th percentile concentration is 35 µg/m³ or lower. This threshold** was only exceeded in 2007 with the maximum value of 36.1 µg/m³, **and the three year average was not exceeded.** The annual arithmetic means during the 2004-2009 period are below the federal standard of 15 µg/m³, but exceed the state standard of 12 µg/m³ in several years. For purpose of state and federal air quality planning, the SDAB is in attainment with the federal PM_{2.5} standard but nonattainment with the state PM_{2.5} standard.

- p. 4.1-14 Air Quality Table 7. The maximum daily PM₁₀ emissions from offsite truck deliveries should equal the PM_{2.5} emissions, and should be zero (see Table G-2.4 in the Responses to Data Requests, Set 2 (#60-71), submitted on August 17, 2011). The



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 3

maximum daily PM₁₀ emissions from construction should be 21.3 lb/day (see Table G-2.1 in the same Response to Data Requests).

- p. 4.1-15 Air Quality Table 8. The table is mislabeled “A2PP;” it should be titled “PPEC”. The maximum hourly SO_x emission rate during commissioning was corrected in the Applicant’s January 17, 2012 letter to the San Diego Air Pollution Control District, which was also docketed with the CEC. The value should be changed to 1.05 lb/hr (based on the worst case short term fuel sulfur level of 0.75 gr/100 scf).
- p. 4.1-17 Air Quality Table 11. The annual SO_x emission rates were corrected in the Applicant’s January 17, 2012 letter to the San Diego Air Pollution Control District, which was also docketed with the CEC. Annual SO_x emissions should be 1.4 TPY for each turbine, and 4.1 for all three turbines (based on the maximum annual fuel sulfur level of 0.25 gr/100 scf).
- p. 4.1-18. The description of modeling does not include the statistical analyses utilized for PM_{2.5} and NO₂. It also fails to mention the cumulative impact analysis that includes nearby sources. We recommend adding the following paragraph after the fourth paragraph on the page:

The federal 1-hour NO₂ and 24-hour PM_{2.5} standards are statistically based (i.e., the three year average of the 98th percentile values cannot exceed the applicable limit). In order to demonstrate compliance with these standards, the modeled impact from the project and nearby sources (including the Otay Mesa Generating Station) were added to hourly background concentrations conservatively derived from the measured ambient background levels. The resulting cumulative impacts were then evaluated following EPA guidance to demonstrate compliance with the statistical standard.

In addition, Applicant provides the following specific revisions to certain Air Quality Conditions of Certification:

AQ-SC5.a

Applicant requests revision of this section to clarify the applicable CARB requirement is the Off-Road Diesel Air Toxics Control Measure, not the Diesel Emission Control Strategy (DECS or VDECS). A DECS is a diesel exhaust retrofit device used to comply



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 4

with Air Resources Board (ARB) diesel regulations. It is one option for complying with CARB diesel regulations, and is not itself a CARB program or requirement.

AQ-SC5 Diesel-Fueled Engine Control:

...

All off-road diesel construction equipment used in the construction of this facility shall be powered by the cleanest engines available that also comply with the California Air Resources Board's (CARB's) **Regulation for In-Use Off-Road Diesel Fleets** ~~Diesel Emission Control Strategy (verified DECS) for in-use vehicles~~ and shall be included in the Air Quality Construction Mitigation Plan (AQCMP) required by AQ-SC2. The AQCMP measures shall include the following, with the lowest-emitting engine chosen in each case, as available:

- a. All off-road compression ignition engines shall comply with the California Air Resources Board's (CARB's) **Regulation for In-Use Off-Road Diesel Fleets (California Code of Regulations Title 13, Article 4.8, Chapter 9, §2449 et. seq.)** ~~Diesel Emission Control Strategy (verified DECS) for in-use, off-road vehicles.~~

AQ-SC5.b

Applicant understands that this condition is intended to require Tier 4 engines (without add-on controls), Tier 4i engines (without add-on controls), or Tier 3 engines with diesel particulate controls. However, the language is potentially confusing. Applicant requests that the condition be clarified by making the suggested change.

- b. To meet the highest level of emissions reduction available for the engine family of the equipment, each piece of diesel-powered equipment shall be powered by a Tier 4 ~~orengine,~~ a Tier 4i engine, or a Tier 3 engine with a post-combustion retrofit device verified by the CARB or the US EPA. For PM, the retrofit device shall be a particulate filter if verified, or a flow-thru filter, or at least an oxidation catalyst. For NOx, the device shall meet the latest Mark level verified to be available (as of January 2012, none meet this NOx requirement).



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 5

Biological Resources

Applicant has comments regarding Staff's analysis of potential impacts to biological resources, as well as proposes specific changes to Conditions of Certification BIO-11, BIO-13 and BIO-14, as set forth below.

Applicant requests the following, minor change to BIO-11 to ensure consistency with the related parcel map (see Parcel Map 20473).

BIO-11 In the event that Transmission Line Alternative Route B is selected for the PPEC project, the project owner shall design, construct, operate, and maintain the transmission line in a manner that avoids any and all disturbances to the Open Space Easement area (*Easement in Favor of the County of San Diego for Open Space, recorded September 13, 2001 as File No. 2001-0657832, O.R., Easement in Favor of the County of San Diego for Conservation of Parcel "A", recorded May 31, 2006 as File No. 2006-0384034, O.R., and Easement in Favor of the County of San Diego for Conservation of Parcel "B", recorded May 31, 2006 as File No. 2006-0384034, O.R.*), which protects biological resources areas, as depicted on Parcel Map 20473, Easement Area "A", "B", and "F". The Designated Biologist or Biological Monitor shall monitor all construction activities during the construction of Transmission Line Alternative Route B.

Verification: At least 30 days prior to the initiation of any construction-related ground disturbance, the project owner shall submit to the CPM for review and approval, a map figure, based on Parcel Map 20473, that depicts the final design plans for the construction of Transmission Line Alternative Route B (including the precise power pole locations, transmission line rights-of-way, construction staging areas, and all points of access for construction and maintenance activities, relative to the Open Space Easement areas.

At least 30 days prior to the initiation of any construction-related ground disturbance, the project owner shall prepare and submit a written plan to the CPM for review and approval that describes in detail how the construction, operation, and maintenance of Transmission Line



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 6

Alternative Route B will not encroach upon or disturb the Open Space Easement areas.

At least two weeks prior to the initiation of any construction-related ground disturbance for Transmission Line Alternative Route B, the project owner shall notify both the CPM and the Designated Biologist in writing (via letter or email), describing the schedule for the construction of Transmission Line Alternative Route.

In addition, Applicant disagrees with Staff's conclusion that PPEC's deposition of nitrogen would be a significant indirect impact. The Project's nitrogen emissions are miniscule and will neither have any significant adverse environmental effects to federally endangered or threatened species, nor jeopardize the continued existence or result in the destruction or adverse modification of designated critical habitat for such a species. The maximum possible levels of nitrogen contribution from PPEC are negligible and are not sufficient to cause an identifiable or statistically significant change in plant growth patterns.

Although Applicant does not believe that the Project requires mitigation for Staff to fulfill the requirements of CEQA, Applicant is willing to comply with the recommendations forthcoming in the United States Fish and Wildlife Service's ("USFWS") Biological Opinion regarding this issue. Applicant is concerned, however, that the PSA requires Applicant to comply both with the mitigation proposed by CEC Staff in BIO13 as well as with the terms of the forthcoming Biological Opinion (BIO-14). The inclusion of both BIO-13 and BIO-14 in the FSA could lead to the imposition of "double mitigation" on the Project, which Applicant does not believe was Staff's intent.

Applicant proposes that Staff strike BIO-13 and incorporate the requirements of the Biological Opinion into the FSA as currently set forth in BIO-14.

Federal Biological Opinion

BIO-1413 The project owner shall provide a copy of the Biological Opinion per Section 7 of the federal Endangered Species Act written by the U.S. Fish and Wildlife Service in consultation with U.S. Environmental Protection Agency. The terms and conditions contained in the Biological Opinion shall be incorporated into the project's BRMIMP and implemented by the project owner.



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 7

Verification: At least 30 days prior to the start of any pre-construction site mobilization activities, the project owner shall submit to the CPM a copy of the U.S. Fish and Wildlife Service's Biological Opinion and verification that the terms and conditions contained in the Biological Opinion are included in the BRMIMP and will be implemented by the project owner.

Applicant remains concerned about the Project's schedule and stresses that issuance of the FSA and subsequent evidentiary hearings need to occur in a timely fashion without additional delays. To that end, Applicant is expressly requesting that Staff does not delay issuance of the FSA while waiting for USFWS to complete the Biological Opinion. Therefore, if Staff is unwilling to remove BIO-13 or mitigation from the FSA, at the very minimum Applicant requests that Staff include language in the FSA similar to language found in the Supplemental Staff Assessment for the Mariposa Energy Project (Dec. 16, 2010) ("SSA"). (See SSA at pp. 4.2-1 – 4.2-2; 4.2-50.) Such language will clarify that Staff's mitigation is not meant to supersede USFWS' mitigation, if any, nor is Staff's intent to require Applicant to provide "double mitigation" for any potential impacts to species or habitat from nitrogen deposition. To that end, Applicant proposes that Staff incorporate language as follows in the FSA:

With implementation of staff's proposed conditions of certification, the proposed project would be in compliance with LORS. However, the proposed project has not yet demonstrated compliance with the federal Endangered Species Act ("ESA"); a Biological Opinion ("BO") from the USFWS is required to comply with the federal ESA.

Staff concludes that impacts to biological resources affected by the proposed project can be mitigated below a level of significance by implementation of the proposed conditions of certification in this Staff Assessment. Staff's analysis and proposed conditions of certification were developed in coordination with USFWS and are expected to be consistent with the terms and conditions required in the BO. Therefore, implementation of the conditions pertaining to federally listed species as well as acquisition of a BO and implementation of the measures therein would ensure compliance with the federal ESA. However, because a final BO has not yet been issued by the USFWS, modifications to the impact analysis and conditions of certification



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 8

may be necessary if the analysis or mitigation set forth in the BO is contradictory to staff's analysis or conditions of certification. Therefore, Staff will issue an errata to this Staff Assessment or update the Committee at the evidentiary hearings of any changes necessary to Staff's proposed conditions of certification and testimony set forth herein based on the forthcoming BO.

Critical habitat area assessed by Staff likely includes areas lacking the "essential elements" of each species defining designated critical habitat and is not actually occupied by the species of concern. Therefore, incidental take or adverse modification of critical habitat is not possible for those areas lacking species habitat essential elements. In fact, the three species of concern have overlapping habitat requirements (all three species require coastal sage scrub vegetation); thus, the species with the greatest habitat impacts will subsume the impacts of the other two species. In this case, Staff has assessed nearly 47 acres of impact to the Quino checkerspot butterfly and includes lesser acreages for the California gnatcatcher and Otay tarplant. Additional mitigation acreage for gnatcatcher and tarplant is not needed for these two species and assessing more acreage would be double mitigation for the same lands being impacted.

BIO-1314 *Note: This condition is only necessary in the absence of mitigation set forth in the U.S. Fish and Wildlife Service's Biological Opinion to fully mitigate for any potential nitrogen deposition impacts to critical habitat and associated listed species (Otay tarplant, Quino checkerspot butterfly, or California gnatcatcher). These measures are preliminary and subject to modification during ongoing coordination with USFWS, CDFG, USEPA, the County of San Diego Department of Planning and Land Use, and the applicant.*

To mitigate for nitrogen deposition impacts to critical habitat and associated listed species (Otay tarplant, Quino checkerspot butterfly, ~~and~~ **or** California gnatcatcher), **in the absence of mitigation set forth by the USFWS in a Biological Opinion**, prior to start of project operation the project owner shall fund one ~~or more~~ of the following options:

Weed Abatement Program

A. Provide funding to support an existing or establish a new noxious weed abatement program on critical habitat or habitat that contains the



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 9

Primary Constituent Elements in the amount listed for the following species: 46.93 acres of **suitable habitat for** Quino checkerspot butterfly habitat, ~~18.57 acres of California gnatcatcher habitat, **or** and 11.86 acres of Otay tarplant habitat.~~ Weed abatement can be implemented for habitat either separately or together if suitable habitat for a combination of species can be found at the same location. If habitat is identified that benefits all three species, **less than 46.93 acres will be allowed if** ~~it shall be no less than 46.93 acres unless approved in writing by the CPM (in consultation with CDFG and County of San Diego DPLU) and USFWS.~~

If the project owner proposes to establish a weed abatement program, the project owner shall conduct a Property Analysis Record (PAR) or PAR-like analysis to establish the appropriate long-term fee to fund the weed abatement program for the identified lands for the life of the project. The project shall also demonstrate that the lands on which the new weed abatement program will be conducted are under conservation easement or otherwise protected in perpetuity. If the project owner proposes to fund an established weed abatement program, the project owner shall identify the cost of funding the weed abatement program lands for the life of the project as determined by the entity implementing the program.

The project owner will submit to the CPM the name of the entity that will be implementing the program for the life of the PPEC project and the endowment funds in the amount determined to be adequate to provide funding for weed abatement on the required acres for the life of the PPEC project. The entity to implement the program and the amount of the endowment shall be approved by the CPM in consultation with the USFWS, CDFG, and the County of San Diego Department of Planning and Land Use (DPLU).

If the project owner chooses to establish a new weed abatement program, the project owner shall submit a weed abatement plan to the CPM for review and approval and to the USFWS, CDFG, and the County of San Diego DPLU for review and comment. The weed abatement plan shall include the following for the mitigation lands: (1) existing conditions at the site(s) and goals for habitats and specific plant populations to be managed and monitored; (2) site preparation methods (weed control



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 10

treatments, soil preparation methods, native species protection methods, timing); (3) weed abatement and site restoration specifications; (4) short (12 months or less) and long-term maintenance and monitoring schedule and methods. If the weed abatement program will be implemented within the nitrogen deposition impact area, then the weed abatement program shall include a biological monitoring component to assess populations of Otay tarplant within the affected area for any long-term effects of competition from noxious weeds. If funding is provided to an existing weed abatement program the project owner shall submit the management plan or other statement of work from the existing program.

Weed abatement programs could include the San Diego's Quino Checkerspot Adaptive Management and Monitoring Strategy, to be implemented as part of the County of San Diego's Quino Checkerspot Butterfly Amendment currently in preparation if approved prior to start of project operation. Management activities funded may include but are not limited to: noxious weed eradication using appropriate methods at the optimal time-of-year to limit seed dispersion and avoid impacts to species, native seed application from local sources (preferably on-site) including Otay tarplant seeds, planting of shrubs in appropriate habitat for California gnatcatcher, and propagation and transplantation of host plants for Quino checkerspot butterfly.

The project owner also shall request an annual report from the San Diego Foundation or other third-party approved by the CPM documenting how each annual payment provided from the endowment required hereunder was used and applied to assist in noxious weed abatement.

Land Acquisition

B. Acquire lands within habitat occupied by Otay tarplant, Quino checkerspot butterfly, and California gnatcatcher in the amount listed for the following species: 46.93 acres of **suitable habitat for** Quino checkerspot butterfly habitat, ~~18.57 acres of California gnatcatcher habitat,~~ **and** ~~or~~ **11.86 acres of** Otay tarplant habitat. Habitat can be acquired either separately or together if suitable habitat for a combination of species can be found at the same location. If habitat is identified that benefits all three



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 11

species, **a minimum acreage of twenty (20) acres will be allowed if it shall be no less than 46.93 acres unless approved in writing by the CPM and the**, CDFG, USFWS, and County of San Diego DPLU. The project owner shall calculate an appropriate endowment for management of the compensation habitat in perpetuity using the Center for Natural Lands Management Property Analysis Record (PAR) or PAR-like analysis. The endowment amount shall be approved by the CPM in consultation with CDFG, USFWS, and County of San Diego DPLU. Also to be provided is the name of the entity that would manage and protect the land in perpetuity.

Verification: Option A. At least ~~60~~ **30** days prior to the start of project operation the project owner shall submit a final Weed Management Plan to the CPM that has been reviewed and approved by the CPM, in consultation with the CDFG, USFWS, and the County of San Diego DPLU. No less than ~~30~~ 20 days prior the start of project operation, the project owner shall provide written verification to the CPM that the endowment has been paid in full to San Diego Foundation or other third-party approved by the CPM in accordance with this Condition of Certification. The project owner shall provide evidence that it has specified that its annual payment from the endowment to the third-party approved by the CPM can be used only to assist in noxious weed management and remediation of its effects (e.g., activities to support continued survival Quino checkerspot butterfly, California gnatcatcher, ~~and or~~ **or** Otay tarplant) at approved locations within critical habitat or habitat that contains the Primary Constituent Elements for these species that is protected in perpetuity.

Thereafter, within 30 days after each anniversary date of the commencement of project operation, the project owner also shall request an annual report from the San Diego Foundation or other third-party approved by the CPM documenting how each annual payment from the endowment required hereunder was used and applied to assist in noxious weed management and/or habitat restoration/enhancement at approved locations for these species. The project owner shall provide copies of such reports to the CPM within 30 days of receipt. This verification shall be provided annually for the operating life of the project.



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 12

Option B. At least ~~60~~ **30** days prior to the start of project operation the project owner shall provide to the CPM for approval, in consultation with the CDFG, USFWS, and the County of San Diego DPLU, the name of the land management entity, written verification that the compensation lands have been purchased, and written verification that the appropriate endowment fund amount (determined by the PAR analysis) has been received by the approved endowment management entity.

In addition, the PSA (at pages 4.2-30 and 4.2-33) indicates Staff is awaiting clarification regarding the figure Applicant submitted on November 28, 2011, which depicts transmission pole locations and construction staging and access areas in relation to all areas held in conservation easement. (*See* Exhibit A “Transmission Routes” to Applicant’s Additional Responses to Staff’s Informal Data Request Regarding Biological Resources.) The figure has been revised to identify the right-of-way width and whether vegetation removal is proposed. This revised figure is provided herein as Attachment 1.² Despite the location of these transmission poles, however, Applicant is confident that Staff’s proposed Conditions of Certification BIO-12 and CUL-9 will ensure significant impacts will be avoided from operation and maintenance of the transmission line.

Lastly, Staff requested that Applicant conduct focused rare plant surveys in 2012 and submit the results from such surveys to Staff as soon as possible. (PSA at p. 4.2-17.) Applicant intends to conduct plant surveys during Spring 2012 and will provide the results thereof to Staff.

Land Use

Applicant proposes the following minor edit to Condition of Certification LAND-1.

LAND-1 The project owner shall provide ~~twelve~~ **ten** on-site parking spaces and one bicycle space.

² On December 1, 2011, CEC’s Cultural Resources Staff, Sarah Allred presented several informal data requests relating to the transmission line corridor as such related to Exhibit A “Transmission Routes” to Applicant’s Additional Responses to Staff’s Informal Data Request Regarding Biological Resources. Applicant’s responses to those data requests are set forth herein as Attachment 2.



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 13

Verification: At least thirty 30 calendar days prior to start of construction of the permanent parking area, the project owner shall submit evidence to the Compliance Project Manager (CPM) for review and approval that the specified number of parking spaces are provided.

The project owner shall notify the CPM within seven calendar days after completion of the permanent parking area that the parking area is ready for inspection.

Soil and Water Resources

Staff correctly acknowledges that the Water Supply Assessment prepared by Otay Water District indicates there are sufficient potable water supplies available to support PPEC, even if recycled water is not available. (PSA pp. 4.9-1, 4.9-41). On March 13, 2012, Applicant provided comments regarding Staff's proposed Condition of Certification SOIL&WATER-9, which are incorporated herein by reference.³ As Applicant's March 13, 2012 correspondence noted, the use of potable water in the event that recycled water is not available is consistent with all LORS as well as State water policy. Moreover, there are no significant impacts associated with the project's proposed water supply; therefore, SOIL&WATER-9 is unnecessary mitigation. Applicant proposes specific revisions to Conditions of Certification SOIL&WATER-1 and SOIL&WATER-6 below.

SOIL&WATER-1 requires the project owner to develop a site-specific Drainage, Erosion, and Sediment Control Plan ("DESCP"). The language of SOIL&WATER-1 is burdensome on the project owner in its requirements, in particular regarding "Agency Comments" and submissions to the San Diego Regional Water Quality Control Board; neither of which are required as part of the DESC. Applicant's specific comments regarding SOIL&WATER-1 are set forth below.

SOIL&WATER-1: The Pio Pico Energy Center (PPEC) owner shall submit to the Compliance Project Manager (CPM) for approval a site specific DESC that ensures protection of water quality and soil resources of the PPEC site and all linear facilities for both the construction and operation phases of the PPEC. This plan shall address appropriate methods and actions, both temporary and permanent, for the protection of water

³ Applicant's March 13, 2012 correspondence is attached hereto as Attachment 3.



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 14

quality and soil resources, demonstrate no increase in off-site flooding potential, and identify all monitoring and maintenance activities. The PPEC owner shall complete all necessary engineering plans, reports, and documents necessary for the CPM to conduct a review of the PPEC and provide a written evaluation as to whether the proposed grading, drainage improvements, and flood management activities comply with all requirements presented herein. The plan shall ~~be consistent with the grading and drainage plan condition of certification in the Facility Design section of the Final Staff Assessment and shall~~ contain the following elements:

Vicinity Map: A map shall be provided indicating the location of all PPEC elements (including service utilities and the generator transmission line) with depictions of all significant geographic features to include watercourses, washes, irrigation and drainage canals, major utilities, and sensitive areas.

Site Delineation: The site and all PPEC elements (including service utilities and the generator transmission line) shall be delineated showing boundary lines of all construction areas and the location of all existing and proposed structures, underground utilities, roads, and drainage facilities. Adjacent property owners shall be identified on the vicinity map. All maps shall be presented at a legible scale.

Drainage: The DESCP shall include the following elements:

- a. Topography. Topography for offsite areas are required to define the existing upstream tributary areas to the site and downstream to provide enough definition to map the existing storm water flow and flood hazard. Spot elevations shall be required where relatively flat conditions exist.
- b. Proposed Grade. Proposed grade contours shall be shown at a scale appropriate for delineation of onsite ephemeral washes, drainage ditches, and tie-ins to the existing topography.



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 15

c. **Hydrology.** Existing and proposed hydrologic calculations for onsite areas and offsite areas that drain to the site; include maps showing the drainage area boundaries and sizes in acres, topography and typical overland flow directions, and show all existing, interim, and proposed drainage infrastructure and their intended direction of flow.

d. **Hydraulics.** Provide hydraulic calculations to support the selection and sizing of the onsite drainage network, diversion facilities and Best Management Practices (BMPs).

Watercourses and Critical Areas: The DESCPC shall show the location of all onsite and nearby watercourses including washes, irrigation and drainage canals, and drainage ditches, and shall indicate the proximity of those features to the construction site. Maps shall identify high hazard flood prone areas.

Clearing and Grading: The plan shall provide a delineation of all areas to be cleared of vegetation and areas to be preserved. The plan shall provide elevations, slopes, locations, and extent of all proposed grading as shown by contours, cross-sections, cut/fill depths or other means. The locations of any disposal areas, fills, or other special features shall also be shown. Existing and proposed topography tying in proposed contours with existing topography shall be illustrated. The DESCPC shall include a statement of the quantities of material excavated at the site, whether such excavations or fill are temporary or permanent, and the amount of such material to be imported or exported or a statement explaining that there would be no clearing and/or grading conducted for each element of the PPEC. Areas of no disturbance shall be properly identified and delineated on the plan maps.

Soil Wind and Water Erosion Control: The plan shall address exposed soil treatments to be used during construction and operation of the PPEC for both road and non-road surfaces including specifically identifying all chemical based dust palliatives, soil bonding, and weighting agents appropriate for use at the PPEC site that would not cause adverse effects to vegetation; BMPs shall include measures designed to prevent wind and water erosion including application of chemical dust palliatives after



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 16

rough grading to limit water use. All dust palliatives, soil binders, and weighting agents shall be approved by the CPM prior to use.

Project Schedule: The DESCP shall identify on the topographic site map the location of the site-specific BMPs to be employed during each phase of construction (initial grading, PPEC element construction, and final grading/stabilization). Separate BMP implementation schedules shall be provided for each PPEC element for each phase of construction.

Best Management Practices: The DESCP shall show the location, timing, and maintenance schedule of all erosion- and sediment-control BMPs to be used prior to initial grading, during PPEC element excavation and construction, during final grading/stabilization, and after construction. BMPs shall include measures designed to control dust and stabilize construction access roads and entrances. The maintenance schedule shall include post-construction maintenance of treatment-control BMPs applied to disturbed areas following construction.

Erosion Control Drawings: The erosion-control drawings and narrative shall be designed, stamped and sealed by a professional engineer or erosion control specialist.

~~**Agency Comments:** The DESCP shall include copies of recommendations, conditions, and provisions from the County of San Diego, California Department of Fish and Game (CDFG), and San Diego Regional Water Quality Control Board (RWQCB).~~

~~**Monitoring Plan:** Monitoring activities shall include routine measurement of the volume of accumulated sediment in the onsite drainage ditches, and storm water diversions.~~

Verification: Prior to site mobilization, the Pio Pico Energy Center (PPEC) owner shall obtain the Compliance Project Manager's (CPM's) approval for a site specific DESCP. The DESCP shall be consistent with the grading and drainage plan as required by Condition of Certification CIVIL-1, and shall be approved by the chief building official (CBO) and



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 17

Compliance Project Manager (CPM). In addition, the PPEC project owner shall do all of the following:

No later than sixty (60) days prior to start of site mobilization, the PPEC project owner shall submit a copy of the DESCP to the ~~County of San Diego and the RWQCB for review and comment. The CBO and CPM shall consider the comments received from the County of San Diego and RWQCB in their approval of the DESCP.~~ **CPM for review and approval.**

During construction, the PPEC project owner shall provide a monthly compliance report on the effectiveness of the drainage, erosion, and sediment control measures and the results of monitoring and maintenance activities. Reporting the effectiveness shall include a table listing: (1) each drainage, erosion, and sediment control measure; (2) the monitoring frequency of the drainage, erosion, and sediment control measure; and (3) the maintenance performed, if any, to that measure during the monthly reporting period.

Once operational, the PPEC project owner shall provide in the annual compliance report information on the results of storm water BMP monitoring and maintenance activities.

~~Provide the CPM with two (2) copies each of all monitoring or other reports required for compliance with the County of San Diego, CDFG, and RWQCB.~~

Furthermore, Applicant notes language in SOIL&WATER-6 requiring minor revisions. At this time, Otay Water District does not enter into contracts or agreements for the supply of water. To that end, Applicant's proposed changes to SOIL&WATER-6 are reflected below.

SOIL&WATER-6: The project owner shall provide the CPM copies of ~~an~~the executed Recycled Water Purchase Agreement (agreement) with the Otay Water District (OWD) for the long-term supply (20 – 25 years) and delivery of tertiary treated recycled water to the PPEC. **If OWD does not enter into such agreements, the project owner shall provide the CPM copies of correspondence between project owner and OWD that demonstrates the level of service that OWD will provide recycled water to PPEC.** The PPEC shall not receive recycled water without the



Mr. Eric Solorio, Siting Project Manager

March 26, 2012

Page 18

final agreement **or correspondence demonstrating level of service** in place.

The project's use of recycled water shall be tertiary-treated water from OWD and shall comply with California Water Code Section 13523 and California Code of Regulations Title 22 and Title 17.

Prior to the use of recycled water during the operation of the PPEC, the project owner shall install and maintain metering devices as part of the water supply and distribution system to monitor and record in gallons per day the volume of recycled water used by the PPEC. The metering devices shall be operational for the life of the project, and an annual summary of daily water use shall be submitted to the CPM in the annual compliance report.

Verification: No later than sixty (60) days prior to the connection to the OWD recycled water pipeline, the project owner shall submit a copy of the executed agreement for the long-term supply and delivery of tertiary treated recycled water to the PPEC. **The agreement shall specify all terms and costs for the delivery and use of recycled water by the PPEC. If OWD does not enter into such agreements, no later than sixty (60) days prior to the connection to the OWD recycled water pipeline, the project owner shall provide the CPM copies of correspondence between project owner and OWD that demonstrates the level of service that OWD will provide recycled water to PPEC.** ~~The agreement shall specify all terms and costs for the delivery and use of recycled water by the PPEC.~~ **The correspondence shall specify the costs associated with the delivery and use of recycled water by the PPEC.**

No later than sixty (60) days prior to delivery of recycled water to the PPEC project, the PPEC owner shall submit the Engineering Report and Cross Connection inspection report to the San Diego RWQCB, and California Department of Public Health (CDPH). The PPEC owner shall submit to the CPM a copy of the Engineering Report and Cross Connection inspection report and include all comments from the San Diego RWQCB and CDPH prior to the delivery of recycled water from OWD.



Mr. Eric Solorio, Siting Project Manager
March 26, 2012
Page 19

At least thirty (30) days prior to use of recycled water for PPEC operation, the project owner shall submit to the CPM evidence that metering devices have been installed and are operational on the recycled water line serving the project. The project owner shall provide a report on the servicing, testing, and calibration of the metering devices in the annual compliance report.

Finally, as noted above and as reflected in Applicant's March 13, 2012 correspondence Applicant objects to Staff's proposed Condition of Certification SOIL&WATER-9. However, at the March 23, 2012 Workshop, Applicant agreed to provide Staff with additional information regarding Applicant's position on this topic.

III. COMMENTS ON THE ENGINEERING ASSESSMENT

The Engineering section of the PSA sets forth a comprehensive description of the Project's design, construction, and operation. Applicant concurs with Staff's findings in this section and its related sub-sections, such as Geological and Paleontological Resources, Power Plant Efficiency and Reliability, and Transmission System Engineering. Below, however, Applicant identifies one sub-section, Transmission System Engineering, wherein a minor typographical error occurs.

Transmission System Engineering

On the top of page 5.5-16, the second "protocol" paragraph indicates there is a footnote (FN2) after worse case conditions. There is, however, only one footnote. If this is a typographical error, Applicant requests the notation for the footnote be deleted. Otherwise, Applicant reserves the right to review and comment on any missing language related to this footnote.

IV. COMMENTS ON ALTERNATIVES AND GENERAL CONDITIONS OF CERTIFICATION

Applicant concurs with Staff's conclusions on Alternatives, finding that the proposed alternative sites do not substantially reduce or avoid any potentially significant adverse impacts of PPEC, while also meeting the basic objectives of the Project. In addition, Applicant finds Staff's proposed general Conditions of Certification to be acceptable and has no suggested revisions thereto.



Mr. Eric Solorio, Siting Project Manager
March 26, 2012
Page 20

V. SUMMARY AND CONCLUSION

In conclusion, Applicant believes the comments identified herein can be resolved in a manner that will not delay publication of the Final Staff Assessment nor hinder the proceeding's schedule. Furthermore, Applicant believes that upon publication of the Final Staff Assessment, the Committee will be in a position to quickly move forward toward the Project's evidentiary hearing and a final decision approving the Project.

Very truly yours,

Melissa A. Foster

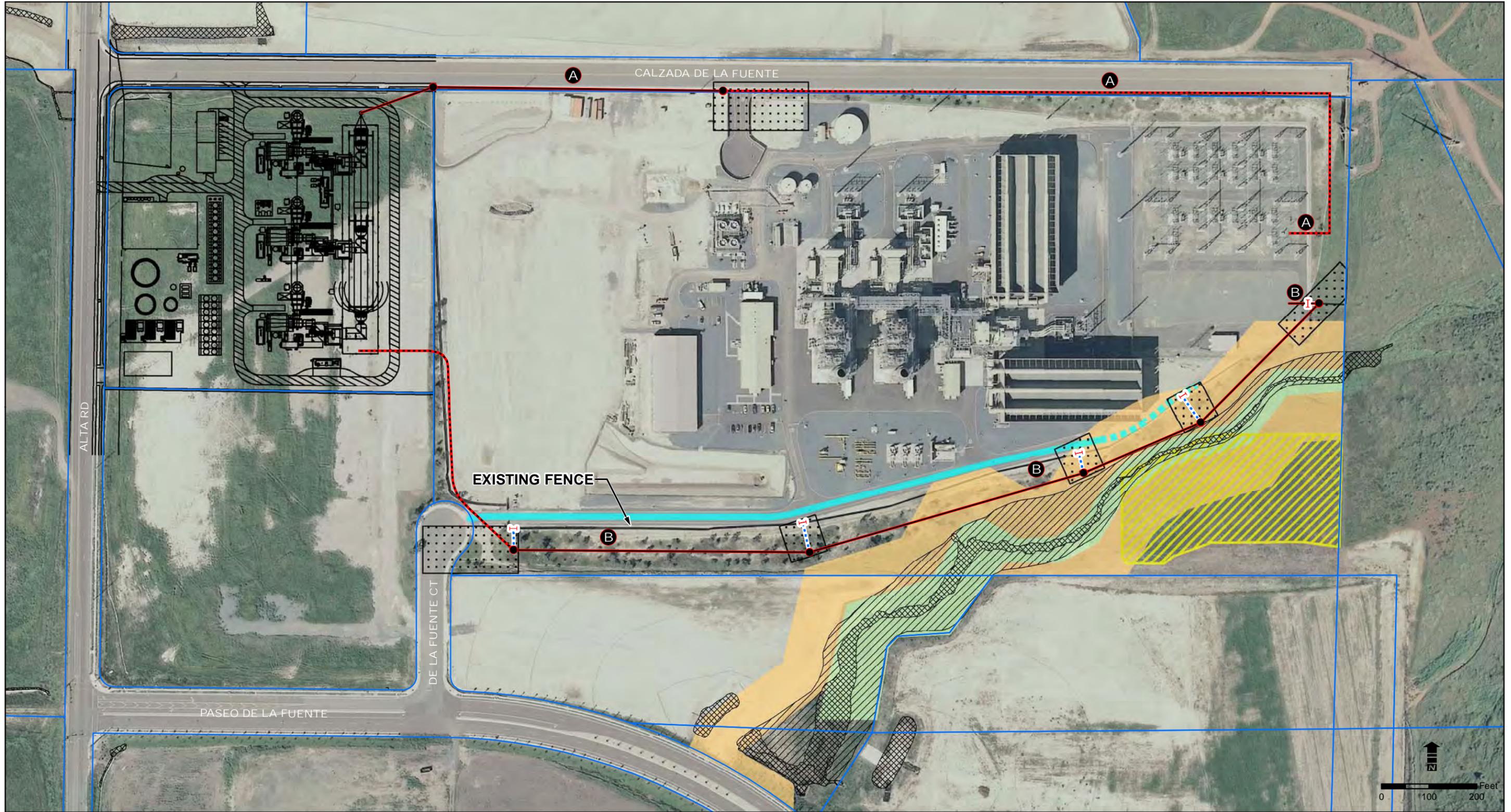
MAF:jmw

Attachments 1 through 3

cc: See Proof of Service

ATTACHMENT 1

REVISED EXHIBIT A “TRANSMISSION ROUTES” TO APPLICANT’S ADDITIONAL RESPONSES TO
STAFF’S INFORMAL DATA REQUEST REGARDING BIOLOGICAL RESOURCES



Legend

- 230kV Transmission Line Pole
- 230kV Overhead Conductor
- - - 230kV Underground Conductor
- Parcels
- ⊠ Working Area
- ▨ CDFG Jurisdiction
- ▩ CWA and CDFG Jurisdiction
- ▨ Easement in favor of the County of San Diego for Archaeological Conservation
- ▨ Easement in favor of the County of San Diego for Fire Buffer
- ▨ Easement in favor of the County of San Diego for Open Space
- ⊠ Gate Location
- - - Access Path (Gravel)
- Existing Road
- - - Existing Gravel

**EXHIBIT A
TRANSMISSION ROUTES**

PIO PICO
ENERGY CENTER

PROJECT NO.: 29874827
DATE: NOVEMBER 2011



ATTACHMENT 2
APPLICANT'S RESPONSES TO SARAH ALLRED'S DECEMBER 1, 2011 DATA REQUESTS

PIO PICO ENERGY CENTER PROJECT (11-AFC-01)
RESPONSES TO SARAH M. ALLRED'S DATA REQUESTS, DATED DECEMBER 1, 2011

The following are the responses to the questions presented to the Pio Pico Energy Center Project (PPEC) by Sarah M. Allred, Cultural Resources Staff of the California Energy Commission on December 1, 2011. The questions are based on the submittal of the responses to informal data requests for biological resources dated November 28, 2011.

1. The text of your submittal refers to a "right-of-way," in which both construction and maintenance activities would occur; however, the proposed rights-of-way for the transmission line alternatives are not depicted on Exhibit A. Please provide a revised Exhibit A depicting the extent of the proposed right-of-way on either side of the T-line centerline (for Route B in particular). Also, please provide a text description of the precise widths of the right-of-way along either side of the T-line centerline. Will the right-of-way be equal on either side of the Route B T-line? Will the right-of-way be reduced (narrower) in the area of the easements? Also, will the existing landscape vegetation be permanently or temporarily removed to accommodate an access road?

Response: The ROW width is generally based on the aerial space required on each side of the conductors to avoid contact with other structures, etc. The electrical clearance for a 230 kV conductor is about 25-30 feet from a structure (other than the pole structures themselves). In between poles there has to be that extra space for the wind whipping the lines out. That is why PPEC has stated a nominal 80' right-of-way along the route.

As requested, revised Exhibit A is attached. The right-of-way in which construction and maintenance activities would occur is from Calzada de la Fuente and within the existing Otay Mesa Generating Project (OMGP) site for Transmission Line Route A and within the existing OMGP site for Transmission Line Route B. The existing road within the OMGP site has been shaded light blue on the revised Exhibit A and this road, will provide access to four of the five Transmission Line Route B work areas. The easternmost work area for Transmission Line Route B will be accessed from within the OMGP site just south of the switchyard. The work areas outside of the OMGP site fenceline along Transmission Line Route B will be accessed from within the OMGP site through access gates, which are depicted on the revised Exhibit A. There will be little to no need for vegetation removal along Transmission Line Route A or Route B with the exception of the work areas depicted on Exhibit A.

2. The text of your submittal indicates that the wire-stringing activities will require vehicular and foot access throughout the length of the right-of-way in order to install the conductors from end to end and that the pulling equipment set-up sites require an average area of approximately 100 x 200 feet. The preliminary wire setup areas are described as being within the "Working Areas" depicted on Exhibit A. These Working Areas on Exhibit A appear to be smaller than the required 100 x 200 feet in some cases, and they appear to straddle the perimeter

wall that surrounds the Calpine Energy plant, thereby reducing the area available to work due to the wall partitioning the area. Please describe how it is feasible to perform the wire stringing activities (and any other construction activities) within a working area that is smaller than the 100' x 200' working area that was said to be required for the pulling equipment set-up and wire stringing activities *without imposing upon the easement areas.*

Response: Exhibit A has been revised to depict the size and location of the "Working Areas" more accurately. In some cases the working area size is closer to 100' by 100' (e.g., three of the five working area locations along Transmission Line Route B). The rest of the working areas are indeed approximately 100' by 200'. The working areas will have access gates along the OMGP fenceline for access to the working areas from within the OMGP site. The proposed working areas may be able to be reduced after detailed design is complete and construction work plans are finalized. The initial lead line will be walked through the areas between the poles. The lead line is then raised up the pole onto pulleys, and used to pull the permanent conductors into place. There is no Construction work along the right of way except to place the poles and do the pulling work at each end. Some vegetation around the pole locations will be affected. Impact along the right of way to vegetation will be minimal to negligible.

3. The submittal depicts a change in the originally-proposed Transmission Line Route B. Instead of a right angle, the proposed Route B now cuts the corner and hugs the perimeter of the Calpine plant. Please indicate whether or not this area was included in the original cultural resources survey area. If it has not been surveyed, a supplemental pedestrian cultural survey would need to be performed. It may be necessary to inquire with the other technical specialists regarding this change in the T-line Route B alternative.

Response: The Cultural Resources lead, Rachael Nixon provided confirmation to the project owner that the area in question was surveyed during the original AFC pedestrian survey. The modification to Transmission Line Route B are a direct result of avoiding cultural resources within a known Conservation Easement which was directly coordinated between the Energy Commission Staff Archaeologist (Sarah Allred) and the project owner. Additionally, per conversations between Sarah Allred and Rachael Nixon the survey area in question was discussed and determined to have been adequately surveyed for cultural resources. However, due to the proximity of Transmission Line Route B to previously document cultural resources the area should be monitored for cultural resources during all ground disturbing and stipulated in the Cultural Resources Mitigation Monitoring Plan (CRMMP). Based on this information no additional cultural resources pedestrian surveys are required in this area.

The area in question was also covered in the original AFC paleontological resources and biological resources study areas for surveys and record searches. No additional surveys are needed.

4. The submittal indicates that the construction, operation, and maintenance for Route B would require access "from De la Fuente Court and from within the Otay Mesa Generating Project (OMGP) parcel." It appears that the OMGP parcel includes a good portion of the easement areas (i.e., the southeast corner of the parcel), if I am reading the parcel lines correctly on your Exhibit A. If that is the case, the description of access "from within the OMGP parcel" is too vague. Please describe exact points and routes of access and depict them on the map to ensure that avoidance of the easement areas is feasible.

Response: Access to the Transmission Line Route B will be from De la Fuente into the OMGP site. Once within the OMGP site, access to the working areas outside of the OMGP fenceline will be through access gates depicted on the revised Exhibit A. The existing road within the OMGP site has been more clearly depicted on the revised Exhibit A by shading it blue. Access to the easternmost working area along Transmission Line Route B will also be from within the OMGP site on the paved area just south of the switchyard. The three easternmost Transmission Line Route B working areas will lie within "Easement in favor of the County of San Diego for Fire Buffer" areas. All other easement areas will be avoided.

5. The fire buffer easement is recorded in favor of the County of San Diego, does the SDCRFD consultant have the authority to approve encroachment on the easement? Please provide approval to install line and poles within fire easement from the appropriate County of San Diego authority.

Response: Yes, the appropriate approval has been obtained for encroachment into the fire buffer easement. The SDCRFD consultant, Jim Hunt, consulted with the SDCRFD Fire Chief, Dave Nissen for approval. The following written statement was provided by Jim Hunt to the project owner via email on October 13, 2011. Fire Chief Dave Nissen was cc'd on the statement.

"I talked to Fire Chief Nissen. Fire District has no issues with the single poles, with conductors above ground, going through a "Fire protection easement". My recommendation, of course, is that the fuel modification zones (Fire protection easement) you mentioned continue to be maintained as required."

ATTACHMENT 3
APPLICANT'S MARCH 13, 2012 CORRESPONDENCE REGARDING STAFF'S PROPOSED
CONDITION OF CERTIFICATION SOIL&WATER-9



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916 447 0700
fax 916 447 4781
www.stoel.com

March 13, 2012

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

VIA EMAIL

Mr. Eric Solorio, Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Pio Pico Energy Center Project (11-AFC-01)
Applicant's Response to Proposed Condition of Certification SOIL&WATER-9**

Mr. Solorio:

On February 22, 2012, CEC Staff published the Preliminary Staff Assessment ("PSA") for the Pico Pico Energy Center project ("PPEC" or "Project"). Subsequent to the publication of the PSA, CEC Staff held a PSA Workshop on March 1, 2012, in Chula Vista, California. On the eve of the Workshop, you provided Applicant Pio Pico Energy Center, LLC ("Applicant") with a copy of proposed SOIL&WATER-X, a proposed condition of certification regarding a water conservation plan that was not included in the published PSA. Due to the lack of notice regarding the proposed condition, Applicant was not prepared to address the proposed condition during the March 1, 2012 PSA Workshop. On March 8, 2012, CEC Staff docketed a revised version of the proposed condition, proposed SOIL&WATER-9, from what was provided to Applicant on February 29, 2012. Applicant herein responds to proposed SOIL&WATER-9.

Applicant objects to Staff's proposed condition as SOIL&WATER-9 because such an obligation is not required by law or appropriate for this project. As noted below, there is no statutory framework for such a requirement. Further noted below, even CEC Staff agrees with Applicant and the relevant involved agencies that there are no potential significant impacts to water supply that might arise from this Project's use of potable water.

The Water Supply Assessment ("WSA") prepared by Otay Water District ("OWD") documents that sufficient potable water supplies are planned for and are intended to be available over a 20-year planning horizon, under normal conditions and in single and multiple dry years to meet the projected demand of the proposed PPEC project and the existing and other planned development projects to be served by OWD (OWD 2011). (PSA at 4.9-29.) As the PSA correctly notes, "PPEC proposes to use recycled water as its primary source of cooling and



Mr. Eric Solorio, Siting Project Manager

March 13, 2012

Page 2

process water. Since recycled water is currently not available at the project site, PPEC will rely on currently available potable water provided by OWD. The calculated interim potable demand for facility operation is expected to be approximately 311 afy. When domestic use water is added, the total potable water demand would be 312 afy.” (PSA at 4.9-29.) Staff concluded in the PSA that “the proposed project would not significantly impact the local potable water supply. To ensure that PPEC's potable water usage does not exceed the values used for the Water Supply Assessment Report, staff recommends Condition of Certification SOIL&WATER-5 [which] requires that PPEC convert to recycled water when available.” (*Id.*)

Staff correctly noted in the PSA that “sufficient potable water supplies are planned for and are intended to be available over a 20-year planning horizon to meet the projected demand of the proposed PPEC project and existing and other planned development projects.” (PSA at 4.9-1 (citing Water Supply Assessment prepared by Otay Water District (Oct. 5, 2011).) Moreover, CEC Staff determined that PPEC “complies with all LORS and that construction and operation of PPEC would not result in project-specific or cumulatively significant impacts to soil or water resources with the adoption of the recommended conditions of certification.” (PSA at 4.9-1.)

The Warren-Alquist Act notes that it is the “policy of the state and the intent of the Legislature to promote all feasible means of energy and water conservation and all feasible uses of alternative energy and water supply sources.” (Pub. Res. Code § 25008.) In addition, Water Code section 13350 provides that the use of potable water for non-potable uses¹ is an unreasonable use of the water “if recycled water is available” and such recycled water meets **all** of the conditions set forth below. (Water Code § 13350 (emphasis added).)

(1) The source of recycled water is of adequate quality for the uses and is available for the uses.

(2) The recycled water may be furnished for these uses at a **reasonable cost** to the user. In determining reasonable cost, the state board shall consider all relevant factors, including, but not limited to, the present and projected costs of supplying, delivering, and treating potable domestic water for these uses and the present and projected costs of supplying and delivering recycled water for these uses, **and shall find that the cost of**

¹ Including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses.



Mr. Eric Solorio, Siting Project Manager
March 13, 2012
Page 3

supplying the treated recycled water is comparable to, or less than, the cost of supplying potable domestic water.

(3) After concurrence with the State Department of Health Services, the use of recycled water from the proposed source will not be detrimental to public health.

(4) The use of recycled water for these uses will not adversely affect downstream water rights, will not degrade water quality, and is determined not to be injurious to plantlife, fish, and wildlife.

(Water Code § 13550 (emphasis added).) Thus, when the State Board is the entity determining if a use is “reasonable,” the State Board must consider the impact of the cost and quality of the nonpotable water on each user.

There are also various state policies regarding the use of potable water and recycled water within the State, as noted by CEC Staff. (PSA at pp. 4.9-36 – 4.9-37.) Such policies include State Water Resources Control Board (“SWRCB”) Resolution Nos. 75-58, 77-1, and 2009-0011, as well as the California Energy Commission’s Integrated Energy Policy Report (“IEPR”) (2003). SWRCB Resolution 75-58 and the 2003 IEPR both prohibit the use of fresh inland waters for powerplant cooling unless “use of other water supply sources or other methods of cooling would be environmentally undesirable or economically unsound.” (Res. 75-58 at p. 4; 2003 IEPR at p. 40. (emphasis added).) The 2003 IEPR then notes that the Energy Commission will approve the use of fresh inland water for cooling purposes only where alternative water supply sources are shown to be “environmentally undesirable” or “economically unsound.” (*Id.*²)

Delivery of recycled water to the proposed PPEC is infeasible and poses an unreasonable cost. Although Applicant intends to use recycled water to operate PPEC, such supply is not yet available. In fact, OWD previously indicated in this proceeding that the cost to install the infrastructure necessary to deliver recycled water (via a 2.5 mile long pipeline) to the PPEC site

² The Energy Commission interprets “environmentally undesirable” to mean the same as having a “significant adverse environmental impact” and “economically unsound” to mean the same as “economically or otherwise infeasible.” “‘Feasible’ is defined under CEQA and by the CEC in its siting regulations as being “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.” (14 Cal. Code Regs. § 15364; 20 Cal. Code Regs. § 1702(f); *see* 2003 IEPR at 40.).



Mr. Eric Solorio, Siting Project Manager
March 13, 2012
Page 4

is ~\$7,000,000 and could take 7-10 years to be completed. (Bob Kennedy, OWD (Aug. 24, 2011 PPEC Workshop). Thus, delivery of recycled water to the PPEC site is neither capable of being accomplished within a reasonable period of time nor at a reasonable cost, rendering the use of recycled water by PPEC “economically unsound.”³ Therefore, the interim use of potable water by PPEC until recycled water is available is allowed under both state law and state policy.

In the PSA, Staff indicated that if Staff determined the interim use of potable water by PPEC to be inconsistent with state water policy, Staff might recommend offsetting such potable water use with implementation of a water conservation program. However, as demonstrated herein, the interim use of potable water by PPEC is not contrary to state water policy. As Staff correctly noted in the PSA, there is adequate supply of potable water available and the use of potable water by PPEC does not pose any project-specific or cumulatively significant impacts to soil or water resources. Thus, SOIL&WATER-9 is unnecessary and should not be included in the Final Staff Assessment (“FSA”).

Based on the foregoing, SOIL&WATER-9 is not required for mitigation purposes as there are no significant impacts to water resources from PPEC. Applicant respectfully requests that SOIL&WATER-9 not be included as a condition in the FSA.

Respectfully submitted,

Melissa A. Foster

MAF:jmw

cc: See Proof of Service List

³ See footnote 2, *supra*.

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, LLC*

Docket No. 11-AFC-1
PROOF OF SERVICE
(Revised 2/21/12)

Pio Pico Energy Center, LLC

**Letter to Eric Solorio, California Energy Commission, dated March 13, 2012
Re Applicant's Response to Proposed Condition of Certification SOIL&WATER-9**

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, Project Manager
URS Corporation
2020 East 1st Street, Suite 400
Santa Ana, CA 92705
maggie_fitzgerald@urscorp.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

PETITIONERS

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
e-mail service preferred
aprilsommerlaw@yahoo.com

**ENERGY COMMISSION-
DECISIONMAKERS**

CARLA PETERMAN
Commissioner and Presiding Member
cpeterma@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
e-mail service preferred
kldougl@energy.state.ca.us

Raoul Renaud
Hearing Adviser
rrenaud@energy.state.ca.us

Jim Bartridge
Presiding Member's Adviser
jbartrid@energy.state.ca.us

Galen Lemei
Associate Member's Adviser
e-mail service preferred
glemei@energy.state.ca.us

ENERGY COMMISSION STAFF

Eric Solorio
Siting Project Manager
esolorio@energy.state.ca.us

Kevin W. Bell
Staff Counsel
kwbell@energy.state.ca.us

Eileen Allen
Commissioners' Technical Advisor for
Facility Siting
e-mail service preferred
eallen@energy.state.ca.us

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Energy Commission Public Adviser
e-mail service preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on March 13, 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.

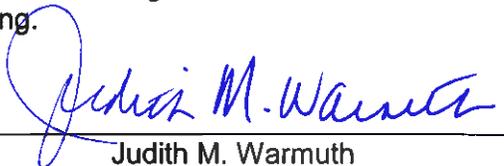
OR

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.



Judith M. Warmuth

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, LLC*

Docket No. 11-AFC-1
PROOF OF SERVICE
(Revised 3/19/12)

Pio Pico Energy Center, LLC
Letter to Eric Solorio, California Energy Commission, dated March 26, 2012
Re Applicant's Comments on the Preliminary Staff Assessment

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

PETITIONERS

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
e-mail service preferred
aprilsommerlaw@yahoo.com

**ENERGY COMMISSION-
DECISIONMAKERS**

CARLA PETERMAN
Commissioner and Presiding Member
cpeterma@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
e-mail service preferred
kldougla@energy.state.ca.us

Raoul Renaud
Hearing Adviser
renaud@energy.state.ca.us

Jim Bartridge
Presiding Member's Adviser
jbartrid@energy.state.ca.us

Galen Lemei
Associate Member's Adviser
e-mail service preferred
glemei@energy.state.ca.us

ENERGY COMMISSION STAFF

Eric Solorio
Siting Project Manager
esolorio@energy.state.ca.us

Kevin W. Bell
Staff Counsel
kwbell@energy.state.ca.us

Eileen Allen
Commissioners' Technical Advisor for
Facility Siting
e-mail service preferred
eallen@energy.state.ca.us

**ENERGY COMMISSION – PUBLIC
ADVISER**

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

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on, March 26, 2012, I served and filed a copy of the attached letter to E. Solorio dated March 26, 2012 re Applicant's Comments on the Preliminary Staff Assessment and Attachments. 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.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

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.

Judith M. Warmuth