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<b>DOCKET</b> <b>05-AFC-2</b>	
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October 4, 2007

Ms. Raquel Rodriguez  
California Energy Commission  
Docket Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5512

**Subject: Walnut Creek Energy Park's Comments on the  
Revised Presiding Members Proposed Decision  
Docket No. 05-AFC-2**

Dear Ms. Rodriguez:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the **Walnut Creek Energy Park's Comments on the Revised Presiding Members Proposed Decision, for the Walnut Creek Energy Park Docket No. (05-AFC-2)**.

Sincerely,



Marguerite Cosens  
Administrative Assistant  
GalatiBlek

## WCE'S SUGGESTED REVISIONS TO REVISED PMPD

### Suggested Revisions to Reader's Guide, paragraph 7

However, even though the likelihood of overnight operation is extremely rare, the Applicant offered proposed Condition **NOISE-7** to provide a remedy in the event overnight operation causes a valid complaint from the nearby residential neighborhood. The Committee has accepted the Applicant's proposed Condition **NOISE-7**, making modifications to delete the off-site residence mitigation, since our Compliance staff has concerns about **Staff's ability to** implementing such a **programmatic** mitigation for such a large neighborhood. Instead, the Committee accepted the Applicant's proposal to limit operation of the power plant to achieve no more than 49 dBA during the four quietest consecutive hours of the nighttime in the event of a valid noise complaint **and in the event that the Applicant cannot resolve the complaint to the satisfaction of the complainant under the Commission's Noise Resolution Process provided by NOISE-2.**

### Suggested Revisions to Executive Summary, page 3

NOISE            ~~The Commission selected a 49 dbA nighttime noise limit to avoid a significant noise impact to residential receptors from nighttime operation at higher capacity factors. In the event of a noise complaint due to rare overnight operation, and in the event the complaint is not resolved by the Applicant under the Commission's Noise Complaint Resolution Process, the Applicant will limit overnight operation to render the project barely audible at 49 dBA.~~

### Suggested Revisions to Summary Table, Mitigation third item, Page 115

~~The Project Owner will not cause noise levels attributable to limit noise from plant operation, during the four quietest consecutive hours of the nighttime, to **not to exceed an average of exceed an average of 49 dBA in response to a valid complaint from a resident measured at near monitoring locations M2 and or M4, if the valid complaint is not resolved to the satisfaction of the resident under the Commission's Noise Resolution Process pursuant to NOISE-2.** Condition: **NOISE-4 7.**~~

### Suggested Revisions to second to last paragraph, page 126

The Commission has routinely provided for all projects a noise complaint resolution process in Condition **NOISE-2**, which provides that the project owner shall promptly investigate the noise complaint and, if attributable to the project, undertake reasonable measures acceptable to the Commission's Compliance Project Manager to reduce the noise **at its source or by other means acceptable to the resident lodging the valid complaint.**

## **Suggested Revisions to Commission Discussion, page 127 and 128**

The Applicant's proposed Condition **NOISE-7** is an attempt to resolve those competing interests and provides an acceptable means to mitigate a valid complaint of overnight noise, should it happen. However, we are mindful of our Compliance staff's concerns about the workability of **a Staff managed and implemented program of** off-site residential mitigation, particularly given the large number of potentially affected residents.

The Commission believes that the Applicant's proposed Condition can be effective if the provision for **a Staff managed and implemented program of** off-site residential mitigation is removed leaving the remaining provision whereby the Applicant agrees to limit potential nighttime project noise by limiting project operation, for example, by reducing the number of units operating. **While we do not seek to preclude the Applicant from privately resolving a complaint with the resident that has lodged a legitimate complaint, we do not want to burden Staff with arbitrating and forcing a program of residential mitigation on either the Applicant or a legitimate complainant. Therefore, we encourage the Applicant to resolve all legitimate complaints under our Noise Resolution Complaint Process pursuant to NOISE-2 and therefore have made a corresponding change to that condition that would not preclude residential mitigation or other means of resolution satisfactory to the complainant. If the complaint is not resolved, then NOISE-7 will mitigate the impact by imposing a limitation on operations.**

The 49 dBA limit in proposed Condition **NOISE-7** will be effective in preventing a nighttime noise impact. Moreover, based upon the Applicant's supplemental testimony, such an off-peak operational limitation will not cause economic loss to the project owner. However, in an electricity supply emergency, the community interest in available generation supplies would outweigh the mitigation of nighttime noise from the project.

Consequently, the Commission will further modify proposed Condition **NOISE-7** to provide that any limit on operation for noise abatement shall not apply ~~during a~~ **if the project is dispatched to avoid, or during, a Cal ISO-declared Stage-2 Electrical Emergency, or dispatched by the Load Serving Entity in order to avoid, or during, a local electrical system emergency.**

Thus, taken as a whole, our Noise conditions are to have the following effect. Pursuant to Condition **NOISE-4**, the project design shall ensure that operation will not cause noise levels attributable to operation during the four quietest consecutive hours of the nighttime to exceed 52 dBA measured at both neighborhood monitoring locations M2 and M4. In the event of a complaint of nighttime noise during those four hours made pursuant to Condition **NOISE-2**, the project owner shall investigate and attempt to resolve the complaint in a manner acceptable to the **complainant** ~~Commission's Compliance Project~~

**Manager.** This process might, for example, rectify a component of project equipment that was defective or operating more noisily than designed. But, if the project is operating within specifications and a legitimate noise complaint for those four hours is made pursuant to **NOISE-2**, the CPM shall determine through either monitoring or mathematical extrapolation of the 25-hour monitoring data obtained pursuant to Condition **NOISE-4** whether project noise exceeded 49 dBA. If project noise exceeded 49 dBA at any time during those four hours at the complainant's residence **and the Applicant does not resolve the complaint to the satisfaction of the complainant**, the project owner shall limit project operation during the four quietest consecutive hours of the nighttime so that noise attributable to the project is no more than 49 dBA at the complainant's location, except that such a limitation shall not apply in the event of an electricity supply emergency.

**Suggested Revision to Condition of Certification NOISE-2, Item 4, page 128**

4. If the noise is project related, take reasonable measures acceptable to the CPM to reduce the noise at its source **or by other means to the satisfaction of the complainant**; and

**Suggested Revision to Condition of Certification NOISE-7, page 129**

**NOISE-7** In the event that a legitimate noise complaint under Condition NOISE-2 is made by an owner of an existing residence located near monitoring locations M2 or M4, and the CPM determines the project was operating ~~during the four quietest consecutive hours of the nighttime~~ **between the hours of 1:00 am and 5:00 am** and the noise attributable to such operation was greater than 49 dBA at the complainant's residence, **and if the complaint is not resolved under the complaint resolution process of NOISE-2**, the Project Owner shall limit **future** operations ~~during the four quietest consecutive hours of the nighttime~~ **between the hours of 1:00 am and 5:00 am** so that noise attributable to the project is no more than 49 dBA at the complainant's residence. The limitation on operation shall not apply **if the project is dispatched to avoid, or a during, a Cal ISO-declared Stage-2 Electrical Emergency, or dispatched by the Load Serving Entity in order to avoid, or during, a local electrical system emergency.**

**Verification:** Fifteen (15) days prior to commercial operation, the project owner shall notify by mail all residents within 1,750 feet of the project boundary of the start of commercial operation. The notice shall inform residents of the Noise Complaint Resolution process under Condition of Certification **NOISE-2**.

Within 10 days of the CPM determining that a complaint is legitimate and the project was operating **between the hours of 1:00 am and 5:00 am** ~~during the four quietest consecutive hours of the nighttime~~ in excess of 49 dBA at the

complainant's residence, **and the complaint has not been resolved under the complaint resolution process of NOISE-2**, the project owner shall limit project operation **between the hours of 1:00 am and 5:00 am** during the four quietest consecutive hours of the nighttime so that noise attributable to project operation does not exceed 49 dBA **at the complainant's residence**.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION  
FOR THE WALNUT CREEK ENERGY PARK  
(WCEP)

DOCKET No. 05-AFC-2

(Revised 6/6/07)

**INSTRUCTIONS:** All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

**CALIFORNIA ENERGY COMMISSION**

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**DECLARATION OF SERVICE**

I, Marguerite Cosens, declare that on October 4, 2007, I deposited copies of the attached **Walnut Creek Energy Park's Comments on the Revised Presiding Member's Proposed Decision, for the Walnut Creek Energy Park (05-AFC-2)** in the United States mail at with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

**OR**

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

  
Marguerite Cosens