



**CALIFORNIA
ENERGY
COMMISSION**

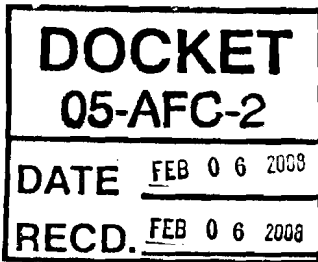
1516 Ninth Street
Sacramento, CA 95814-5512
800-822-6228
www.energy.ca.gov

**NOTICE OF HEARING ON STATUS
OF THE PROCEEDING and
EVIDENTIARY HEARING**

WALNUT CREEK ENERGY PARK
APPLICATION FOR CERTIFICATION
DOCKET NO. 05-AFC-2

Background

On August 15, 2007, the Committee assigned to the above-captioned matter released its Presiding Member's Proposed Decision (PMPD) on the Walnut Creek Energy Park (WCEP), a 500 megawatt (MW) simple-cycle power plant in the City of Industry, California. Following a public hearing on September 12, 2007, the Committee issued substantive Revisions to the Presiding Member's Proposed Decision on September 24, 2007. The Committee recommended approval of the Walnut Creek Energy Park project and scheduled consideration and possible certification at the full Commission October 10, 2007, Business Meeting.



At the October 10, 2007, Business Meeting, the Commission withdrew immediate consideration of the certification of the project following a letter and oral comments from the South Coast Air Quality Management District (SCAQMD), indicating that the Final Determination of Compliance required further review and possible amendment following the District's August 2007 adoption of Rule 1309.1.

After deliberation, the SCAQMD issued its January 11, 2008, Addendum to the Determination of Compliance for the Edison Mission Energy's Proposed Walnut Creek Energy Project. On January 21, 2008, the SCAQMD publicly issued its Notice of Intent to Issue Permit which announced a 30-day public comment period at the District.

Committee Hearing:

The Committee will conduct a public hearing to receive comments on the status of the proceeding and to supplement the evidentiary record with the Addendum of the Determination of Compliance, together with related evidence from the parties. By separate notice, the Committee will be scheduling Commission consideration of possible certification of the project at the February 27, 2008, Business Meeting.

**Evidentiary Hearing -
Date & Place:**



**Thursday, February 21, 2008
Beginning at 10:00 a.m.
California Energy Commission
1516 Ninth Street, Hearing Room A
Sacramento, CA 95814**



As a convenience, parties and members of the public who cannot attend the hearing in person may participate by calling the toll-free number for the proceeding: 1-888-455-9641 (Passcode: "Walnut Creek" Leader: "Garret Shean.")

Public Comments:

The parties, public, and interested agencies are encouraged to make comments on the PMPD, the Revisions, SCAQMD's Addendum, and the Committee's First Errata to Presiding Member's Proposed Decision issued

February 6, 2008. Oral comments may be made in person during the public hearing on February 21, 2008, or by calling the toll-free number herein. Written comments can be submitted to the Energy Commission, Docket Unit, 1516 - 9th Street, MS-4, Sacramento, CA 95814. Email comments can be submitted to the Docket Unit at [docket@energy.state.ca.us]. All comments (if written, an original and 11 copies) must be received prior to the full Commission Business Meeting on February 27, 2008. Identify all submittals with the Docket number 05-AFC-2.

Whether made at the evidentiary hearing or submitted in writing, public comments will be entered into the record of the proceeding and may be used to supplement or explain the evidence in the record. Public comments by themselves, however, are not sufficient to support a finding of fact or a decision on an issue.

**Evidentiary Hearing –
Procedures:**

Witnesses may appear by declaration instead of in person if the topic is uncontested. If a topic is contested, a witness must appear in person to testify under oath and may be subject to cross-examination by other parties. A party sponsoring an expert witness, either by declaration or in person, shall establish the witness' qualifications.

**Deadline for Filing and
Service of
Supplemental Written
Testimony:
February 11, 2008**

Prepared supplemental written testimony shall be filed and served on or before February 11, 2008. Rebuttal testimony, if any, shall be oral, and thus not prepared in writing in advance of the Evidentiary Hearing.

Public Participation:

800-822-6228
(toll free in California)

916-654-4489

Members of the public may participate in all phases of the licensing process in a variety of ways. If you need information concerning public participation, please contact the Energy Commission's Public Adviser's office, at 916-654-4489 or, toll free in California, at 800-822-6228, or by e-mail at: [pao@energy.state.ca.us].

If you have a disability and need assistance in order to participate at this hearing, please contact Lou Quiroz at (916) 654-5146 at least 5 days in advance of the hearing.

Information concerning the status of the project, notices, and other relevant documents are available on the Commission's Web Site at:

[www.energy.ca.gov/sitingcases/walnutcreek]

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Contacts:

Technical questions concerning the project should be addressed to the Energy Commission Staff's Project Manager, Jack Caswell, at 916-653-0062 or e-mail at: [\[jcaswell@energy.state.ca.us\]](mailto:jcaswell@energy.state.ca.us).

Questions of a legal or procedural nature should be directed to Garret Shean, the Hearing Officer, at 916-654-3893 or e-mail at: [\[gshean@energy.state.ca.us\]](mailto:gshean@energy.state.ca.us).

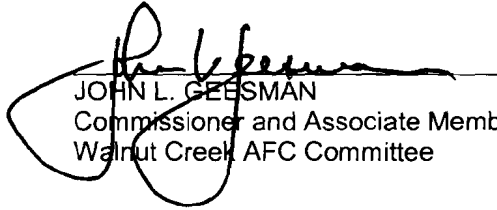
Media inquiries should be directed to Claudia Chandler, Assistant Executive Director for Media and Public Communications, at 916-654-4989 or by e-mail at: [\[energia@energy.ca.gov\]](mailto:energia@energy.ca.gov).

Dated: February 6, 2008

**ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**



JACKALYNE PFANNENSTIEL
Chairman and Presiding Member
Walnut Creek AFC Committee



JOHN L. GEESMAN
Commissioner and Associate Member
Walnut Creek AFC Committee

Mailed to Lists: 7096, 7097 & 7098



FIRST ERRATA to PRESIDING MEMBER'S PROPOSED DECISION

WALNUT CREEK ENERGY PARK
APPLICATION FOR CERTIFICATION
DOCKET NO. 05-AFC-2

Background

On August 15, 2007, the Committee released its Presiding Member's Proposed Decision (PMPD) in the above-captioned matter. During the public comment period, the Committee conducted a public hearing on September 12, 2007, to receive comments on the PMPD and to accept additional testimony from the Applicant.

As a result of the supplementary testimony and comments on the PMPD, the Committee released its Revisions to the Presiding Member's Proposed Decision on September 25, 2007. During the public comment on the Revisions, the Applicant filed its *WCE's Suggested Revisions to Revised PMPD (10/4/07)* requesting clarifications in order to explain the noise complaint resolution process in the event of a nighttime noise complaint and to expressly allow off-site mitigation at the residence of a complainant. After considering the matter, the Committee believes the following changes to the PMPD are warranted. These supersede those relating to pages 127 and 130 contained in the Revisions.

Availability of Off-site Mitigation to Remedy Noise Complaints

Revisions to PMPD, p. 127, beginning after third full paragraph, **insert:**

The Commission believes that the Applicant's proposed Condition can be effective if the provision for large-scale, CPM-supervised 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.

The Applicant has consistently argued for the ability to perform off-site mitigation at the residence of a complainant as an option for resolving a valid nighttime noise complaint. The Commission's interest is in promptly and effectively resolving project noise complaints, and we are not going to be inflexible about how that resolution is accomplished. However, the requirement of Condition **NOISE-2** that noise mitigation be "at its source," meaning the power plant itself, is favored since the Commission has jurisdiction over the project and decides whether or not the project meets the Conditions of Certification for operation. Inherently, off-site mitigation at a complainant's residence creates a subjective standard when "resolution" of the complaint depends upon the complainant's satisfaction. Our Staff has appropriately pointed out the pitfalls of potentially interposing the CPM between the project owner and the complainant in a dispute as to whether any off-site mitigation should be considered sufficient to resolve the complaint and satisfy the complainant.

In affording the Applicant some flexibility in resolving a valid noise complaint with off-site mitigation, we put the responsibility upon the Applicant to secure proof of the complainant's satisfaction through a signed statement or equivalent documentation. We are expressly not requiring that the CPM approve off-site mitigation performed by the Applicant to the satisfaction of the complainant or allowing the CPM to be interposed in a dispute with between the Applicant and complainant as to whether off-site mitigation *should* resolve the complain or *should* have satisfied the complainant.

Thus, we will maintain Condition **NOISE-2** as written and provide in **NOISE-7** that the Applicant may attempt to resolve a valid noise complaint with off-site mitigation. In this way, the operational limitations of **NOISE-7** would not be triggered by a resolved nighttime noise complaint. However, in the absence of verified resolution of any valid nighttime noise complaint, the operational limitation provisions of **NOISE-7** will be implemented and enforced.

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 Cal ISO-declared Stage 2 Electrical 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 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** but not resolved by off-site mitigation to the verified satisfaction of the complainant or by on-site mitigation to the satisfaction of the CPM, 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, 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.

The Commission believes that Condition **NOISE-7** addresses the concerns of Los Angeles County regarding potential noise impacts to residents in the unincorporated areas adjoining the City of Industry.

MITIGATION

- ~~The Project Owner will limit noise from plant operation, during the four quietest consecutive hours of the nighttime, to 49 dBA in response to a valid complaint from a resident near monitoring locations M2 or M4. In response to a valid noise complaint during the four quietest consecutive hours of the nighttime from a resident near monitoring locations M2 or M4, the Project Owner will attempt to resolve the complaint by on-site reduction of project noise or by off-site mitigation at an affected residence, but in the absence of such resolution, the Project Owner will limit noise from plant operation during the four quietest consecutive hours of the nighttime to 49 dBA. Conditions: **NOISE-2 & NOISE-7.**~~

PMPD, p. 130. **Insert:**

NOISE-7: In the event that a legitimate nighttime noise complaint under Condition **NOISE-2** is made by an owner of an existing residence located near monitoring locations M2 or M4 but not resolved by off-site mitigation to the verified satisfaction of the complainant or by on-site mitigation to the satisfaction of the CPM and the CPM determines the project was operating during the four quietest consecutive hours of the nighttime and the noise attributable to such operation was greater than 49 dBA at the complainant's residence, the Project Owner shall limit operations 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 residence. The limitation on operation shall not apply during a Cal ISO-declared Stage 2 Electrical Emergency.

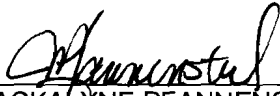
Verification: Fifteen (15) days prior to commercial operation, the project owner shall notify by mail all residents within 1,750 feet of the project boundary of the start of commercial operation. The notice shall inform residents of the Noise Complaint Resolution process under Condition of Certification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

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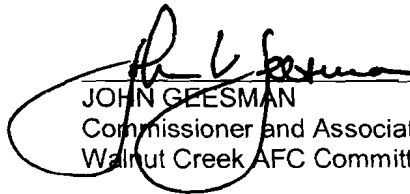
Within 10 days of the CPM determining that a complaint is legitimate and the project was operating during the four quietest consecutive hours of the nighttime in excess of 49 dBA at the complainant's residence, the project owner shall provide the CPM an owner-approved plan to mitigate project noise off-site at the affected residence or shall limit project operation during the four quietest consecutive hours of the nighttime so that noise attributable to project operation does not exceed 49 dBA.

Dated: February 6, 2008

**ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**



JACKALYNE PFANNENSTIEL
Commissioner and Presiding Member
Walnut Creek AFC Committee



JOHN GEESMAN
Commissioner and Associate Member
Walnut Creek AFC Committee

**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 10/16/07)

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

**Attn: Docket No. 05-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us**

APPLICANT

Lawrence Kostrzewa, Project Director
Edison Mission Energy
18101 Von Karman Avenue, Suite 1700
Irvine, CA 92612-1046
lkostrzewa@EdisonMission.Com

Jenifer Morris
NJ Resources, LLC
7240 Heil Avenue
Huntington Beach, CA 92647
jenifer@njr.net

Victor Yamada, Project Manager
Edison Mission Energy
18101 Von Karman Avenue, Suite 1700
Irvine, CA 92612-1046
vyamada@EdisonMission.Com

COUNSEL FOR APPLICANT

Scott Galati
Galati & Blek, LLP
555 Capitol Mall, Suite 600
Sacramento, CA 95814
sgalati@gb-llp.com

Thomas McCabe
Edison Mission Energy
18101 Von Karman Ave., Suite 1700
Irvine, CA 92612-1046
tmccabe@edisonmission.com

INTERESTED AGENCIES

* Mohsen Nazemi
South Coast Air Quality Mgmt. District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182
mnazemi1@aqmd.gov

Douglas Davy
CH2M Hill
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833
ddavy@ch2m.com

INTERVENORS

California Unions for Reliable Energy
(CURE)
C/O Marc D. Joseph
Gloria D. Smith
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com
gsmith@adamsbroadwell.com

JOHN L. GEESMAN
Associate Member
jgeesman@energy.state.ca.us

GARRET SHEAN
Hearing Officer
gshean@energy.state.ca.us

JACK CASWELL
Project Manager
jcaswell@energy.state.ca.us

ENERGY COMMISSION

JACKALYNE PFANNENSTIEL
Chairman & Presiding Member
jpfannen@energy.state.ca.us

LISA DECARLO
Staff Counsel
ldecarlo@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

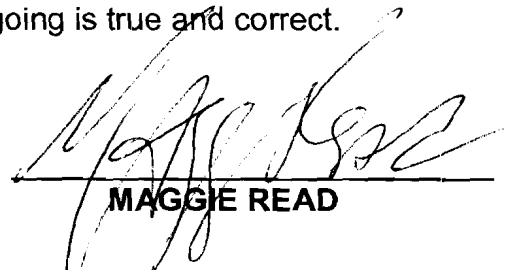
DECLARATION OF SERVICE

I, Maggie Read, declare that on February 6, 2008, I deposited copies of the attached First Errata to the Presiding Member's Proposed Decision & Notice of Hearing on Status of the Proceeding and Evidentiary Hearing in the United States mail at Sacramento, California 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.



MAGGIE READ