

<b>DOCKET</b>	
<b>05-AFC-2</b>	
<b>DATE</b>	FEB 15 2008
<b>RECD.</b>	FEB 15 2008

February 15, 2008

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

Re: **WALNUT CREEK ENERGY, LLC'S  
COMMENTS ON THE FIRST ERATTA TO THE REVISED PRESIDING  
MEMBER'S PROPOSED DECISION AND COMMENTS ON STAFF'S  
SUPPLEMENTAL TESTIMONY  
DOCKET NO. (05-AFC-2)**

Dear Ms. Hockaday:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the **WALNUT CREEK ENERGY, LLC'S COMMENTS ON THE FIRST ERATTA TO THE REVISED PRESIDING MEMBER'S PROPOSED DECISION AND COMMENTS ON STAFF'S SUPPLEMENTAL TESTIMONY** for the Walnut Creek Energy Park Docket No. (05-AFC-2).

Sincerely,



David L. Wiseman  
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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application for Certification for the  
Walnut Creek Energy Park

**DOCKET NO. 05-AFC-2**

**WALNUT CREEK ENERGY, LLC'S  
COMMENTS ON THE FIRST ERRATA  
TO THE REVISED PRESIDING  
MEMBER'S PROPOSED DECISION  
AND COMMENTS ON STAFF'S  
SUPPLEMENTAL TESTIMONY**

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Walnut Creek Energy, LLC (WCE), hereby files its comments on the First Errata to the Revised Presiding Member's Proposed Decision (PMPD) and comments on Staff's Supplemental Testimony.

**PROPOSED CONDITION OF CERTIFICATION NOISE-7**

WCE appreciates and supports the modifications made to pages 127 and 130 of the Revised PMPD as contained in its First Errata. The Committee has accepted many of WCE's suggested revisions contained in our comments on the Revised PMPD. WCE, however, requests some additional clarification to the language provided in the current version of Proposed Condition of Certification **NOISE-7**.

***Definition of Four Quietest Hours of the Nighttime***

In our comments on the Revised PMPD, WCE suggested that the term "four quietest hours of the nighttime" be replaced with "0100 to 0500 hours" to explicitly identify those

four quietest hours. Staff has used this set of hours to establish the background to which noise generated by the project be compared, which resulted in the limit of 49 dbA contained in the condition. If a different set of hours were used, the limit would be greater than 49 dbA. Explicitly identifying the hours to which this condition would apply is needed in order for WCE to make the appropriate commercial and operational accommodations to comply with it, and to avoid unnecessary complications in administering the condition. The term “four quietest consecutive hours of the nighttime” is uncertain and could be interpreted to mean the four quietest hours on each specific day, which may vary slightly from day to day and can only be known after the fact. That would leave WCE in the commercially-untenable position of guessing which hours would be applicable for compliance. Explicitly identifying the hours between 0100 and 0500 in the condition, whether by direct replacement or by reference, would provide certainty without exposing residents to significant impacts. We offer the revision below for the Committee’s consideration.

### ***Definition of Emergency***

In WCE's comments on the Revised PMPD, we suggested that **NOISE-7** include a broader definition of emergency conditions that would be exempted from compliance with the lower nighttime standard. The current version exempts the limitation on operation *during* a Cal-ISO-declared Stage 2 Electrical Emergency (a Stage 2 Emergency is one in which Cal-ISO requires interruptible electricity customers to have their power cut off). It would be a shame for Cal-ISO to have to cut off power supplies to interruptible customers before directing the WCEP to come online, which is why WCE proposed that the exception in **NOISE-7** be expanded to say “*in order to avoid, or during, a Cal-ISO-declared Electrical Emergency*”. WCE again requests that the limitation on operation not be imposed if the operation of the WCEP were necessary to avoid such an emergency as well as after such an emergency has been declared. We believe avoiding an emergency is as much in the public interest as responding to one. WCE also proposed to delete “Stage 2” from the condition so as not to exclude the even

more serious Stage 3 emergency, during which rolling blackouts are ordered, from the exception. We therefore offer the revision below for the Committee's consideration.

**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 and 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 **(0100 to 0500)** and the noise attributable to such operation was greater than 49 dBA at the complainant's residence, the Project Owner shall limit such operations during the four quietest consecutive hours of the nighttime **(0100 to 0500)** 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** during a-Cal ISO-declared ~~Stage-2~~ Electrical Emergency.

#### **RESPONSE TO STAFF'S COMMENTS ON REVISED PMPD**

WCE agrees with Staff's Supplemental Testimony on Air Quality and its recommended revisions to the Proposed Conditions of Certification.

WCE disagrees with Staff's recommended changes to Condition of Certification **NOISE-4**. Staff proposes additional testing requirements to the condition that it asserts would better enable it to enforce Condition of Certification **NOISE-7**. WCE believes that the additional testing requirements proposed by Staff are neither warranted nor would yield information that would help administer **NOISE-7**. Staff's additional testing requirements require the WCEP to operate the turbines during the quietest hours of the nighttime. Staff asserts that this information is necessary to determine future compliance with the operating limitation that would be imposed by **NOISE-7** should any complaint not be resolved by the Project Owner. It is important to understand, however, that the remedy provided by **NOISE-7**, if the complainant is not satisfied by the Project Owner, can be either on-site mitigation or limitation on operations. The limitation on operations could take various forms, other than just a limit on the number of turbines that may operate.

One potential limitation could be that turbines cannot be operated above a specific load. If such a limitation were the solution to ensure meeting the 49 dBA limit, Staff's testing of various turbines at full output would yield little value in crafting such operating restriction. WCE believes that it bears the burden of proving to the CPM what limitations on operations would meet the 49 dBA requirement. One of the ways it would do so would be to perform tests under similar conditions to the operating restriction to be imposed and then submitting such proof to the CPM. In that case, the information obtained from the testing currently proposed by Staff would not be useful. The testing proposed by Staff would be expensive, requiring the WCEP to operate at full load during the nighttime, when the power would not be needed. Since the results would provide little benefit, we urge the Committee to reject Staff's revisions to **NOISE-4**.

WCE will be prepared to provide live testimony at the upcoming evidentiary hearing with previously disclosed and qualified witnesses if the Committee desires.

Dated: February 15, 2008

Respectfully Submitted,



SCOTT A. GALATI

Counsel to Walnut Creek Energy, LLC

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:

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**DECLARATION OF SERVICE**

I, David Wiseman, declare that on February 15, 2008, I deposited copies of the attached **WALNUT CREEK ENERGY, LLC'S COMMENTS ON THE FIRST ERATTA TO THE REVISED PRESIDING MEMBER'S PROPOSED DECISION AND COMMENTS ON STAFF'S SUPPLEMENTAL TESTIMONY** 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.



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