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March 13, 2012

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VIA EMAIL

Mr. Eric Solorio, Siting Project Manager
California Energy Commission
1516 Ninth Street
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DOCKET

11-AFC-1

DATE MAR 13 2012

RECD. MAR 13 2012

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



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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.



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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.).



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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*.

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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**

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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.

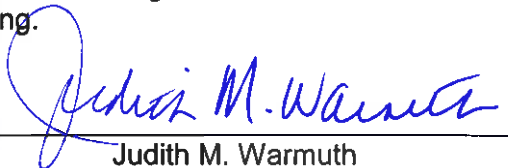
OR

☒ 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