COMMITTEE CONFERENCE

BEFORE THE

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT

COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:	)	
	)	
Application for Certification	)	Docket No.
for the Pio Pico Energy Center	)	11-AFC-01
	)	

California Energy Commission
DOCKETED
11-AFC-1
TN # 8273
SEP 19 2012

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 29, 2012

9:30 a.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Carla Peterman, Presiding Member

Karen Douglas, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Jim Bartridge, Advisor to Commissioner Peterman

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Adviser for Facility Siting

CEC STAFF PRESENT

Kevin Bell, Staff Counsel

Eric Solorio, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

John A. McKinsey
Stoel Rives, LLP

Gary Chandler
Pio Pico Energy Center, LLC

Gary Rubenstein
Sierra Research

INTERVENORS

Gretel Smith (via WebEx)
Attorney for Intervenor Robert Simpson

I N D E X

	Page
1. Call to Order	1
2. Committee and Parties Discussion of PMPD	3
3. Public Comment	14
4. Closed Session	--
5. Adjourn	15
Certificates of Reporter and Transcriber	16

1 P R O C E E D I N G S

2 9:37 a.m.

3 PRESIDING MEMBER PETERMAN: Good morning everyone;
4 we're going to get started so please take your seats.
5 Good morning to everyone in the room and those on
6 the line. This is Commissioner Carla Peterman with the
7 California Energy Commission. Welcome to today's Pio Pico
8 Energy Center AFC Committee Conference.
9 Let's first start with a round of introductions.
10 To my left I have our Hearing Officer, Raoul Renaud. To his
11 immediate left we have Commissioner Karen Douglas, who is
12 the Associate Member of this committee. To her left we have
13 Galen Lemei, her advisor. To my right I have my advisor,
14 Jim Bartridge and to the far right we have Eileen Allen,
15 advisor to the Commissioners, technical advisor on siting.
16 Let's start with the parties. Staff?
17 MR. BELL: Senior staff counsel Kevin W. Bell
18 appearing on behalf of staff. With me is project manager
19 Eric Solorio.
20 PRESIDING MEMBER PETERMAN: For the applicant?
21 MR. McKINSEY: John McKinsey with Stoel Rives on
22 behalf of the applicant. With me is Gary Chandler who is
23 the president of the applicant, Pio Pico Energy Center, LLC.
24 PRESIDING MEMBER PETERMAN: I think we have
25 Intervenor Rob Simpson's attorney on the line, Gretel Smith.

1 MS. SMITH: Yes, Gretel Smith, attorney for Rob
2 Simpson.
3 PRESIDING MEMBER PETERMAN: Welcome.
4 MS. SMITH: Good morning.
5 PRESIDING MEMBER PETERMAN: We also have the
6 public advisor who is in the back of the room.
7 Are there any other -- is there anyone from a
8 local or state agency or government that would like to
9 introduce themselves at this time?
10 (No response.)
11 Okay. Not hearing anyone I'll now turn it over to
12 Hearing Officer Renaud.
13 HEARING OFFICER RENAUD: Thank you, Commissioner
14 Peterman.
15 We hold these Committee Conferences to give the
16 parties and the public an opportunity to comment on the
17 Presiding Member's Proposed Decision. We issued the PMPD on
18 August 6th and it will be going before the full Commission
19 for a vote on September 12th at the Business Meeting.
20 At the time we issued the PMPD on August 6th we
21 asked that the parties submit comments and we received
22 comments from all three parties and we thank you for those.
23 We have reviewed the written comments and --
24 I want to compliment the parties first on the fact
25 that the comments reflect a very careful reading of the

1 document by you. it's a long document and your eagle eyes
2 have caught a number of things that we will correct. And
3 again we appreciate that help from you in just making sure
4 that our Final Decision is as perfect as it can be.
5 I think maybe the way we will proceed is first
6 with any Committee questions or concerns about the comments
7 that we received and then we will ask the parties if they
8 have anything they wish to add or any comments or concerns
9 about the other parties' comments. And so maybe I'll just
10 kick off with a few questions that I have. And I'll start
11 -- let's see. I'll start with staff. Okay.
12 Okay. Now on page three of the staff comments you
13 have recommended an edit to Condition of Certification BIO-
14 8, which would -- which it states here is recommended to
15 ensure that the CPM receives weekly updates on nesting
16 activities. And I guess I want to ask the applicant whether
17 that's okay with the applicant. Do you have any concerns
18 about that?
19 MR. McKINSEY: No, no concerns at all.
20 HEARING OFFICER RENAUD: All right, fine.
21 The suggested language is simply to cross out the
22 words "in the monthly compliance reports." And I am going
23 to suggest that we replace that with "on a weekly basis."
24 So that the last sentence would read: "Nest locations shall
25 be mapped using GPS technology and submitted, along with a

1 weekly report, stating the survey results, to the CPM, on a
2 weekly basis."
3 MR. BELL: That's acceptable to staff.
4 HEARING OFFICER RENAUD: All right, so I think
5 that's what we'll wind up doing.
6 Okay. And then staff, on page five of your
7 comments under Land Use at page 8.1-8 it states that the
8 initials EMDF should be spelled out, meaning "East Mesa
9 Detention Facility, Corrections Corporation of America."
10 I think the intent there actually was, was to
11 eliminate mention of the EMDF at that point because it's
12 not, it doesn't actually exist. So I would propose that we
13 simply delete the initials "EMDF."
14 I was trying to -- the Committee was trying to
15 have the references to the East Mesa Detention Facility
16 referred to in those areas where it's anticipated presence
17 is relevant. But in this particular paragraph we're talking
18 about what's there now and I would -- that's why I would
19 suggest that we just not refer to it at all. Anybody wish
20 to comment on that?
21 MR. BELL: Well I can't say that the editorial
22 suggestion made by our staff was just expressing a
23 preference to spell out EMDF. If it's the Committee's
24 intention to eliminate that, that, of course, would
25 eliminate the need to spell it out.

1 HEARING OFFICER RENAUD: That makes complete
2 sense, Mr. Bell, thank you. All right.
3 Okay. And then turning to page six of the staff
4 comments. You noted that the subsection of -- let's see.
5 It's called -- at 8.3-1 of the PMPD it's called
6 Socioeconomics and Environmental Justice. And you've
7 requested that the phrase "and Environmental Justice" be
8 deleted. And I am just curious why since we do talk about
9 EJ in the section.
10 MR. BELL: We do. But there are other sections
11 within the PMPD where environmental justice is considered as
12 well and it's not, it's not solely limited to the
13 socioeconomics area.
14 HEARING OFFICER RENAUD: Okay.
15 MR. BELL: One thing that we don't want to do is
16 give the impression to the public, somebody reading the PMPD
17 or the eventual license itself, to think that this section
18 is all that encompasses environmental justice.
19 HEARING OFFICER RENAUD: All right, that makes
20 sense, thank you, I appreciate that. You're correct that we
21 do discuss environmental justice in other sections as well
22 so, all right.
23 All right. That's all the clarifying questions I
24 have regarding the parties' comments.
25 Commissioners, anything you wish to bring up with

1 the parties? No, all right.
2 Let's ask the applicant first if you have anything
3 you wish to add regarding your comments or to tell us about
4 the other parties' comments.
5 MR. McKINSEY: The applicant has no additional
6 comments other than what they have submitted in writing.
7 And also we can indicate that we have got no -- we have no
8 issues with the staff's proposed changes and comments. They
9 are completely acceptable to us, in addition to the one you
10 specifically asked about.
11 HEARING OFFICER RENAUD: All right, good.
12 MR. McKINSEY: And the applicant can definitely go
13 on the record as being opposed to the primary thrust of the
14 comments proposed by the Intervenor Rob Simpson.
15 HEARING OFFICER RENAUD: All right, thank you.
16 Okay, staff, anything you wish to advise the
17 Committee regarding your comments or the other parties'
18 comments?
19 MR. BELL: No, the staff is standing by the
20 comments that we filed.
21 We did have one question of the applicant. On
22 page two of their comments, Section 2, Project Description,
23 final bullet. The applicant was requesting the addition of
24 three words before the very end of that bullet, which is
25 "the equivalent of." I understand that the original intent

1 was to permit operation for up to 4,000 hours a year and
2 staff was a little confused about the requested language of
3 what is meant by "the equivalent of 4,000 hours a year."
4 MR. McKINSEY: And there may have been in a few
5 places in the application where it wasn't clear so we're not
6 necessarily indicating that this is a fault of the staff, it
7 may be actually the fault of the applicant. But clearly in
8 the conditions of certification and in the general
9 description of operation the 4,000 is an equivalent full
10 power number.
11 And so the conditions of certification, for
12 instance, allow the project to operate up to the equivalent
13 of 4,000 effective full power hours and so it shouldn't be
14 capped at a number of hours. And one of the reasons for
15 that is that there are many hours that would count, for
16 instance, but are really a start-up hour. So the real
17 limitations on the project are fuel-based and that's why
18 most of the conditions read on terms of equivalent. So
19 we're really only trying to correct the text to be
20 consistent with the conditions.
21 MR. BELL: I'm going to turn this over to Eric
22 Solorio for just a second; he is very familiar with this.
23 MR. SOLORIO: I just want to be sure that I
24 understand. The real issue is the 4,000 hours on each
25 turbine and not overall as a whole for the facility, right?

1 Thanks.
2 MR. McKINSEY: Let me -- I' going to ask Gary
3 Rubenstein from Sierra Research to help answer that part of
4 the question.
5 HEARING OFFICER RENAUD: Thank you.
6 MR. RUBENSTEIN: Gary Rubenstein from Sierra
7 Research on behalf of the applicant.
8 The 4,000 number is applicable to each unit. But
9 again, as Mr. McKinsey indicated, the thrust of our
10 suggestion was to make the text of the PMPD consistent with
11 the conditions; there is no clock hour limit on operations.
12 There are limitations on emissions, which are translated or
13 translatable, if you will, to limits on fuel use. That fuel
14 use number is the equivalent of 4,000 hours of full load
15 operation of each unit plus fuel consumption and hours spent
16 for start-ups and shut-downs.
17 HEARING OFFICER RENAUD: Is there a particular
18 condition of certification to which this applies?
19 MR. RUBENSTEIN: No, Mr. Renaud. We were only
20 making a suggested change to the -- we are proposing a
21 suggested change to the text of the PMPD, we have no
22 objection to any of the conditions at all.
23 HEARING OFFICER RENAUD: All right. I guess what
24 I am really trying to ask is, this is text in Project
25 Description. So that the Committee can ensure that it's

1 comfortable with the language being consistent with the
2 conditions I think we'd like to know which conditions we're
3 talking about here.
4 MR. RUBENSTEIN: That's the dilemma. There is no
5 condition that limits the hours of operation to 4,000 hours
6 per turbine. So I can't point you to a condition that we
7 are trying to be consistent with. We are trying to modify
8 the language because there is no corresponding condition
9 that has such a limit in it.
10 HEARING OFFICER RENAUD: Well, it says in your
11 comments that the conditions of certification do not include
12 such a limit, rather the conditions reflect emission limits
13 equivalent to full load operation at up to 4,000. Is the
14 4,000 number anywhere in a condition?
15 MR. RUBENSTEIN: No, that number is not. And what
16 that language refers to is the annual emissions limit in
17 Condition AQ-39.
18 HEARING OFFICER RENAUD: All right.
19 MR. RUBENSTEIN: They're expressed as tons per
20 year but those values were calculated based on the
21 equivalent of 4,000 full load hours of operation per year,
22 per turbine.
23 HEARING OFFICER RENAUD: All right, thank you,
24 that's helpful.
25 Okay, anything else from the staff?

1 MR. BELL: No. The staff has also read and
2 considered the comments filed on behalf of Intervenor
3 Simpson and on behalf of other entities as well by Gretel
4 Smith and we have no further comments to those. Staff does
5 feel that the information that is being provided in those
6 comments has already been handled through these proceedings.
7 HEARING OFFICER RENAUD: Okay, thank you.
8 Turning now to Gretel Smith representing
9 Mr. Simpson. Would you care to comment on any of the other
10 parties' comments?
11 MS. SMITH: Yes I would, actually. And we have
12 just one comment on the socioeconomic and actually
13 throughout this entire PMPD. I notice that there is not one
14 mention of the existing -- the prison facility, Donovan
15 State Prison, the George Bailey County Jail, nor is there
16 mention of the East Mesa Detention Facility, which is a
17 juvenile detention facility. And I brought this up, I
18 believe, in the evidentiary hearing briefly but it doesn't
19 seem that there is any analysis on the effect to that
20 population that this project will have on them.
21 HEARING OFFICER RENAUD: Well, we are all --
22 MS. SMITH: That's one of our issues that we have
23 with the -- with the PMPD.
24 In addition then, we believe that the analysis in
25 the Alternatives, in the No Project Alternative, is lacking

1 and that there should be more emphasis put on the fact that
2 the solar PVs are definitely a viable alternative to this
3 project.
4 HEARING OFFICER RENAUD: Okay, just one moment.
5 We are all agreeing here that we know there is mention of
6 the Donovan and Bailey facilities at least in the Land Use
7 section and I think actually it may be elsewhere as well.
8 MS. SMITH: It's in the Energy section?
9 HEARING OFFICER RENAUD: Land Use is one.
10 MS. SMITH: Okay.
11 HEARING OFFICER RENAUD: But I'm just going to do
12 a quick --
13 MR. McKINSEY: Hearing Officer Renaud, I could
14 offer -- we just did a quick search digitally and spotted a
15 bunch, including right at the very beginning of Public
16 Health.
17 MS. SMITH: Right.
18 MR. McKINSEY: On page 6.3-4 it specifically
19 identifies all those facilities as part of what has to be
20 evaluated.
21 HEARING OFFICER RENAUD: Yes.
22 MR. McKINSEY: And there are numerous locations of
23 those facilities in the PMPD.
24 HEARING OFFICER RENAUD: Okay. So, Ms. Smith, I'd
25 refer you to page 6.3-4.

1 MS. SMITH: Page four, okay.
2 HEARING OFFICER RENAUD: That's in Public Health;
3 6.5-1, that's in Hazardous Materials.
4 MS. SMITH: However, it doesn't seem to -- it just
5 says that they are there, it doesn't -- I don't believe that
6 there was any analysis done on the effect that this will
7 have on the prison population. I mean, those people don't
8 get to leave. And the East Mesa Detention Facility is a
9 juvenile facility where minors live for long periods of
10 time, And they go outside to exercise so they'll be exposed
11 to this without having a break.
12 PRESIDING MEMBER PETERMAN: Ms. Smith, I am going
13 to ask staff to comment because the issue of these
14 populations was a concern that the Committee was aware of
15 from the beginning. And in terms of doing the analysis on
16 sensitive receptors, that is -- they were included in that
17 assessment of the analysis of who could be a sensitive
18 receptor. So staff, could you just comment on that again,
19 please.
20 MR. BELL: I'm going to let Mr. Solorio answer
21 that question. But I can say from a legal perspective that
22 I know that staff considered or assumed the presence of
23 sensitive receptors at the outset. But I'll let Mr. Solorio
24 answer that in more detail.
25 MR. SOLORIO: I only have a slight amount more

1 detail to add to that and that's the health risk assessment
2 assumes there are sensitive receptors everywhere. So it's
3 not just in the facilities that are identified.
4 HEARING OFFICER RENAUD: Yeah. I think, again,
5 Ms. Smith, if you will go back and review the Public Health
6 section you will find that it is consistent with what
7 Mr. Solorio just stated.
8 MS. SMITH: Um-hmm.
9 HEARING OFFICER RENAUD: That the section lists
10 the potential sensitive receptors in the area and then goes
11 into a discussion of the possible health effects on those
12 sensitive receptors.
13 MS. SMITH: Right.
14 HEARING OFFICER RENAUD: So we'll just have to
15 agree to disagree with you about that.
16 MS. SMITH: Okay.
17 HEARING OFFICER RENAUD: Anything further you wish
18 to add? We did receive your written comments, of course,
19 regarding the Alternatives section.
20 MS. SMITH: Yes.
21 HEARING OFFICER RENAUD: We will take those into
22 consideration and very likely include a response that we'll
23 recommend adding to the Final Decision.
24 MS. SMITH: Okay.
25 HEARING OFFICER RENAUD: But it's quite clear what

1 Mr. Simpson's position is from your comments and we thank
2 you for that clarity.
3 MS. SMITH: Right. Okay, thank you.
4 HEARING OFFICER RENAUD: All right?
5 MS. SMITH: Yes.
6 HEARING OFFICER RENAUD: Is there anything further
7 that any party wishes to add? It looks like we might be
8 just about done here.
9 (No response.)
10 All right. Okay, I think what we'll do now is ask
11 for public comment. Do we have anyone present here in the
12 room who wishes to address the Committee with a public
13 comment?
14 (No response.)
15 All right. Seeing none I'll ask if there is
16 anyone on the phone who has a public comment and wish to
17 address the Committee? If so just speak up.
18 (No response.)
19 Hearing none I'll take it there is no public
20 comment. I think what we'll do now --
21 Well, the next step, of course, is that the
22 Committee will take your comments and the discussion today
23 and prepare a document that we call an Errata. And that
24 will include any corrections to the PMPD that have been
25 discovered since it was published and incorporate as well

1 the substantive materials from the parties' comments.
2 When we go to the full Commission hearing on
3 September 12th what will be before the Commission will be
4 both the PMPD as published and the Errata with a Committee
5 recommendation to adopt that as the Final Decision, those
6 two documents together. If the Commission so votes the two
7 documents would then be combined into a single document,
8 which will be called and published as the Final Decision.
9 So with that, do the Committee Members have any
10 closing remarks before we adjourn?
11 PRESIDING MEMBER PETERMAN: I'll just say thank
12 you to all the parties and intervenors and the public for
13 your comments to date and for the input that provided in
14 helping us to craft the PMPD. And thank you again for your
15 comments on that and stay tuned for what the Errata will
16 say. So thank you.
17 HEARING OFFICER RENAUD: Okay, this hearing is
18 adjourned, thank you.
19 (The Committee Conference adjourned
20 at 9:59 a.m.)
21 --oOo--
22
23
24
25

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

August 31, 2012

RAMONA COTA, CERT**478