



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**

/s/
JACKALYNE PFANNENSTIEL
Commissioner and Presiding Member
Walnut Creek AFC Committee

/s/
JOHN GEESMAN
Commissioner and Associate Member
Walnut Creek AFC Committee