CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 11-AFC-01
	)	
PIO PICO ENERGY CENTER	)	STAFF'S OPPOSITION
	)	to Rob Simpson's
PIO PICO ENERGY CENTER, LLC	)	Petition to Intervene
	)	

INTRODUCTION

On February 9, 2011, Pio Pico Energy Center LLC submitted an Application for Certification (AFC) to the California Energy Commission (Energy Commission) seeking permission to construct and operate a power generation facility, the Pio Pico Energy Center (PPEC), in the County of San Diego, adjacent to the existing Otay Mesa Generating Project. The PPEC is a proposed simple-cycle power generation project that consists of three General Electric LMS100 natural gas-fired combustion turbine generators. The total net generating capacity would be 300 megawatts, with each CTG capable of generating 100 megawatts.

The AFC for the PPEC was found data adequate on April 20, 2011 and was assigned to a committee to conduct proceedings on the AFC. A public Site Visit and Informational Hearing was held on May 16, 2011, at Southwestern College Higher Education Center at Otay Mesa. Since that time, staff has worked diligently towards publishing the Preliminary Staff Assessment (PSA).

On November 2, 2011, Petitioner Rob Simpson filed a Petition to Intervene in the above entitled matter. Staff hereby objects to this petition, and for the reasons set forth below, requests that the presiding member DENY the petition.

ANALYSIS

Title 20, California Code of Regulations, section 1207 provides as follows:

> (a) Any person may file with the Dockets Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceeding, and the name, address, and phone number of the petitioner.

Historically, the Energy Commission and staff both have actively encouraged public participation in our proceedings. Public participation is an integral part of the Energy Commission's licensing proceedings, particularly for those members of the public who reside in the vicinity of projects that are certified by the Energy Commission, or for those members of the public who have a particular interest in some aspect of the project. In this matter, Mr. Simpson is seeking to intervene in order to be granted party

status. However, Mr. Simpson resides nowhere near this project, and has identified no particular interest in this matter that would justify his intervention. A review of his petition shows that he has failed to support his request for intervention.

1. Grounds for intervention

Mr. Simpson states as his sole ground for intervention that he wishes to "insure [sic] that all applicable laws are followed and that the environment and human health are protected through these proceedings." Based on Mr. Simpson's historical level of participation as an intervener and staff's observation that he has not contributed in helping to create an informed record, we do not believe Mr. Simpson's request to intervene merits approval. There is nothing that would prevent Mr. Simpson from participating in this matter as a member of the public to further his wishes that "all applicable laws are followed and that the environment and human health are protected through these proceedings." However, his one stated ground for intervention is alone insufficient to grant him party status.

While staff sees no reason to allow his request to be granted party status, staff continues to support Mr. Simpson's participation as a member of the public, and encourages him to attend workshops and to comment on various documents, including the PSA, FSA, PMPD, and Final Decision. Unless and until Mr. Simpson can articulate adequate grounds to justify his intervention in this proceeding, the Committee should deny his request.

2. The position and interest of the petitioner in the proceeding

Mr. Simpson states that he will participate in the proceeding as an individual citizen, and as the "Executive Director of the non-profit corporation Helping Hand Tools." However, he fails to set forth any interest in this proceeding whatsoever, either as an individual or in his "official" capacity.

Mr. Simpson does not reside in the community in which this project would be constructed: this project is hundreds of miles away from Mr. Simpson's residence in the vicinity of Hayward, California. Nor has Mr. Simpson identified any ties, professional or otherwise, that would give rise to an interest in this proceeding, professional or otherwise. Absent a showing of an identifiable interest in this project, Mr. Simpson's petition should be denied.

3. The extent to which the petitioner desires to participate in the proceeding

Mr. Simpson states that he wishes to "fully participate in the proceedings." However, Mr. Simpson has failed to specify how he would "fully participate." He has failed to identify which technical areas are of concern, or exactly in what manner he would participate. In previous matters in which he was allowed to intervene before the Energy Commission, staff is unaware of any hearing where Mr. Simpson has proffered expert testimony. Mr. Simpson has not authored his own reports or studies, nor is staff aware of any instance in which he has been qualified to render anything other than a lay opinion on the various technical areas that will encompass the Energy Commission's comprehensive environmental review of the current project.

In order to grant Mr. Simpson intervener status, the Committee would at the very least have to know what specific areas are of concern to Mr. Simpson so that it could limit the scope of his intervention to those areas for which he could provide meaningful participation.

Section 1207 is a permissive statute, one that allows any person to petition to intervene in any proceeding before the Energy Commission. Indeed, staff encourages participation by all other potential parties where such participation is reasonable and relevant, and will assist the Energy Commission in creating a thorough and robust record for a project's environmental review. However, section 1207 does not automatically confer party status on a person who files a Petition to Intervene, and any person who files a Petition to Intervene has the burden of justifying their intervention. Mr. Simpson simply has not provided such justification.

The Committee is not obligated to grant a request for intervention. Title 20, California Code of Regulations, section 1207(c) provides as follows:

> (c) The presiding member *may* grant leave to intervene to any petitioner *to the extent he* [or she] *deems reasonable and relevant* [Emphasis added]

Here, Mr. Simpson has failed to demonstrate the relevance of his request to be granted party status in this matter. More specifically, he has also failed to specify which (if any) technical areas within which his participation would have some relevance. Additionally, staff also notes that the time to submit data requests has already ended. Based on his petition, it is difficult to determine to what extent he should be allowed to participate as a party in these proceedings. Because of the insufficiency of his pleadings, the Committee should not grant leave to intervene to any extent, and should deny his Petition to Intervene.

CONCLUSION

Public participation is an integral part of the Energy Commission's licensing process, and Energy Commission staff actively encourages members of the public to participate in our proceedings, to review the reports and studies that are produced as a part of the Energy Commission's environmental review, and to provide comment on those documents. Comments offered by the public are an important part of the Energy Commission's final decision, and help ensure that any potential environmental effects are fully mitigated to less than significant, and that the project complies with all laws, ordinances, regulations, and standards. Staff believes that Mr. Simpson's one stated goal of his proposed participation to "insure [sic] that all applicable laws are followed and that the environment and human health are protected through these proceedings" could be readily met by encouraging his comments throughout these proceedings. There is nothing in his Petition to Intervene, however, that supports the granting of party status to Mr. Simpson. Based on the foregoing, Rob Simpson's Petition to Intervene should be DENIED.

Date: November 17, 2011

Respectfully Submitted,

_____/S/_____
Kevin W. Bell
Senior Staff Counsel

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION
FOR THE *PIO PICO ENERGY CENTER, LLC*

Docket No. 11-AFC-1
PROOF OF SERVICE
(Revised 8/15/2011)

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*indicates change

DECLARATION OF SERVICE

I, Pamela Fredieu, declare that on, November 17, 2011, I served and filed copies of the attached Staff's Opposition to Rob Simpson's Petition to Intervene, dated November 17, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/piopico/index.html].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(*Check all that Apply*)

For service to all other parties:

__X__ Served electronically to all e-mail addresses on the Proof of Service list;

__X__ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "e-mail service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

__X__ by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); *OR*

____ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-01
1516 Ninth Street, MS-4
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OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

____ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
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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.

_____/S/_____