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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.	A.11-05-023 (Filed May 19, 2011)

PIO PICO ENERGY CENTER NOTICE OF EX PARTE COMMUNICATIONS

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Dated: February 8, 2013

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Application of San Diego Gas & Electric Company (U902E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.	A.11-05-023 (Filed May 19, 2011

PIO PICO ENERGY CENTER NOTICE OF EX PARTE COMMUNICATIONS

Pursuant to Article 8 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Pio Pico Energy Center ("Pio Pico" or "Project") submits this notice of ex parte communications with Commissioner Mark J. Ferron and his advisor, Michael Colvin, and with Damon Frantz, Advisor to Commission President Michael R. Peevey on February 5, 2013.

Gary Chandler, President of Apex Power Group, LLC and President of Pio Pico; Keith Derman, Partner, Energy Investors Funds ("EIF"), and David L. Huard, Partner, Manatt, Phelps & Phillips, outside counsel to Pico Pico, were in attendance. Both meetings were scheduled at Pico Pico's request and were held at the Commission on 505 Van Ness Avenue in San Francisco. Pio Pico provided a handout, attached hereto as Exhibit A, at both meetings.

At 2:00 pm, Mr. Chandler, Mr. Derman, and Mr. Huard met with Commissioner Ferron and Mr. Colvin for 25 minutes. Mr. Derman provided a brief overview of EIF which is the owner of Pio Pico. He noted that EIF has been a reliable investor in California infrastructure over the last 25 years including investments in transmission, wind, solar, landfill gas, biomass, hydroelectric and natural gas-fired generation. Mr. Derman expressed to Commissioner Ferron that if the Proposed Decision ("PD") or Alternate Proposed Decision ("APD") were not revised to approve Pio Pico, Pio Pico would be terminated and with it a project with no local opposition that offers reliability, jobs, tax base, investment in California and the ability to integrate

renewables. He further explained that if the Project cannot close on financing now and start construction as planned, the Project would not likely be able to maintain its Large Generator Interconnection Agreement ("LGIA"), site option, permits and fixed price, date-certain contracts and the Project would be terminated.

Mr. Derman stated that EIF's analysis suggests that there are no other gas-fired peaking projects under development in the San Diego area that could likely be on line before 2020-2022. No peaking projects have submitted applications for approval to the California Energy Commission ("CEC") or are currently in the California Independent System Operator's ("CAISO") queue. Limited Emission Reduction Credit availability in the Air District would make receiving an air permit for a project of similar size difficult and very expensive. As is evidenced by the local opposition to other projects, finding and permitting a site in California is not easy and cannot be taken for granted.

Mr. Derman next stated that the development schedule for any new project will be increased due to new risks for CPUC final approval and it is not prudent for the Commission to assume that a new project can be relied upon to materialize for years. Finally, the price of that capacity could be significantly higher than Pio Pico due to the increased risk profile, timeframe to develop in California, uncertain interconnection costs, higher environmental compliance costs, potential increases in inflation and interest rates and limited competition were any project to actually mature sufficiently.

In addition, Mr. Derman expressed concerns as to the message that the PD and AD sends to developers and investors about investing and doing business in California if the Commission can periodically change its findings as to need; even in the face of local utility, CAISO and CEC support. He stressed that the long term procurement plan was approved by the Commission and with it the request for proposals ("RFP") and that developers, investors, lenders, equipment suppliers and engineering and construction firms are all watching this proceeding very closely. The PD and APD could lead to capital flight and inevitably questions the integrity of reliability in the region (and potentially the State in the longer term) and ultimately leads to

significantly higher rates for consumers.

Mr. Derman requested that Commissioner Ferron draft a revised APD which would approve Pio Pico to meet the San Diego area's unquestioned needs at known and very reasonable costs.

At 2:30 p.m. Mr. Chandler, Mr. Derman, and Mr. Huard met with Mr. Franz for approximately 30 minutes. Mr. Derman went through the presentation and discussed the issues as previously discussed in the prior meeting as stated above.

Dated: February 8, 2013

Respectfully submitted,

By: _____
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EXHIBIT A

Pio Pico Energy Center

Meeting with the CPUC
Application 11-05-023
February 5, 2013

ENERGY INVESTORS FUNDS

APEX Power Group, LLC

Summary Arguments For Pio Pico PPTA Approval

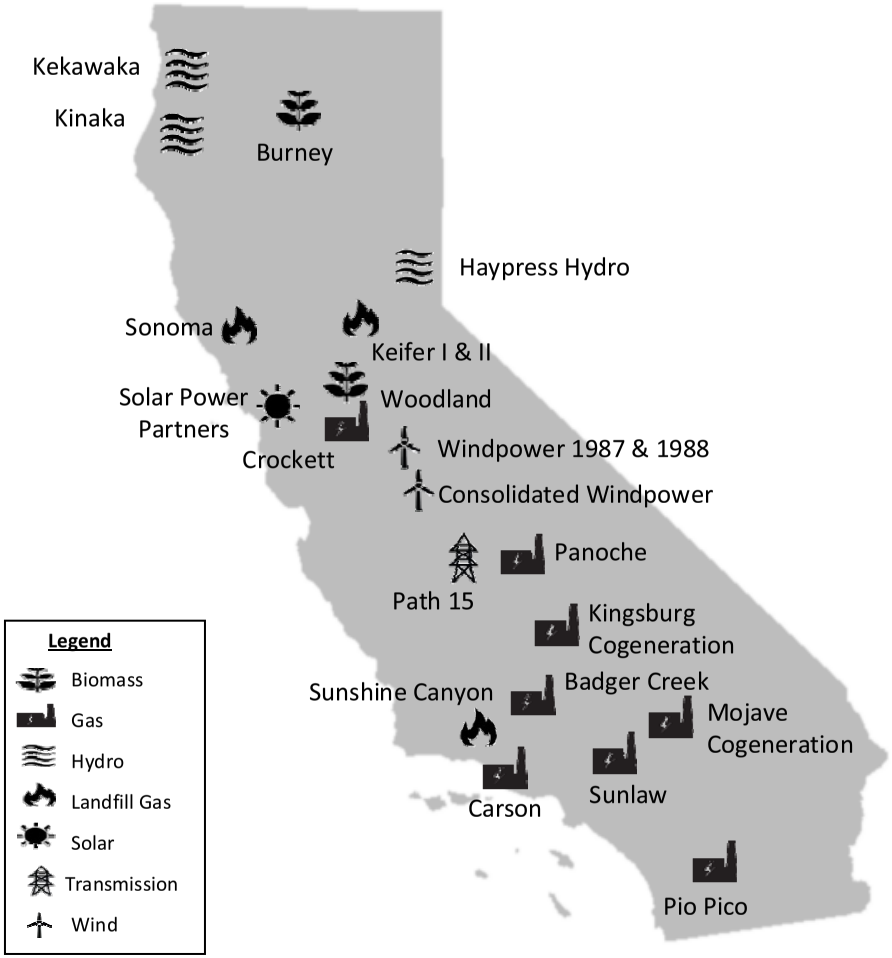
- Pio Pico has been under development for nearly 4 years with millions invested to meet SDG&E required COD
  - ✓ Pio Pico is fully permitted (no local opposition) and shovel-ready
- The PD terminates Pio Pico and with it reliability, new investment, jobs and the potential to integrate renewables
- SDG&E, CAISO and CEC have communicated that local capacity is needed and that Pio Pico should be approved
  - ✓ The South Bay facility was shutdown in 2011, SONGS is still offline, and more plants will be shutdown in the short term that use once through cooling
- There is no gas-fired peaking project in San Diego other than Pio Pico that can realistically be relied on to be in service before 2020 at the earliest
- The implications of the PD/AD (as currently drafted) are severe:
  - ✓ Reliability jeopardized indefinitely with shift of responsibility to the CPUC
  - ✓ Strong and sobering message sent to the independent power community w/r/t development in California
  - ✓ Similarly negative message sent to investors across industries about doing business in California
  - ✓ Development cycle in CA lengthened with significant risk transferred to ratepayers
- <u>What happens if Pio Pico is approved?</u>
  - ✓ Scenario 1: If the experts are right about timing of need, reliability in the short and long term is ensured and costs to ratepayers are reasonable
  - ✓ Scenario 2: If experts are wrong about timing of need, ratepayers pay a few years early for a reasonably priced project, while medium and long term reliability is ensured
- <u>What happens if Pio Pico is not approved?</u>
  - ✓ No guarantee a replacement project ever materializes
  - ✓ Cost of any future capacity that may materialize is highly uncertain (especially if interest rates rise, inflation increases or capacity is needed on an emergency basis)
  - ✓ Highly likely that ratepayers pay significantly more than they would have for Pio Pico and thus give back any savings from not paying for Pio Pico based on the delta in the capacity price

Sponsor Overview (1 of 2)

- Founded in 1987, EIF was one of the first U.S. private equity fund managers to focus on the independent power industry
- Fully-integrated team of approximately 40 investment, engineering, financial, legal, marketing, and administrative professionals focused on a single line of business
- Offices in San Francisco, Boston and New York
- Historic and continued commitment to California development across fuel types (wind, gas, solar, biomass, hydro, landfill gas and transmission) including notable development and construction of projects such as Path 15, Crockett Cogeneration, Panoche, Sunshine Canyon and Pio Pico
- Experienced investor in all segments of the U.S. power and electric utility sectors with a primary focus on generation and transmission with proven technology
- Since inception, EIF's funds have made more than 100 investments with a combined underlying net asset value exceeding $15 billion
- EIF has raised over $5.0 billion in equity capital and has one of the longest track records among U.S. private equity power fund managers
- EIF's institutional investors have included pension plans (teachers), retirement plans (police and fire), labor unions, endowments and universities including CALPERS and Contra Costa County

EIF has been a majority investor in 6.3 GW of greenfield generation and transmission projects representing nearly $8 billion of capital costs in the last decade alone

Sponsor Overview (2 of 2)



Existing Power Investments

Project Name	MW	Fuel Type
Burney Forest Products	31	Biomass
Haypress Hydroelectric	10	Hydro
Kanaka	1	Hydro
Keifer Landfill Gas I *	9	Landfill Gas
Keifer Landfill Gas II	6	Landfill Gas
Kekawaka	5	Hydro
Panoche Energy Center	400	Gas (SC)
Pio Pico Energy Center	300	Gas (SC)
Sonoma County Landfill Plant *	8	Landfill Gas
Sunshine Canyon	20	Landfill Gas
Total MW in Existing Investments	**790**	

Previous Investments

Badger Creek	46	Gas (SC)
Carson Cogeneration	42	Gas (CC)
Consolidated Windpower	71	Wind
Crockett Cogeneration	240	Gas (CC)
Kingsburg Cogeneration	34	Gas (CC)
Mojave Cogeneration	55	Gas (CC)
Path 15 Upgrade	1500	Transmission
Solar Power Partners	30	Solar
Sunlaw	56	Gas
Windpower 1987 and 1988	72	Wind
Woodland	25	Biomass
Total MW in Previous Investments	**2,171**	

*Project is operated but not owned by EIF

EIF has a 25 year track record of supporting generation fueled by conventional and renewable sources as well as energy infrastructure in CA

ENERGY INVESTORS FUNDS

Pio Pico Energy Center Overview & Status

- Simple-cycle generation facility using three GE LMS-100 natural gas-fired combustion turbines (~300 MW)
- 20 year Power Purchase and Tolling Agreement ("PPTA") with SDG&E for 100% of capacity and output
- Under development for nearly 4 years in response to RFP
- Owner has invested millions of dollars in order to meet the desired in service date of SDG&E
- Pio Pico will be located on a 10 acre site in Otay Mesa which is already cleared, leveled and zoned accordingly
- Pio Pico has executed all major project contracts including:
  - ✓ Equipment supply agreement with GE
  - ✓ EPC agreement with Kiewit (inclusive of a PLA with $40 million of local labor union payroll)
  - ✓ LGIA with SDG&E/CAISO
- Pio Pico is fully permitted including CEC approvals—there was no local opposition
- Financing is ready to close upon CPUC approval of the PPTA
- Pio Pico is fully capable of performing under the PPTA including delivery date

Pio Pico is shovel-ready today and offers California employment, new investment, tax-base and low-carbon reliability

ENERGY INVESTORS FUNDS

The Current Debate Regarding the PD/AD

- The debate around the PD/AD is generally centered around the timing of the need for new local capacity
  - ✓ Is it 2014 or is it 2018 or is it some time in between?
  - ✓ "Experts (SDG&E, CAISO and CEC) vs. Consumer Advocates"
- Trying to save ratepayers from paying for Pio Pico starting in 2014 will not only put reliability at risk, it will likely drive more significant rate increases in the medium and long term

- <u>What happens if Pio Pico is approved?</u>
  - ✓ Scenario 1: If the experts are right about timing of need, reliability in the short and long term is ensured and costs to ratepayers are reasonable
  - ✓ Scenario 2: If experts are wrong about timing of need, ratepayers pay a few years early for a reasonably priced project, while medium and long term reliability is ensured
- <u>What happens if Pio Pico is not approved?</u>
  - ✓ No guarantee that a replacement project ever materializes
  - ✓ Cost of any future capacity that may materialize is highly uncertain (especially if interest rates rise, inflation increases or capacity is needed on an emergency basis)
  - ✓ Highly likely that ratepayers pay significantly more for a future project than they would have for Pio Pico and thus give back any savings from not paying for Pio Pico based on the delta in the capacity price

There is just no upside for reliability or the ratepayers in seeing Pio Pico terminated

Critical Importance of Pio Pico

- Both SDG&E and CAISO fully demonstrated the need for Pio Pico in the near term
  - ✓ Their commitment and belief of the need has not wavered
  - ✓ CEC Chairman Weisenmiller also supports Pio Pico to meet reliability
- There exists continued uncertainty at SONGS (even if the PD suggests otherwise)
- The nearby 706 MW South Bay Power in nearby Chula Vista was decommissioned in 2011
  - ✓ Thousands of MWs which utilize once-through-cooling are expected to follow suit in the near term
- Pio Pico allows for the integration of renewables (despite factually incorrect arguments in the PD to the contrary) and is consistent with California energy policy
- Developing and permitting new resources in California is more challenging than ever
  - ✓ CAISO process is now up to 3 years long and the time to execute and approve a PPA must dovetail with final deliverability studies to remain in the queue
  - ✓ CEC timeline is 18+ months but it is no longer a "one stop shop" for permits based on the EPA PSD requirement
  - ✓ PSD Permit—lengthy and very challenging process that was not required until 2012 and will make it more difficult to permit power plants in the future
  - ✓ Extremely challenging to locate new generation sources in the State, particularly in the San Diego area
  - ✓ Often strong local opposition as seen at Quail Brush
  - ✓ Very few, if any, sites with electric transmission, gas transmission and water
  - ✓ The sudden new uncertainty as to long term procurement processes in California…

Limited Other Development in San Diego Area

- There are no other gas-fired projects in the SDG&E service territory in the CAISO queue other than Pio Pico, Quail Brush, Escondido and NRG-Carlsbad (CCGT)
  - ✓ Calpine withdrew from the CAISO queue more than a year ago
- There are no other gas-fired projects in the SDG&E service territory that have CEC approval or have even applied for approval at this time other than (1) Pio Pico, (2) Quail Brush which likely requires rezoning, and (3) NRG-Carlsbad which is a combined cycle
- Very limited emission reduction credit ("ERC") availability in the San Diego APCD registry
  - ✓ Pio Pico's ERCs are derived from shut down of South Bay Power Plant
- Development timeline, as noted in CPUC Proceeding # R12-03-014, is conservatively 7-9 years
  - ✓ San Diego residents better hope the need is not until 2022 (i.e. 2013 + up to 9 years)

Other than Pio Pico, there are no other peaking projects that can realistically be relied on to be in service before 2020 at the earliest

Implications of the PD/AD (1 of 2)

- Pio Pico will be terminated and with it a shovel-ready project that offered low cost reliability, jobs, investment and the ability to integrate renewables
  - ✓ EPC will be cancelled and with it goes the firm commitments on price
  - ✓ Equipment resold or utilized at another project
  - ✓ CAISO LGIA immediately in jeopardy; likely have to restart process
  - ✓ Permit maintenance uncertainty
  - ✓ Site option terminated

- Reliability, in Southern California, despite the strident objections from SDG&E, CAISO and the CEC, will be put in jeopardy
  - ✓ The PD's rejection of SDG&E's and CAISO's testimony puts the blame squarely on the CPUC if there are outages over the next decade
  - ✓ Very strong possibility that the cost of any new plant will be significantly greater than Pio Pico
  - ✓ No guarantee that a new plant will be available in 2018-2020 and such risk, which is always considerable, only increases as a result of this PD

- ✓ The PD when compared to the PD in proceeding # R12-03-014 highlights inconsistency in energy policy and decision-making at the CPUC

Implications of the PD/AD (2 of 2)

- The PD sends a message to the independent power community that is nothing short of **chilling** with respect to future power development in California
  - ✓ The CPUC authorized the RFO in the first place and now (after a 20+ month review process) has arbitrarily changed its mind as to the need
  - ✓ The PD has the potential to set a very dangerous precedent to make all future PPAs subject to later review of need even after projects receive all approvals and are ready to construct
  - ✓ The PD recommends a new RFO with the caveat that future CPUC approval "will take into consideration material intervening events and circumstances"
  - ✓ Be assured that developers, EPC firms and equipment suppliers are watching this proceeding **VERY** closely

- The PD sends a message to investors (energy and otherwise) about the vagaries of deploying capital in California

- The PD further lengthens an already protracted development schedule because capital cannot be reasonably deployed with the CPUC contract approval risk over-hang

- The PD may not just lengthen the development schedule, it may actually make it impossible
  - ✓ No developer can or will commit to a fixed price contract and then successfully lock in its capital costs while waiting for the CPUC to decide if its long term forecast or policy ambitions have remained the same

Project Checklist

- LTPP Need ✓
- RFO ✓
- PPA ✓
- LGIA ✓
- EPC and Project Labor Agreement ✓
- Equipment Supply ✓
- CEC Permit ✓
- PSD Permit ✓
- Financing ✓
- Shovel Ready ✓
- CPUC Final Authorization ?

ENERGY INVESTORS FUNDS