CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

06-AFC-10

DOCKET
06-AFC-5
DATE APR 17 2007
RECD. APR 17 2007

April 17, 2007

Alan Weaver, Director
Fresno County Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

**Re: Panoche Energy Center (06-AFC-5) and Starwood Midway Energy Center (06-AFC-6)**

Dear Mr. Weaver:

On August 2, 2006, Energy Investors Fund, LLC, submitted an Application for Certification (06-AFC-5) to construct and operate a 400 megawatt (MW) simple-cycle power plant, the Panoche Energy Center (PEC), in an unincorporated area of western Fresno County. On November 17, 2006, Starwood Power-Midway, LLC, submitted an Application for Certification (06-AFC-7) to construct and operate a 120 MW simple-cycle (peaking) power plant, the Starwood-Midway Project (Midway), in the same unincorporated area of western Fresno County.

The 12.8-acre Panoche site and the 5.6-acre Midway site would be located on the same 128-acre parcel (Assessors Parcel Number 027-060-78S). The plant sites and construction areas are leased by the applicants from the property owner. The 128-acre parcel is currently subject to a Williamson Act agricultural land conservation contract that is being revised through a partial cancellation process by Fresno County.

The Energy Commission has the exclusive authority to license all new or modified power plant facilities, 50 MW or greater in the state (Public Resources Code section 25500). The Energy Commission's license takes the place of all other state, regional, or local permits (e.g., conditional use permit), and other entitlements for use, that would otherwise be required. The Energy Commission's facility certification process carefully examines public health and safety, environmental impacts, and engineering aspects of proposed power plants, and all related facilities such as electric transmission lines and natural gas and water pipelines. The Energy Commission's responsibilities are those of a lead agency under the California Environmental Quality Act (CEQA), except the Energy Commission's analysis includes multiple environmental and decision documents rather than an Environmental Impact Report.

As part of the licensing process, the Energy Commission must determine whether a proposed facility complies with all applicable state, regional, and local laws, ordinances, regulations, and standards (LORS) (Public Resources Code section

PROOF OF SERVICE (REVISED 3/16/07) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 4/17/07

25523(d)(1)). The Energy Commission must either find that a project conforms with all applicable LORS or make specific findings that a project's approval is justified even where the project is not in conformity with all applicable LORS (Public Resources Code section 25525).

The staff of the Energy Commission has begun the analysis phase of each project's 12-month licensing process. The Energy Commission staff is an independent party in a licensing case and has the responsibility to perform an independent assessment of each energy facility application filed with the Energy Commission. The decision on whether to grant a facility a license and under what set of conditions is ultimately made by the Energy Commission (a five-member body appointed by the Governor). The Preliminary Staff Assessments (PSA) for Panoche and Starwood are scheduled to be published in May 2007 and June 2007, respectively.

My staff has been working with Senior Staff Analyst Robin Tani on issues related to the unclassified use permit and with Senior Planner Margie McHenry and Planning and Resource Analyst Jared Nimer on the Williamson Act Cancellations for both projects. Robin Tani provided my staff (via email) with Fresno County's Site Plan Reviews for both projects (Site Plan Review Nos. 7586 and 7584). Jared Nimer provided my staff (via email) with the agenda for the Agricultural Land Conservation Committee hearing held on April 4, 2007 and the agenda items for the two Williamson Act cancellations (Panoche cancellation RLCC NO. 838; Starwood cancellation RLCC NO. 843).

Because both projects are proposed to be located on Williamson Act land (land conservation contract No. 367), partial cancellation of the contract must occur before the proposed power plants can be constructed. According to your staff, cancellation proceedings are scheduled for the Board of Supervisor's April 24, 2007 agenda. One of the findings the Board of Supervisors must make is "That the cancellation is for an alternative use that is consistent with the provisions of the County General Plan." In the agenda Board items, Fresno County staff states that the County's General Plan allows for development of certain non-agricultural uses in areas designated Agriculture. However, County staff does not provide a thorough discussion of how a use such as a power plant would be consistent with the uses allowed by right or by special permit listed in Table LU-3 in the General Plan Agriculture and Land Use Element or with the provisions and intent of the Agriculture land use designation.

Because a power plant is not a use expressly listed in Table LU-3, Energy Commission staff requests that the County provide a discussion of the specific findings the County would have to make to determine how a power plant is consistent with the intent and purpose of the Agriculture land use designation. From my staff's review of the General Plan Agriculture and Land Use Element, it

appears that Policy LU-A.3 would contain the findings the County would have to make to allow for non-agricultural uses in areas designated Agriculture.

We would like to incorporate the County's input on the issue of general plan conformance and address any concerns the County may have in our PSA. Once the PSA is complete, it will be released for public review, allowing your agency the opportunity to comment on the projects' LORS conformity and environmental issues.

We request that Fresno County provide the requested information by May 7, 2007. If you have any other concerns or need additional time to respond, please let us know. Please contact Eric Knight, Community Resources Unit Supervisor, by phone at (916) 653-1850 or by email at eknight@energy.state.ca.us should you have any questions.

Sincerely,

Paul C. Richins, Jr., Manager
Environmental Office
Energy Facilities Siting Division

cc: Docket (06-AFC-5 and -6)
proof of service list (06-AFC-5 and -6)
Margie McHenry
Robin Tani
Jared Nimer

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

| | |
|---|---|
| **APPLICATION FOR CERTIFICATION FOR THE *STARWOOD POWER PLANT*** | **Docket No. 06-AFC-10**<br>**PROOF OF SERVICE**<br>**(Revised 3/16/07)** |

**INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:**

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-10
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
**docket@energy.state.ca.us**

**APPLICANT**

Ron Watkins
Calpeak Power
7365 Mission Gorge Road, Suite C
San Diego, CA 92120

Rich Weiss
2737 Arbuckle St.
Houston, TX 77005 USA

**APPLICANT'S CONSULTANTS**

Angela Leiba, URS
1615 Murray Canyon Road, Suite 1000
San Diego, CA 92108

**COUNSEL FOR APPLICANT**

Allan Thompson
21 "C" Orinda Way, No. 314
Orinda, CA 94563
allanori@comcast.net

**INTERESTED AGENCIES**

Larry Tobias
Ca. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

**INTERVENORS**

**ENERGY COMMISSION**

JOHN L. GEESMAN
Associate Member
jgeesman@energy.state.ca.us

JEFFREY D. BYRON
Presiding Member
jbyron@energy.state.ca.us

Garret Shean
Hearing Officer
gshean@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Che McFarlin
Project Manager
cmcfarli@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

## DECLARATION OF SERVICE

I, Angela Hockaday, declare that on April 17, 2007, I deposited copies of the attached Letter to Alan Weaver/Fresno County Dept. of Public Works and Planning from Paul Richins/CEC dated 4/17/07, in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

***OR***

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Angela Hockaday
**[signature]**