

## CALIFORNIA ENERGY COMMISSION

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



06-AFC-10

April 17, 2007

<b>DOCKET</b>	
<b>06-AFC-5</b>	
DATE	APR 17 2007
RECD.	APR 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  
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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

Mr. Alan Weaver  
April 17, 2007  
Page 3

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](mailto: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 PANOCHÉ ENERGY  
CENTER

Docket No. 06-AFC-5  
PROOF OF SERVICE  
(Revised 3/16/07)

**INSTRUCTIONS:** All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 06-AFC-5  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**APPLICANT**

Gary R. Chandler  
Panoche Energy Center, LLC  
P.O. Box 95592  
South Jordan, UT 84095-0592

**APPLICANT CONSULTANTS**

Maggie Fitzgerald, Program Manager  
URS  
2020 East First Street, Suite 400  
Santa Ana, CA 92705

**COUNSEL FOR APPLICANT**

Allan Thompson  
21 "C" Orinda Way, No. 314  
Orinda, CA 94563  
[allanori@comcast.net](mailto:allanori@comcast.net)

**INTERESTED AGENCIES**

Larry Tobias  
Ca. Independent System Operator  
151 Blue Ravine Road  
Folsom, CA 95630  
[LTobias@caiso.com](mailto:LTobias@caiso.com)

Electricity Oversight Board  
770 L Street, Suite 1250  
Sacramento, CA 95814  
[esaltmarsh@eob.ca.gov](mailto:esaltmarsh@eob.ca.gov)

**INTERVENORS**

CURE  
Gloria D. Smith  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
[gsmith@adamsbroadwell.com](mailto:gsmith@adamsbroadwell.com)

CURE  
Marc D. Joseph  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
[mdjoseph@adamsbroadwell.com](mailto:mdjoseph@adamsbroadwell.com)

Paul Kramer, Jr.  
Hearing Officer  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

James Reede  
Project Manager  
[jreede@energy.state.ca.us](mailto:jreede@energy.state.ca.us)

**ENERGY COMMISSION**

JEFFREY D. BYRON  
Presiding Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

Dick Ratliff  
Staff Counsel  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

JAMES D. BOYD  
Associate Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Margret J. Kim  
Public Adviser  
[pao@energy.state.ca.us](mailto: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.

  
(signature)