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October 5, 2007

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BY HAND DELIVERY AND ELECTRONIC MAIL

Hearing Officer Paul Kramer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Panoche Energy Center (06-AFC-5)
Clarification of Proposed Condition of Certification GEN-1
Supplemental Testimony of Steve Garrett (Exhibit 50)**

Dear Hearing Officer Kramer:

Applicant Panoche Energy Center, LLC ("Applicant") seeks to clarify the discussion of Staff's proposed Condition of Certification ("COC") GEN-1 as set forth in Applicants Prehearing Conference Statement docketed on September 28, 2007. Applicant is providing you with this letter as a follow-up to the October 2, 2007 Prehearing Conference at which you noted that Applicant's concerns regarding the content of Staff's proposed GEN-1 are not clear.

By way of this letter, Applicant seeks the following related to Staff's proposed GEN-1:

1. That the Commission determine that the publication date of the 2007 California Building Standards Code ("CBSC") was July 24, 2007;
2. Clarification from the Commission as to the applicable date of the 2007 CBSC as applied to Applicant, based on the July 24, 2007 publication date of the 2007 CBSC and the following language of GEN-1:

The project owner shall design, construct, and inspect the project in accordance with the 2001 California Building Standards Code ("CBSC") (also know as Title 24, California Code of Regulations), which encompasses the California Building Code . . . , and all other applicable engineering LORS in effect at the time initial design plans are submitted to the CBO for review and approval. (The CBSC in effect is that edition that has been adopted by the California Building Standards Commission and published at least 180 days previously)

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In the event that the initial engineering designs are submitted to the CBO when a successor to the 2001 CBSC is in effect, the 2001 CBSC provisions identified herein shall be replaced with the applicable successor provisions.

FSA at p. 5.1-6 (emphasis added).

Thus, based on the foregoing language of the proposed GEN-1, the defining date of the applicability of the 2007 CBSC is January 20, 2008. However, the COC only refers to initial (not final) designs and plans, and, as such, Applicant requests confirmation that, by commencing the submission of initial engineering designs for the project to the CBO prior to January 20, 2008, the Applicant will be locked into the governance of the 2001 CBSC.

3. Applicant provides this letter and the attached testimony of Mr. Steve Garrett as Exhibit 50 in support of Applicant's position at the upcoming October 10, 2007 Evidentiary Hearing.

In the testimony attached hereto, Mr. Garrett indicates that the GE equipment are packaged units that that were ordered in 2006 and are already being manufactured around the world for assembly in Houston. At this point it would be impractical if not impossible to require General Electric to go back and review and perhaps change design drawings and equipment. Reliance on the 2001 CBSC for this project is of particular importance as equipment specifications date back to August 2006; well before the 2007 CBSC was even released for public comment. Any other interpretation of GEN-1 as currently drafted would require Applicant to review and revise all initial plans already engineered and designed, and would require resubmittal of the same, all the while significantly impacting the timeline of this project.



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We look forward to the Commission's determination of the appropriate California Building Standards Code applicable to the Panoche Energy.

Very truly yours,

John A. McKinsey

JAM:kjh

cc: Commissioner Jeffrey D. Byron, California Energy Commission
Commissioner James D. Boyd, California Energy Commission
Staff Counsel Jared Babula, California Energy Commission
Dr. James W. Reede, California Energy Commission
Gloria Smith, Esq., Adams Broadwell Joseph & Cardozo
Mr. Gary Chandler, Panoche Energy Center, LLC
Allan Thompson, Esq., Law Office of Allan Thompson

SUPPLEMENTAL TESTIMONY OF STEPHEN GARRETT

EXHIBIT 50

**PANOCHÉ ENERGY CENTER
06-AFC-5
APPLICATION FOR CERTIFICATION**

**EXHIBIT 50
PANOCHE ENERGY CENTER, LLC**

Background

At the October 2, 2007 Prehearing Conference, Panoche Energy Center, LLC (“Applicant”) requested clarification with regard to Staff’s recommended Condition of Certification GEN-1 in which Applicant was required to “design, construct and inspect the project in accordance with the 2001 California Building Standards Code (CBSC).” The requested clarification stemmed from two vague statements within the condition that state, in pertinent part:

The project owner shall design, construct, and inspect the project in accordance with the 2001 California Building Standards Code (CBSC) (also know as Title 24, California Code of Regulations), which encompasses the California Building Code . . . , and all other applicable engineering LORS in effect at the time initial design plans are submitted to the CBO for review and approval. (The CBSC in effect is that edition that has been adopted by the California Building Standards Commission and published at least 180 days previously)

In the event that the initial engineering designs are submitted to the CBO when a successor to the 2001 CBSC is in effect, the 2001 CBSC provisions identified herein shall be replaced with the applicable successor provisions.

(Final Staff Assessment at p. 5.1-6 (emphasis added)).

Upon the conclusion of the Prehearing Conference, Applicant was informed by Staff Counsel Jared Babula via email correspondence that Commission Staff would be preparing an errata to the Final Staff Assessment related to the GEN-1 condition indicating that the 2007 CBSC would apply to the Panoche Energy Center (Project) and as such, there was “no longer a controversy” with regard to this issue. To that end, the following supplemental testimony of Stephen M. Garrett is submitted in response to Applicant’s concerns regarding GEN-1 and Staff’s decision to apply the 2007 California Building Standards Code to the Panoche Energy Center project.

**Supplemental Testimony of Stephen M. Garrett
October 5, 2007**

In August 2006, Applicant ordered the combustion turbine generators (CTGs) from the manufacturer (GE). The design of the CTGs was based on the applicable California Building Standard Code in effect at the time the contract was completed.

The GE CTG equipment is a packaged unit that has parts already being manufactured around the world for shipment and assembly in Houston, Texas. It would be impractical if not impossible to require GE to go back and review and perhaps change design drawings sent out over a year ago

to its suppliers. As such, the GE-supplied equipment should be exempted from application of the new Code.

In addition to the aforementioned complications, changes to equipment design would delay shipment and delivery to the project site and would ultimately delay the project beyond the terms of Applicant's Power Purchase Agreement with Pacific Gas & Electric (PG&E).

Finally, Applicant's contract with GE states, in pertinent part:

“Changes to Codes and Standards or to Federal Laws. If any change to the Codes and Standards or any change in Federal Law after the Effective Date requires a change to the Equipment, the Seller shall be entitled to a Change Order that includes equitable adjustments to the Contract Price.”

With regard to the GE components for this project, Applicant has determined it both necessary and appropriate to apply the 2001 CBSC. However, with regard to the balance of the plant design, Applicant's EPC contractor (Kiewit and Bibb) can accommodate the 2007 CSBC, but will need to know well in advance of the Commission's Final Decision (essentially, now) as equipment is currently being ordered so that the project is on-line by the date required under its Power Purchase Agreement with PG&E.

APPLICANT'S REVISED EXHIBIT LIST

**PANOCHÉ ENERGY CENTER
06-AFC-5
APPLICATION FOR CERTIFICATION**

**PANOCHÉ ENERGY CENTER, LLC
 APPLICANT'S REVISED EXHIBIT LIST
 AS OF OCTOBER 5, 2007**

The following exhibits and declarations will be presented as indicated in Section I of Applicant's Prehearing Conference Statement.

Exhibit #	Description	Witness
1.	Panoche Energy Center, LLC's Application for Certification, Volumes I and II, August 2, 2006	Various
2.	Data Adequacy Responses, November 6, 2006	Various
3.	Responses to Staff's Data Requests, Set 1, January 9, 2007	Various
4.	Revised Figure 5.5-5, February 14, 2007	Jason Moore
5.	Responses to Staff's Data Requests, Set 2, March 1, 2007	Various
6.	Revised Data Request Response 26, April 23, 2007	John Lague
7.	Fresno County Site Plan Approval, March 26, 2007	David Jenkins
8.	Fresno County Board of Supervisors Resolution on Williamson Act Cancellation, May 9, 2007	David Jenkins
9.	Panoche Energy Center Comments to Staff's Preliminary Staff Assessment, July 26, 2007	Maggie Fitzgerald
10.	Fresno County General Plan Conformity Letter, August 8, 2007	David Jenkins
11.	Biological Opinion, August 21, 2007	Maggie Fitzgerald
12.	San Joaquin Valley Air Pollution Control District's Preliminary Determination of Compliance, May 4, 2007	David Jenkins
13.	San Joaquin Valley Air Pollution Control District's Final Determination of Compliance, July 13, 2007	David Jenkins
14.	Declaration of Noel Casil	Noel Casil
15.	Declaration of Lanny Fisk	Lanny Fisk
16.	Declaration of Brian Hatoff	Brian Hatoff
17.	Declaration of Lincoln Hulse	Lincoln Hulse
18.	Declaration of David Jenkins	David Jenkins
19.	Declaration of Michael King	Michael King
20.	Declaration of John Lague	John Lague
21.	Declaration of Angela Leiba	Angela Leiba
22.	Declaration of Ron Reeves	Ron Reeves
23.	Declaration of Stuart St. Clair	Stuart St. Clair
24.	Declaration of Eric Vonberg	Eric Vonberg
25.	Declaration of Tricia Winterbauer	Tricia Winterbauer
26.	Declaration of Jennifer Wu	Jennifer Wu

The following exhibits will be presented by witnesses at the October 10, 2007 Evidentiary Hearing.

Exhibit #	Description	Witness
27.	Technical Memorandum, March 2, 2007 <i>Expanded Evaluation of Water Supply and Wastewater Discharge Alternatives</i>	Maggie Fitzgerald
28.	Technical Memorandum, March 23, 2007 <i>Supplemental Discussion of Water Supply and Wastewater Discharge Alternatives</i>	Maggie Fitzgerald
29.	Technical Memorandum, April 24, 2007 <i>Water Quality Evaluation</i>	Maggie Fitzgerald
30.	Letter to Dr. Reede, July 27, 2007	Gary Chandler
31.	State Water Resources Control Board Resolution 75-58	Steve Ottemoeller
32.	2003 California Energy Commission, Integrated Energy Policy Report	Steve Ottemoeller
33.	Water Balance – Lower Aquifer (2 pages)	Steve Garrett
34.	GE LMS 100 Representation	Steve Garrett
35.	Lime and Soda Ash Softening System	Steve Garrett
36.	Geologic Cross-Section	Jason Moore
37.	Groundwater Levels	Jason Moore
38.	Declaration of Maggie Fitzgerald	Maggie Fitzgerald
39.	Declaration of Jeff Fuller	Jeff Fuller
40.	Prepared Direct Testimony of Gary Chandler	Gary Chandler
41.	Prepared Direct Testimony of Maggie Fitzgerald	Maggie Fitzgerald
42.	Prepared Direct Testimony of Charles Fritz	Charles Fritz
43.	Prepared Direct Testimony of Stephen Garrett	Steve Garrett
44.	Prepared Direct Testimony of Joseph Gruemmer	Joseph Gruemmer
45.	Prepared Direct Testimony of Jason Moore	Jason Moore
46.	Prepared Direct Testimony of Stephen Ottemoeller	Steve Ottemoeller
47.	Interconnection Facilities Re-Study Report, June 15, 2007	
48.	Memorandum of Understanding between the Panoche Energy Center, LLC and the Sacramento Fish and Wildlife Offices, U.S. Fish and Wildlife Service, July 31, 2007	
49.	Lease Agreement for Panoche Energy project site, November 30, 2004	
50.	Supplemental Testimony of Stephen Garrett	Steve Garrett

From: "Hellwig, Kimberly J." <kjhellwig@stoel.com>
To: "Paul Kramer" <Pkramer@energy.state.ca.us>
Date: 10/5/2007 2:04 PM
Subject: Panoche Energy Center, LLC (06-AFC-5) Supplemental Testimony (GEN-1)
Attachments: Supplemental Testimony (GEN-1).pdf

CC: <jboyd@energy.state.ca.us>, <jbyron@energy.state.ca.us>, <Jbabula@energy...
Dear Hearing Officer Kramer:

Please find attached hereto Applicant's letter and Supplemental Testimony related to Condition of Certification GEN-1 and a Revised Exhibit List. Applicant is submitting the requisite paper copies to the Docket Unit this afternoon.

Should you have any questions or concerns regarding the attached, please do not hesitate to contact Melissa A. Foster or John A. McKinsey at (916) 447-0700

Respectfully submitted,

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