

Memorandum

Date: December 7, 2007
Telephone: (916) 863-1246

To: Jeffrey F. Byron, Presiding Member
James D. Boyd, Associate Member
Paul Kramer, Hearing Officer

From: California Energy Commission - James W. Reede, Jr., Ed.D
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512



Subject: **PANOCHÉ ENERGY CENTER PROJECT (06-AFC-5) PMPD COMMENTS**

Attached are staff's PMPD Comments for the proposed Panoche Energy Center (PEC) project.

Panoche Proof of Service List
Mail List: 7207, 7208, 7209

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PMPD STAFF COMMENTS

James W. Reede, Jr., Ed.D and Jared Babula

AIR QUALITY

The Committee directed staff to provide a post-Final Staff Assessment update on the status of the California Air Resources Board's rulemaking regarding revised and new standards for Nitrogen Dioxide (NO₂). Staff contacted the Air Resources Board on November 27, 2007, and learned that the status has not changed since the publication of the FSA.

Please revise the following text with the revisions shown below.

Page 95, AIR QUALITY TABLE 1 Notes:

^a ARB has approved a revised 1-hour standard for NO₂ (0.18 ppm or 338 ug/m³) and a new annual standard for NO₂ (0.030 ppm or 56 ug/m³); however, these standards have not yet been officially approved by the Office of Administrative Law, were not expected to be officially approved prior to the completion of the FSA.

Page 96, 2nd paragraph:

The PEC is located within the San Joaquin Valley Air Basin (SJVAB) and under the jurisdiction of the San Joaquin Valley Air Pollution Control District (District). This area is designated as nonattainment for both the federal and state ozone, ~~and~~ PM10, and PM2.5 standards. Air Quality Table 2 summarizes federal and state attainment status of criteria pollutants for the SJVAB.

Page 106, number 4:

4. Project nonattainment and nonattainment precursor criteria pollutant emissions will be fully offset.

Page 109, Condition AQ-SC4:

The "Verification" text/style is missing from the verification of this condition.

Page 111, Condition AQ-SC7, correction to fix staff's continuity error:

Last sentence of condition should reference "Conditions of Certification **AQ-78 through AQ-81**" not AQ-74 through AQ-77.

Page 133, Condition AQ-87 Verification, correction to fix staff's continuity error.

Verification should reference "Condition **AQ-35**" not AQ-33.

BIOLOGICAL RESOURCES

Page 168. Please revise the following text with the revisions shown below.

~~Impacts to Wildlife Corridors. Substantial wildlife movement through the area is lacking and the project area is not a significant wildlife corridor, so no significant impacts to wildlife movement are expected.~~

Impacts to Wildlife Corridors. The project area is located in an area that has been identified by USFWS to be preserved for San Joaquin Kit Fox (SJKF) habitat connectivity. Construction and operation of the project would result in preclusion of SJKF movement through the area, thereby resulting in adverse impacts to SJKF habitat connectivity and movement corridors. Compensation for this loss of habitat, as described in Condition of Certification BIO-10 (Habitat Compensation), would mitigate impacts to wildlife corridors to less than significant levels.

CULTURAL RESOURCES

Page 195, second paragraph, last sentence. Please revise the following text with the revisions shown below.

The construction would be open trench, with excavations to four feet in depth and a width ranging from 18 inches extending to up to 8 feet at the surface in width, extending to (Ex. 1, pp. 3-40 – 3-41; Ex. 3.)

Commission Discussion of Potential Impacts

Page 200, first full paragraph:

In several of the Conditions of Certification proposed by staff, the phrase "prior to the start of preconstruction site mobilization, construction ground disturbance, construction grading, boring and trenching, and construction" appears. We understand the intent of the phrase as to trigger the associated requirement at the earliest of those events which will, by definition, be preconstruction site mobilization. We have therefore truncated the phrase to "prior to the start of preconstruction site mobilization" wherever it appears in the Conditions as a timing standard.

and

Notice of Availability of the PMPD – Attachment A, second paragraph:

Cultural Conditions: As is explained in the Cultural Resources discussion, we truncated the phrase "prior to the start of preconstruction site mobilization, construction ground disturbance, construction grading, boring and trenching, and construction" to "prior to the start of preconstruction site mobilization" wherever it appears in the Cultural Conditions as a timing standard. In doing so, we did not intend to affect the meaning of the timing requirement. We invite the parties to point out any unintended consequences of this change.

Comment:

Please revise the Conditions of Certification, restoring staff's original language for Conditions **CUL-1, 2, 3, 5, & 6** and their Verifications (exemplified by recommended revisions to **CUL-1** at the end of this comment), for the reasons explained below. Staff is concerned that the PMPD's proposed truncated language could have the unintended consequence of justifying an interpretation that could result in inappropriate time frames for the Cultural Resources Conditions.

Please note that the intent of specifying a series of construction-related activities that commonly occur sequentially was not "to trigger the associated requirement at the earliest of those events." Rather, the intent was to trigger the associated requirement when any one of the activities involving ground disturbances should occur.

The listed activities all have explicit definitions in the Standard General Conditions that the Compliance Project Managers propose for all projects whose compliance with conditions of certification the Energy Commission would oversee (see PMPD, page 29). All the General Conditions definitions (except the definition of "Construction") identify some kind of ground disturbance associated with the listed activities. To make its proposed conditions consistent with the definitions in the General Conditions, and to ensure that the associated requirements would be triggered when the project engaged in any of the ground-disturbing activities, staff listed in its conditions as triggers all the ground-disturbing activities defined in the General Conditions. Staff included "Construction" in the list, even though the General Conditions definition did not include any overt ground disturbance, because staff wanted the list of possible triggers to include such activities as landscaping, which was not included in any of the other definitions.

The full specification of all defined ground-disturbing activities in the cultural resources conditions prevents a misinterpretation of the timing standard of the following kind (using, for example, the proposed, truncated alternative of the PMPD): "This project is starting with construction grading, so there is no preconstruction site mobilization (as defined in the General Conditions). Consequently, there is no time frame for fulfillment of any of the cultural resources requirements."

For these reasons, staff asks that the original triggering phrases be restored as identified in the Final Staff Assessment. Please be informed that staff is currently working with the Compliance Office to modify the language of one or more of the General Conditions definitions to produce less unwieldy triggering phrases than the list originally proposed.

Also, it should be pointed out that if use of the truncated phrase remains preferred, it needs to be substituted in additional conditions to those already modified, including:

Page 204. CUL-2, Verification, second paragraph;
Page 204. CUL-2, Verification, fourth paragraph;
Page 204. CUL-3, first paragraph, last sentence;
Page 206. CUL-3, Verification, first paragraph;
Page 207. CUL-5, first paragraph;
Page 208. CUL-5, Verification, last paragraph; and
Page 208. CUL-6, first paragraph.

Staff's FSA version:

CUL-1 Prior to the start of preconstruction site mobilization; construction ground disturbance; construction grading, boring, and trenching; and construction, the project owner shall obtain the services of a Cultural Resources Specialist (CRS), and one or more alternates, if alternates are needed. ...

PMPD version:

CUL-1 Prior to the start of preconstruction site mobilization, ~~construction ground disturbance; construction grading, boring, and trenching; and construction,~~ the project owner shall obtain the services of a Cultural Resources Specialist (CRS), and one or more alternates, if alternates are needed. ...

LAND USE

Page 233, end of the first paragraph, please revise the following text with the revisions shown below:

~~Applying the same analysis to the County zoning ordinance, Staff concludes that a power plant is allowed in the AE-20 zone in this location. (Ex-100, p. 4.5-12.)~~

In the Preliminary Staff Assessment (PSA), staff could not conclude that the PEC was consistent with Fresno County's General Plan Agriculture and Land Use Element. Staff sent a letter to Fresno County requesting that the County provide a discussion of how a use such as a power plant would be consistent with the provisions and intent of the Agriculture land use designation and with the uses allowed by right or by special permit listed in Table LU-3 in the General Plan Agriculture and Land Use Element. Fresno County's response letter to the Energy Commission (docketed May 7, 2007) stated that County staff did discuss with Energy Commission staff, the basis for the County's conclusion that the proposed project is consistent with the County's General Plan. The letter also stated that the Fresno County Board of Supervisors concurred with its staff and determined that the proposed use is consistent with the General Plan when they approved the petition for partial cancellation of the 12.8-acre site from the Williamson Act.

While Energy Commission staff did not disagree with Fresno County's letter, in the PSA, staff stated its belief that Fresno County had not provided the Energy Commission with a discussion of how the proposed project is substantially similar in character and intensity to such uses listed Table LU-3 in the Fresno County General Plan Agriculture and Land Use Element that would warrant a determination of consistency.

In addition, Fresno County in its staff report for cancellation or in its response to Energy Commission staff's letter did not address the four criteria listed in its general plan Policy LU-A.3. This policy is the mechanism that enables the county to allow through a discretionary permit, the non-agricultural uses listed in Table LU-3 in areas designated Agriculture.

Responding to staff's recommendation in the PSA that the applicant work with Fresno County to resolve the issue of conformity, the applicant provided staff with a copy of Fresno County's August 8, 2007, General Plan Conformity Determination (Determination)

for the PEC (See LAND USE Appendix 4 for full text). In its Determination, Fresno County provides the following information:

"Policy LU-A.3 states that the County shall allow special agricultural uses, agriculturally related activities, and certain non-agricultural uses listed in areas designated Agriculture. Table LU-3 lists typical uses allowed in areas designated Agriculture. Approval of those and similar uses is subject to a determination that certain criteria can be met. This list is not intended to be inclusive of all uses that can be considered for development. The proposed power generating facility is similar to other allowed uses which provide a needed service to the surrounding community or the larger area. Table LU-3 includes uses which provide a public benefit to the surrounding community or larger area, such as sewage treatment plants, solid waste disposal, wireless communication facilities and electrical substations."

The Determination also provides a discussion of how the PEC sufficiently meets the four bulleted criteria in Policy LU-A.3 of the Fresno County Agriculture and Land Use Element and concludes by stating:

"It has been determined that the proposed power generating facility is similar to other non-agricultural uses listed in Table LU-3 of the Fresno County General Plan. Further, the Panoche Energy Project facility meets the criteria for allowing such a use as described in Policy LU-3.A of the General Plan. The development of the proposed use on the subject property is consistent with the Fresno County General Plan... This determination was supported by the Board of Supervisor's on April 24, 2007, when the request for partial cancellation of Agricultural Land Conservation Contract No.267 was approved."

In its FSA, staff stated its belief that Fresno County's General Plan Conformity Determination for the PEC addressed its concerns regarding the PEC's conformity with the Fresno County General Plan. Therefore, Energy Commission staff deferred to Fresno County's position that the proposed project is consistent with its General Plan Agriculture and Land Use Element.

NOISE AND VIBRATION

The discussion of "Pile Driving" under "Construction Impacts and Mitigation" as published on p. 4.6-10 of the FSA is missing in the PMPD.

SOCIOECONOMICS

Please revise the text as shown below.

1. Page 260, 2nd paragraph, Summary and Discussion of the Evidence.

Line 1. School enrollment figures are for 2004-2005. The Mendota Unified School District has 2,434 students not 2,355 (See AFC-Socioeconomic and FSA-Socioeconomics).

2. Page 261, 2nd paragraph, Summary and Discussion of the Evidence.

Line 1. See staff FSA-Socioeconomics, page 4.8-8, medical services discussion of emergency medical services (EMS), paragraph 1. This should be in the PMPD.

Line 2. The four hospitals listed are within "approximately" one hour's driving distance of the PEC. However, please consider adding hospitals available for American Ambulance and its rapid helicopter service Skylife in Fresno. These hospitals are: Fresno Trauma Center (City of Fresno), Coalinga Regional Memorial Hospital (Kings County), Memorial Hospital Los Banos Merced County), and Dos Palos Memorial Hospital (Merced County). (FSA-Socioeconomics, page 4.8-9).

3. Page 263, 1st paragraph, Cumulative Impact.

Lines 2 and 3-The worst case scenario as analyzed by Staff **does not** include the San Joaquin Valley Energy Center (approved in 2004 and currently on hold). Please delete ~~San Joaquin Valley Energy Center (approved in 2004 and currently on hold)~~. See FSA-Socioeconomics, page 4.8-10, Socioeconomics Table 2 Cumulative Impact Analysis of the PEC, Bullard, and SPP Construction Workforces 2008 to 2009.

Insert, "Fresno County" before construction workforce on line 5.

Line 6, insert after short supply "from a four-county area (Fresno, Madera, Tulare, and Kings counties) as well as San Benito and Merced counties." (FSA Socioeconomics, page 4.8-10)

Line 8, insert after housing "(hotel/motels)."

Point 7, Findings and Conclusions, Insert "socioeconomic" between disproportionate and impacts.

SOILS AND WATER RESOURCES

Please revise the text with the revisions shown below.

1. Page 181, 4th paragraph, Line 4. Please add "rough" before draft permit, at the bottom of the page. The term "rough" in USEPA lexicon denotes that it has not been released for public comment. When it becomes a "draft permit," a 45-day public comment period commences.
2. Page 182, 4th paragraph, Line 3. Please add to the phrase ... to contribute funds "to" an agricultural...
3. Page 184, last sentence on page, please delete ... conserved "will" exceeds...

4. Page 185, Findings and Conclusions, No.2, please revise to read:

Use of water from the confined aquifer in combination with the applicant's contribution of funds to the Westland's Water District Agricultural Water Conservation Program is consistent with the state water policies for the conservation of potable water supplies.

TRAFFIC AND TRANSPORTATION

In Attachment A of the November 14, 2007 "Notice of Availability of the Presiding Member's Proposed Decision and Notice of Committee Conference and Notice of Commission Hearing" (Notice), the Committee invites comment on whether the additional measures to "enhance protection of children" in the Starwood-Midway case (06-AFC-10) are appropriate in this case. According to Attachment A, the parties in the Starwood-Midway case "are proposing to stipulate to the adoption of certain measures to enhance protection of children using the school bus that travels on West Panoche Road to the east and west of the PEC site and has a pick up and drop off area in the vicinity of the site." (Page 4) The measures at issue relate to the protection of children using the bus stop located in the vicinity of both the Starwood and Panoche projects.

In response to the Committee's invitation, staff respectfully submits the following comments:

The Committee should not adopt measures or conditions of certification which are not supported by facts and testimony properly introduced into the record during the evidentiary hearing. All factual determinations must be made exclusively on the basis of the hearing record at an evidentiary hearing. (Cal. Code Regs., tit. 20, § 1751.) The presiding member's proposed decision, submitted to the full Commission for adoption, "shall be based exclusively upon the hearing record, including the evidentiary record, of the proceedings on the application." (*Ibid.*) More importantly, "only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a finding." (Cal. Code Regs., tit. 20, § 1702(h).) Section 1213 refers to official notice and does not apply here, but Section 1212 is pertinent in that it requires testimony offered by a party to be under oath and subject to cross examination. (*Id.* at § 1212(b) and (c).)

Staff's FSA and the applicant's AFC, both duly entered into the evidentiary record at the October 10, 2007 hearing, contain the only testimony before this committee on the subject of traffic in and around the project site and bus stop. Staff's FSA provides extensive evidence, through expert analysis and discussions with the school district, that the children riding the bus system and using the bus stop will be afforded ample protection from the additional traffic associated with the construction and operation of the Panoche power plant.

The PMPD concludes that no additional measures are necessary based on the submitted evidence. It, thus, appropriately states, "We therefore conclude that construction and operation of the project, as mitigated herein, will not result in any significant, direct, indirect, or cumulative impacts to the local or regional traffic and transportation system, nor will the project cause significant degradation in the level of service on area roads."

To impose measures borrowed from another project would be inconsistent with the findings in the PMPD that are, themselves, well supported by the evidentiary record in this case. There is no factual basis in the record to adopt additional measures. To do so simply to be consistent with a neighboring project would lack evidentiary justification, especially given measures that are the result of a requested stipulation rather than the evidentiary record in the case.

TRANSMISSION SYSTEMS ENGINEERING

Please revise the following Condition of Certification text as shown below.

- TSE-5** The project owner shall ensure that the design, construction and operation of the proposed transmission facilities will conform to all applicable LORS, including the requirements listed below. The project owner shall submit the required number of copies of the design drawings and calculations as determined by the CBO.
1. ~~a.~~ The existing Panoche Substation will require expansion and upgrades to accommodate the addition of the PEC.
 - a. The Substation will require expansion for about 300 by 320 feet.
 - b. Install a pair of bus sectionalizing breakers to split the busses into two double-bus sections.
 - c. Install one 230 kV bus parallel breaker on the north side using the existing spare bay.
 - d. ~~Adding two new 230 kV bays, one for the relocation of the Gates-Panoche Line #1 and the other for the new generation tie line~~ Adding two new 230 kV bays for the relocation of the Gates-Panoche #1 and #2 230 kV lines.
 - e. Protection requirements will consist of a fully redundant, double-pilot current differential scheme for the generation tie line, four current transformers and protective relays replacement.
 2. ~~b.~~ The PEC would be interconnected to the Panoche Substation via a single 230 kV transmission line approximately 300 feet long with 795 kcmil ACSS conductor or conductor with a higher rating.
 3. ~~c.~~ The power plant outlet line shall meet or exceed the electrical, mechanical, civil and structural requirements of CPUC General Order 95 or National Electric Safety Code (NESC); Title 8 of the California Code and Regulations (Title 8); Articles 35, 36 and 37 of the "High Voltage Electric Safety Orders", California ISO standards, National Electric Code (NEC) and related industry standards.

4. ~~d~~. Breakers and busses in the power plant switchyard and other switchyards, where applicable, shall be sized to comply with a short-circuit analysis.
5. ~~e~~. Outlet line crossings and line parallels with transmission and distribution facilities shall be coordinated with the transmission line owner and comply with the owner's standards.
6. ~~f~~. The project conductors shall be sized to accommodate the full output from the project.
7. ~~g~~. Termination facilities shall comply with applicable PG&E interconnection standards.
8. ~~h~~. The project owner shall provide to the CPM:
 - a. The final Detailed Facility Study (DFS) including a description of facility upgrades, operational mitigation measures, and/or Special Protection System sequencing and timing if applicable,
 - b. Executed project owner and California ISO Facility Interconnection Agreement
9. ~~i~~. A request for minor changes to the facilities described in this condition may be allowed if the project owner informs the CBO and CPM and receives approval for the proposed change. A detailed description of the proposed change and complete engineering, environmental, and economic rationale for the change shall accompany the request. Construction involving changed equipment or substation configurations shall not begin without prior written approval of the changes by the CBO and the CPM.

Verification: At least 60 days prior to the start of construction of transmission facilities (or a lesser number of days mutually agreed to by the project owner and CBO), the project owner shall submit to the CBO for approval:

1. Design drawings, specifications and calculations conforming with CPUC General Order 95 or National Electric Safety Code (NESC); Title 8 of the California Code and Regulations (Title 8); Articles 35, 36 and 37 of the "High Voltage Electric Safety Orders", California ISO standards, National Electric Code (NEC) and related industry standards, for the poles/towers, foundations, anchor bolts, conductors, grounding systems and major switchyard equipment.
2. For each element of the transmission facilities identified above, the submittal package to the CBO shall contain the design criteria, a discussion of the calculation method(s), a sample calculation based on "worst case conditions"¹ and a statement signed and sealed by the registered engineer in responsible charge, or other acceptable alternative verification, that the transmission element(s) will conform with CPUC General Order 95 or National Electric Safety Code (NESC); Title 8 of the California Code and Regulations (Title 8); Articles 35, 36 and 37 of the "High Voltage Electric Safety Orders", California ISO standards, National Electric Code (NEC) and related industry standards.

¹ Worst-case conditions for the foundations would include for instance, a dead-end or angle pole.

3. Electrical one-line diagrams signed and sealed by the registered professional electrical engineer in responsible charge, a route map, and an engineering description of equipment and the configurations covered by requirements **TSE-5 a) through i) 1) through 9)** above.
4. The final DFS, including a description of facility upgrades, operational mitigation measures, and/or SPS sequencing and timing if applicable, shall be provided concurrently to the CPM.
5. At least 60 days prior to the construction of transmission facilities, the project owner shall inform the CBO and the CPM of any impending changes which may not conform to the facilities described in this condition and request approval to implement such changes.

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 10/31/07)

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
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DECLARATION OF SERVICE

I, Maria Sergoyan, declare that on December 7, 2007, I deposited copies of the attached Panoche Energy Center Project (06-AFC-5) PMPD Comments in the United States mail at Sacramento, CA 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.



Maria Sergoyan