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December 10, 2007

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BY HAND DELIVERY AND EMAIL

Commissioner Jeffrey D. Byron
Commissioner James D. Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Panoche Energy Center LLC (06-AFC-5)
Comments on Presiding Member's Proposed Decision**

Dear Commissioners:

Pursuant to the Committee's Notice of Availability dated November 21, 2007 ("Notice") and on behalf of Panoche Energy Center LLC ("Applicant" or "Panoche"), we submit the following comments to the Presiding Member's Proposed Decision ("PMPD") for the Panoche Energy Center Project ("Project"). Generally, Applicant finds the PMPD to be acceptable, accurate, and fair. Panoche seeks only minor changes to correct non-substantive issues and responds to the Committee's "Highlighted Aspects of the PMPD."

To date, the Committee and Staff have responded excellently to the timing needs of this project and, as such, the project is on schedule to meet its contractual obligations. This is due in large part to the Committee's responsiveness and the cooperation of Staff in reaching agreement on various issues throughout this proceeding. To that end, Panoche believes the Committee will be able to resolve any remaining issues at the Committee Workshop on Wednesday, December 12, 2007.

Committee's Highlighted Aspects of the PMPD

In Attachment A to the Notice, the Committee identified five (5) issues and required the parties to either comment or provide additional information related thereto. We address these issues first.

Air Quality – The Committee has asked for a status of the San Joaquin Valley Air Pollution Control District ("District") revised and new NO2 standards. Panoche has been informed by representatives of both the District and the California Energy Commission that the District has

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not implemented changes to the related rules since the release of the Final Staff Assessment ("FSA"). In addition, the Project was modeled and evaluated based on the District's current, operative criteria. Thus, any standards currently under review, but not yet adopted by the District, are inapplicable to this proceeding.

Cultural – In those Conditions of Certification ("COC") that contain the phrase "prior to the start of preconstruction site mobilization, construction ground disturbance, construction grading, boring and trenching, and construction," the Committee has indicated it has changed the phrase to "prior to the start of preconstruction site mobilization." Panoche notes the Committee's intent of the change and that such change was not intended to affect the meaning of the timing requirement. To this end, Panoche does not have concerns regarding the change.

Noise – The Committee has revised the FSA version of COC NOISE-5 to require the relocation of the residents at location ML2 "prior to the start of noisy construction activities" (see PMPD at p. 254-255). It appears the change was made to mitigate noise levels associated with "noisy construction activities" (i.e., pile driving). However, moving the resident at ML2 prior to construction is unnecessary as there is no pile driving associated with the Project (see Panoche's Comments to the PSA at p. 61 (or 4.6-10)). To that end, and in order for the Applicant to meet critical compliance and construction related milestones, Panoche requests the Committee reconsider the change and revise COC NOISE-5 to read as previously agreed to between Staff and Applicant and as written in the FSA. Specifically, the relocation of residents at location ML2 shall occur pursuant to "the signed agreement between the applicant and the landowner of the property of MLS." Such relocation will occur "prior to initial startup of the first combustion turbine." Applicant's request to change COC NOISE-5 to the FSA version comports with the agreement between Panoche and the landowner (see Applicant's Exhibit 51).

Traffic – The Committee invited the parties to consider whether there is a need to adopt certain measures to enhance the protection of children using the school bus that travels West Panoche to the east and west of the proposed project site and, if the parties believed such protection measures were needed, the Committee requested proposed COCs. To that end, Panoche reviewed the proposed COCs set forth in the Starwood-Midway proceeding (06-AFC-10) and carefully considered and evaluated this issue.

During the AFC process Staff and Applicant carefully and thoroughly evaluated the school bus stop located on West Panoche Road near the project site. The results of such extensive evaluation determined there would be no safety hazard to children waiting for the school bus or



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to the school bus as it passed the site. As such, Applicant believes extensive conditions regarding the issue are unnecessary and not supported by the evidence in this proceeding. Moreover, if extensive conditions are imposed this late in the process, such conditions may risk the Applicant's ability to meet contractual obligations related to the project. Failure to achieve its contractual requirements under the power purchase agreement will risk cancellation of the project altogether. As the Committee is aware, Panoche must start construction shortly after the Commission's approval of the AFC in order to meet these contractual obligations.

While Applicant is strongly opposed to the inclusion of extensive traffic conditions of certification related to the school bus stop located near the project site, Panoche is not opposed to a condition that requires worker safety training. The requirements of such a condition would ensure training of all construction workers who commute to the site and all truck drivers and delivery drivers who drive to and from the site during construction on safety awareness and standards with regard to the nearby bus stop and the safety of school children. To that end, Panoche proposes the following COC TRANS-2.

TRANS-2 Worker Traffic Safety Training

The project owner shall brief and train all construction workers that commute to the site, and all truck drivers and delivery drivers that drive to and from the site during construction, on safety awareness and standards with regard to the nearby bus stop(s) and with regard to school children safety. The briefing and training shall be conducted for such workers and drivers before they begin working at the site and shall include the following elements:

- California highway and driving laws and regulations that relate to school busses and school children.
- The locations of bus stops and residences along the traffic routes in the vicinity of the site.
- The approximate times that school bus routes are driven to pick up and to drop off students.
- The type of risks to school children that can arrive on rural highways and roads during elevated construction traffic periods.
- The particular risks that can arise during low visibility conditions such as when foggy or at night.
- The need to be exceptionally careful and patient when following a slower moving vehicle to ensure heightened danger activities such



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- as passing do not endanger school children crossing or walking along the road.
- The need to be exceptionally alert and cautious during the morning and afternoon school bus periods and also the need to be alert for shortened days that result in school buses being present at unusual times.

Verification: The project owner shall report the results of the school bus and school children safety training in its monthly compliance reports submitted to the CPM, beginning with the first report after site mobilization and continuing until construction is completed.

This enhancement serves to provide proper training to construction workers and delivery personnel when traveling to and from the Project site. Adopting the above proposed condition should alleviate any concerns related to traffic safety.

California Building Code: During the Evidentiary Hearing for this matter, the parties agreed to change all references to the 2001 California Building Standards Code ("CBSC") to the 2007 version, excepting the General Electric supplied equipment (see GEN-1). To ensure this agreement was memorialized correctly within the PMPD, the Committee requested the parties to verify that any Conditions or language referring to the CBSC contained the correct version of the CBSC. Panoche has reviewed the entirety of the PMPD and noted one needed correction. COC TSE-3 states, in pertinent part:

TSE-3: If any discrepancy in design and/or construction is discovered in any engineering work that has undergone CBO design review and approval, the project owner shall document the discrepancy and recommend corrective action. (2001 California Building Code, Chapter 1, Section 108.4, Approval Required; Chapter 17, Section 1701.3, Duties and Responsibilities of the Special Inspector; Appendix Chapter 33, Section 3317.7, Notification of Noncompliance [**Verify correct version**]). The discrepancy documentation shall become a controlled document and shall be submitted to the CBO for review and approval and shall reference this condition of certification.

(PMPD at p. 82).

Applicant believes the correct version of the CBSC applicable to this Condition is the 2001 version of the CBSC. The referenced CBSC sections in the PMPD version of TSE-



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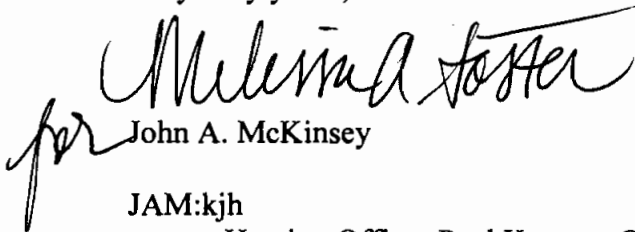
3 refer to actions that have been changed in the 2007 version. For example, the 2001 version of "Section 108.4, Approval Required," is now referred to as "Permits, Fees, and Inspections." There does not appear to be equivalent language regarding approvals in the 2007 version. The same applies to Section 1701.3 "Duties and Responsibilities of the Special Inspector." As such, the language of this condition should remain the same, except for the deletion of "[Verify correct version]."

Applicant's Comments to PMPD

Applicant reviewed Staff's comments to the PMPD, which was served on all parties Friday, December 07, 2007, and is in accord with most of Staff's comments. Aside from the comments related to Noise and Traffic & Transportation noted above, Applicant has no additional comments or changes to the PMPD.

In closing, Panoche looks forward to the December 12, 2007 Committee Conference and subsequent Final Decision by the Commission. Should you have any questions or concerns regarding these comments, please do not hesitate to contact Melissa Foster or me.

Very truly yours,


for John A. McKinsey

JAM:kjh

cc: Hearing Officer Paul Kramer, California Energy Commission
Dr. James Reede, Project Manager, California Energy Commission
Gary Chandler, Panoche Energy Center, LLC
Maggie Fitzgerald, Project Manager, URS
Allan Thompson, Esq.