

COMMITTEE CONFERENCE - EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the PANOCHÉ ENERGY CENTER;) 06-AFC-5
Presiding Member's Proposed)
Decision)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 12 2007

3:38 P.M.

Reported by:
Peter Petty
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

HEARING OFFICER AND ADVISORS

Paul Kramer, Hearing Officer

Gabriel Taylor, Advisor

Peter Ward, Advisor

STAFF AND CONSULTANTS PRESENT

Eileen Allen for James Reede, Jr., Project Manager

Jared Babula, Staff Counsel

Beverly Bastian

Shahab Khoshmashrab

Lei Ping Ng

APPLICANT

Melissa A. Foster, Attorney

Ha T. Nguyen

Kimberly J. Hellwig

Stoel Rives, LLP

Gary Chandler, President

Panoche Energy Center, LLC

Bullard Energy Center, LLC

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 P R O C E E D I N G S

2 3:38 p.m.

3 PRESIDING MEMBER BYRON: This is the
4 PMPD for Panoche Energy Center, a hearing on the
5 PMPD. I'm Commissioner Jeff Byron. With me is my
6 Advisor, Gabriel Taylor. And Commissioner Boyd, I
7 believe, is flying to Tampa, Florida; so instead
8 this is his Advisor, Peter Ward.

9 And I will turn it over to our Hearing
10 Officer Paul Kramer.

11 HEARING OFFICER KRAMER: Okay, thank
12 you. I think everything is pretty much worked out
13 in the exchange of comments between the parties.

14 First, for the record, on the telephone
15 I know we have John McKinsey, representing the
16 applicant. So, anyone else on the telephone?
17 Okay, hearing no one else.

18 We have several things to do today.
19 First is to reopen the evidentiary hearing and
20 consider introducing several documents that are
21 listed in the exhibit list at the end of the PMPD.
22 These came in after the previous evidentiary
23 hearing. But in anticipation of their being
24 introduced they were used in the preparation of
25 the decision.

1 I'm speaking specifically of exhibits 53
2 and 54 from the applicant. And exhibits 105
3 through 107 from the staff. So I'd entertain
4 motions, first from the applicant, to introduce
5 their documents.

6 MS. FOSTER: Good afternoon,
7 Commissioner Byron, Advisors and Hearing Officer
8 Kramer. I'm Melissa Foster with Stoel Rives for
9 the applicant.

10 Exhibit 53 is a letter from myself dated
11 October 15, 2007, clarifying the natural gas
12 pipeline route.

13 And exhibit 54 is a letter also from
14 myself dated October 22, 2007, regarding Panoche's
15 revised proposal for condition of certification
16 haz-10.

17 We sponsor those exhibits here today.

18 HEARING OFFICER KRAMER: And do you move
19 those into evidence?

20 MS. FOSTER: And we move those into
21 evidence, as well.

22 HEARING OFFICER KRAMER: Any objection
23 from staff?

24 MR. BABULA: No objection.

25 HEARING OFFICER KRAMER: Okay. Note for

1 the record that CURE, I believe, is an intervenor
2 in this case, and they are not here today with us
3 as far as I know. Is there a representative from
4 CURE in the audience? I see no one.

5 Okay, exhibits 53 and 54 will be
6 received into evidence.

7 Staff, would you care to introduce your
8 documents.

9 MR. BABULA: I'm not clear what
10 documents --

11 HEARING OFFICER KRAMER: Oh. Actually
12 I'll just read them. Exhibit 105 is a
13 supplemental testimony of Rick Tyler regarding
14 hazardous materials handling. I don't believe it
15 had a date on it.

16 Exhibit 106 was a memorandum from you,
17 Mr. Babula, dated October 12, 2007, regarding
18 condition cultural-5.

19 And exhibit 107 was a memorandum from
20 staff and an accompanying USEPA draft -- actually
21 that should be rough draft -- injection well
22 permit, dated November and they didn't give a
23 specific date, 2007.

24 Those are the three documents that came
25 in subsequent to the evidentiary hearing.

1 MR. BABULA: Okay. Then those would be
2 the ones staff would be sponsoring.

3 HEARING OFFICER KRAMER: And you want to
4 move those into evidence?

5 MR. BABULA: Yeah, I'd like to move
6 those into evidence.

7 PRESIDING MEMBER BYRON: Please
8 introduce yourself. I don't think we've done that
9 yet, for the record.

10 HEARING OFFICER KRAMER: I'm sorry

11 MR. BABULA: Okay. Yeah, I don't think.
12 It's Jared Babula, Staff Counsel. And I'm sitting
13 next to Eileen Allen who is covering for Dr. James
14 Reede as Project Manager.

15 HEARING OFFICER KRAMER: Any objections
16 to those documents being received into evidence
17 from the applicant?

18 MS. FOSTER: No objection.

19 HEARING OFFICER KRAMER: Okay, those
20 will be received into evidence.

21 Okay, we'll leave the evidentiary record
22 open for the moment because in discussing the
23 comments it may be necessary to take a very small
24 amount of additional testimony.

25 On the topic of noise, Shahab, I'll

1 mangle your last name, I'm sorry, so I'm going to
2 call you by your first name. Could you come
3 forward to the microphone and identify yourself.

4 MR. KHOSHMAHRAB: Shahab Khoshmashrab.

5 HEARING OFFICER KRAMER: And were you
6 involved in the preparation of the noise testimony
7 for staff?

8 MR. KHOSHMAHRAB: Yes.

9 HEARING OFFICER KRAMER: Okay. Let me
10 explain the context for this. In writing the
11 decision and reviewing the staff's testimony it
12 appeared that staff's conclusion that there would
13 be no significant impacts from construction noise,
14 assumed that the residents located at location ML-
15 2 would be relocated. So therefore they would not
16 be present at that location during construction.

17 Because some of the noise estimates for
18 that location suggested that there would be an
19 increase in noise levels that would normally be
20 considered a significant impact.

21 And therefore we changed the condition
22 of certification to require the relocation of that
23 residence prior to the start of noisy
24 construction, rather than what was proposed by
25 staff which was prior to the start of operations

1 of the power plant.

2 Both the applicant and the staff, in
3 their comments, have indicated that it's not
4 necessary to make that change. And I wonder if
5 you could summarize why staff believes that it
6 remains appropriate to require the relocation at
7 the time prior to the start of the power plant's
8 operations, as you originally proposed.

9 MR. KHOSHMAHRAB: I think we received
10 comments recently from the applicant that the
11 vibrations, or the pile-driving will not be
12 required for this project. And pile-driving noise
13 is usually, I want to say, approximately 10
14 decibels higher than other construction
15 activities.

16 And that leads me to believe that it
17 probably won't be necessary to move the applicant
18 prior to construction, because now you don't have
19 this very high noise for this activity.

20 Also, before that, the conclusion was
21 basically placed on the construction noise being
22 considered as a temporary increase in noise.

23 Also, construction work will take place
24 during mostly -- well, it will take place during
25 daytime hours.

1 And also if the noise still proves to be
2 intrusive enough to launch a complaint, condition
3 noise-2 will provide protection through the noise
4 complaint process. That is described there.

5 So, that's why I believe that it should
6 be okay.

7 HEARING OFFICER KRAMER: Now there's a
8 condition, I think it's noise-9, that talks about
9 pile-driving.

10 MR. KHOSHMAHRAB: Noise-8. I think
11 it's noise-8.

12 HEARING OFFICER KRAMER: You're right.
13 And that requires the applicant to use a quieter
14 process than traditional pile-driving techniques.
15 But if the applicant is saying that they're not
16 going to use pile-driving, is it necessary to have
17 this condition?

18 MR. KHOSHMAHRAB: No, it's not.

19 HEARING OFFICER KRAMER: Asking the
20 applicant, is there any chance that you may change
21 your approach and use pile-driving?

22 MR. CHANDLER: Gary Chandler, President
23 of Panoche Energy Center. We will not be using
24 pile-driving at all. There will be no change in
25 that.

1 HEARING OFFICER KRAMER: So would it
2 make sense to you just to delete condition noise-8
3 then?

4 MR. CHANDLER: Yeah, we would not have
5 any problem with deleting that condition.

6 HEARING OFFICER KRAMER: With it being
7 understood that if you wanted to use pile-driving
8 you'd have to come back with an amendment of some
9 sort?

10 MR. CHANDLER: Well, I checked with our
11 contractor today again, and they assured me there
12 will be no pile-driving on the site.

13 HEARING OFFICER KRAMER: Okay. That's
14 all the questions I had about noise.

15 Moving on to transmission system
16 engineering, which I believe you were also going
17 to testify about, Shahab, is that correct? Will
18 that be Lei Ping Ng?

19 MS. NG: Yes.

20 MS. ALLEN: I understand from Dr. Reede
21 that Shahab and Lei Ping will both be involved
22 because of Shahab's familiarity with the
23 California building standards.

24 HEARING OFFICER KRAMER: Okay.

25 MS. ALLEN: Thank you. Both of you.

1 HEARING OFFICER KRAMER: Okay. Let me
2 ask the applicant, have you reviewed staff's
3 filing today and their --

4 MS. FOSTER: We have, and we are
5 amenable to the changes that they have made
6 incorporating the provisions regarding the 2007
7 building code and the revised section numbers that
8 go accordingly with that in TSE-3.

9 HEARING OFFICER KRAMER: Okay, well,
10 that answers that question.

11 Staff also proposed changes to TSE-5.
12 And my only question was there was no explanation
13 as to the reason for proposing these changes. So
14 I wanted to ask staff to briefly provide that
15 explanation. And, Lei Ping, I don't believe you
16 were sworn in at the last hearing, so if you could
17 be sworn as a witness and then offer that
18 explanation.

19 Whereupon,

20 LEI PING NG
21 was called as a witness herein, and after first
22 having been duly sworn, was examined and testified
23 as follows:

24 MS. NG: I'm Lei Ping Ng, L-e-i
25 P-i-n-g, last name N-g.

1 The reason we changed the TSE-5 is
2 because we received the new project description
3 from the applicants after we finished the draft
4 PSA. And then it states that the adding two new
5 bay to the substation. And the two new bay,
6 originally one new bay was for a relocation of the
7 existing Gate-Panoche 230 kV line number one. And
8 then the other one, the other new bay is for the
9 generation tieline.

10 And the new facility study we received
11 in October and has the change to the two new bay
12 for relocation of the two lines. Those two lines
13 are the Gate-Panoche number 1 and number 2 230 kV
14 line.

15 And then the existing bay will be used
16 for the generation tieline. That's why we made
17 the changes.

18 HEARING OFFICER KRAMER: Thank you. Did
19 the applicant want to ask any questions of this
20 witness?

21 MS. FOSTER: No.

22 HEARING OFFICER KRAMER: Okay, thank
23 you, that's all the questions we have.

24 I don't see a land use witness. Do you
25 have one, Eileen?

1 MS. ALLEN: No, we don't have a land use
2 witness here. We weren't aware that that would be
3 a topic of discussion.

4 HEARING OFFICER KRAMER: I think Dr.
5 Reede was going to try to get her here, but he
6 wasn't sure that he would be able to.

7 The nature of my question was if you
8 look at the original staff comments, they propose
9 a rather long narrative be inserted into the
10 decision, explaining in more depth than the
11 surrounding paragraphs of the decision would, the
12 process by which staff -- here they use the
13 phrase, decided to defer to Fresno County's
14 determination that the project was allowed under
15 the general plan and the zoning.

16 And I noted in the original staff
17 assessment, the final staff assessment, rather,
18 they said basically the same thing, but they
19 described themselves as assuming that the project
20 was consistent with the zoning designation.

21 So, what I was proposing to do to modify
22 the decision was to change the paragraph -- or the
23 sentence that staff deleted. Say something like,
24 the County applied the same analysis, which would
25 refer to a description that immediately precedes

1 this, to the County's zoning ordinance. And say,
2 based on that analysis staff assumes a power plant
3 is allowed in the AE-20 zone in this location.

4 Does that seem a reasonable approach to
5 the staff?

6 MS. ALLEN: Yes, that's acceptable.

7 HEARING OFFICER KRAMER: And the
8 applicant?

9 MS. FOSTER: Also reasonable, yes.

10 HEARING OFFICER KRAMER: And then that
11 would avoid this long discussion that the staff is
12 proposing.

13 Okay, that's all for land use.

14 Next would be cultural.

15 MS. BASTIAN: I think I was sworn in
16 before, but--

17 HEARING OFFICER KRAMER: Were you sworn
18 in -- I think you were at the last meeting. Yes,
19 I recall that.

20 Please identify yourself for the record.

21 MS. BASTIAN: I'm Beverly Bastian; I'm
22 the cultural resources specialist for the Panoche
23 project, for the CEC.

24 HEARING OFFICER KRAMER: Okay, now the
25 latest staff comments you responded to our effort

1 to try to truncate that rather long phrase that
2 appeared many times in the cultural conditions.
3 And your suggestion is that we could just
4 substitute the term, ground disturbance, in each
5 of those places.

6 MS. BASTIAN: Correct.

7 HEARING OFFICER KRAMER: The applicant,
8 in its comments, seemed to be accepting of either
9 approach. Is that the case?

10 MS. FOSTER: That is the case.

11 HEARING OFFICER KRAMER: Okay, thank you
12 for helping work that out.

13 MS. BASTIAN: I think that many projects
14 would be pleased with that, having been -- let's
15 consider it fixed.

16 HEARING OFFICER KRAMER: Okay, and then
17 in the matter of traffic -- I think this is the
18 last issue that -- in the matter of traffic from
19 the applicant's response. They have proposed, in
20 response to the Committee's invitation, condition
21 transportation-2, which would add to the worker
22 safety training an element discussing the presence
23 of the school bus on the school bus route that
24 travels on East Panoche Road.

25 I don't know what staff's response to

1 that is officially. We did read staff's
2 admonishment that there is -- or at least staff's
3 conclusion that there is no evidence in the record
4 to support this requirement. Am I correct, from
5 the applicant, that you are volunteering this
6 measure as a way of addressing any potential
7 school bus issues, whether they are significant or
8 not?

9 MS. FOSTER: Yes, we are.

10 HEARING OFFICER KRAMER: And does staff
11 object to including this as volunteered by the
12 applicant?

13 MR. BABULA: No, the applicant, if they
14 want to do additional stuff. I mean our position
15 is laid out that, and I think they agreed with us,
16 too, is that actually what had been determined and
17 what our analysis determined and what the
18 applicant determined is the condition set forth
19 were more than adequate for the protection and
20 safety of the children.

21 So trying to use what another project,
22 Starwood, is doing has no basis here. But if they
23 want to do an additional signage or training that
24 they have suggested then that's fine with staff.

25 HEARING OFFICER KRAMER: Okay.

1 MS. ALLEN: Another reason that we have
2 no objection is that it's kind of a commonsense
3 item that these projects are very close together.
4 So if that kind of measure is going to go forward
5 for the Starwood project, which is right there
6 near the Panoche site, we don't need the
7 inconsistency if it was to be perceived as a
8 different situation for Panoche. It's not.

9 MR. CHANDLER: If I could just add
10 something to the record on that. I don't disagree
11 with Ms. Allen, but I think it is a little bit
12 different in that we are not near the bus stop,
13 where the Starwood project is very close to the
14 bus stop. And we're quite a distance from the bus
15 stop. And our access to our facility is not
16 anywhere near the bus stop where the children are
17 let off.

18 MS. ALLEN: Given the location of the
19 site, compared to the Starwood site, yes, I agree
20 with that clarification. I was thinking primarily
21 of West Panoche Road and the access to the Panoche
22 site. But, you know, Mr. Chandler's clarification
23 is reasonable.

24 HEARING OFFICER KRAMER: Right. And as
25 I understand it, Starwood is also going to be

1 required, in addition to worker training, to put
2 in some kind of barrier to protect the kids from
3 careening automobiles and vehicles, I guess. And
4 so that's an additional burden on Starwood. It
5 isn't being asked in this project, or volunteered
6 in this project.

7 Okay, we've talked a lot about my
8 issues. Does anybody else, either on the
9 telephone, or either party, or in the audience
10 wish to make any comments on the PMPD?

11 Seeing and hearing none, the comment
12 period officially closes on Friday, this Friday.
13 I hope to have an errata out on Monday. And then
14 we will be going, as previously proposed, unless
15 something really unexpected comes in before Friday
16 by way of a comment, to the business meeting for
17 adoption on next Wednesday, the 19th.

18 Does anybody wish to make any final
19 comments before we adjourn?

20 PRESIDING MEMBER BYRON: You indicated,
21 Mr. Kramer, that we didn't have CURE here today.
22 I'm wondering if there's a reason for that. They
23 received notice. We're not going to have any
24 problem there, are we?

25 HEARING OFFICER KRAMER: I doubt it

1 because they haven't -- they did not file a
2 prehearing conference statement or appear at the
3 initial, the first evidentiary hearing. So I'm
4 presuming that they feel their interests have been
5 taken care of.

6 MR. BABULA: We haven't had any contact
7 with them.

8 MR. CHANDLER: If I can address that
9 briefly, as well. We have an EPC contractor that
10 we entered into a contract with -- that's Kiewit
11 Industrial Company -- on July 2nd of this year.
12 And they entered into a project labor agreement
13 with California Building Trades sometime shortly
14 thereafter. So that's why CURE has shown no
15 further interest in the project.

16 PRESIDING MEMBER BYRON: Well, since I
17 think this is the close of our hearing process I
18 would just like to thank the staff for their
19 diligence on all of this, and the applicant. I'm
20 sorry it's taken us a little bit longer than you
21 might have preferred. But I think we're pretty
22 complete and we will now take this to the full
23 meeting on the next business meeting, next week.

24 So I will see you there.

25 MR. CHANDLER: Thank you.

1 PRESIDING MEMBER BYRON: Thank you.

2 HEARING OFFICER KRAMER: Okay, the
3 reopened evidentiary hearing is closed. And we're
4 adjourned. Thank you.

5 (Whereupon, at 4:02 p.m., the Re-opened
6 Evidentiary Hearing and Committee
7 Conference were adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing and Committee Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of December, 2007.