STATE OF CALIFORNIA

California Energy Commission

In the Matter of:)
Application for Certification of the)
Starwood Power-Midway, LLC) Docket No. 06-AFC-10
Peaking Project)
)

STARWOOD POWER-MIDWAY, LLC
PREHEARING BRIEF

Starwood Power-Midway, LLC ("Applicant" or "Starwood") filed its Application for Certification on November 17, 2006. Following data requests and workshops, Staff issued its Preliminary Staff Assessment on July 25, 2007. Applicant filed comments to the PSA on August 10, 2007 and Staff released its Final Staff Assessment ("FSA") on October 10, 2007.

There is a single major point of disagreement between Staff and Applicant. Staff's SOIL & WATER-4 requires the use of water from the semi-confined aquifer for process, sanitary and landscape uses and Applicant wants to use available agricultural waste water.

Starwood Water Requirements

The Starwood facility could use up to 136 AFY if the facility operates 4,000 hours in a given year. Applicant anticipates that actual operation will be far less. Applicant believes that actual operation will be approximately 400 hours per year, necessitating the use of 13.6 AFY of water (AFC, Table 5.5-8, Page 5.5-10). Staff anticipates use of 14 AFY with 400 hours of operation (FSA, page 3-3)

Sources of Water

Staff correctly describes the three alternative water supply sources that have been discussed in this proceeding (FSA, page 4.9-10). At this juncture, Applicant strongly prefers the Baker Farm Irrigation Water Filter Backwash (Alternative 1) to the Staff's preferred semi-confined aquifer water.

In its AFC, Starwood stated that the agricultural wastewater resulting from backwashing sand filters used to filter irrigation water would be a more reliable alternative than water from the semi-confined aquifer. Starwood could not embrace this water source until the property owner agreed to a water supply contract and connected a

number of small wastewater ponds to a large, centrally located pond. (AFC, Section 4.6.2). The contract is executed and additional small ponds are being connected to the main pond. As cited in the AFC, Section 5.5.2.1, Baker Farm produces approximately 160 AFY of back wash filter water, while the project requires 14 AFY, 9% of the available quantity. This wastewater is currently disposed of through percolation and evaporation (AFC, Section 4.6.2). Staff opposes the use of this wastewater in the Starwood facility, citing state policy, as enunciated in State Water Resources Control Board Resolutions 75-58 and 88-63, the California Constitution and the 2003 Integrated Energy Policy Report. Applicant here addresses each of the policy arguments advanced by Staff.

SWRCB 75-58

Staff claims that the irrigation wastewater does not fit the "overall intent of Resolution 75-58" (FSA, Page 4.9-26) and argues that it fits a definition of "fresh inland waters" and is a higher priority than water from the semi-confined aquifer. Staff also argues that the agricultural waste water should be considered "fresh inland waters" and should only be used for power plant cooling if other sources of water are environmentally undesirable or economically unsound. (FSA, Page 4.9-25). These arguments can best be evaluated by examining the three Principles (1, 2, and 3) of SWRCB 75-58 that pertain to power plant cooling water:

Principle 1

> "It is the Board's position that from a water quantity and quality standpoint the source of powerplant cooling water should come from the following sources in this order of priority depending on site specifics such as environmental, technical and economic feasibility consideration: (1) wastewater being discharged to the ocean, (2) ocean, (3) brackish water from natural sources or irrigation return flow, (4) inland wastewaters of low TDS, and (5) other inland waters."

Principle 1 of the resolution does not apply to water used in simple cycle power plant facilities where the water is used by the engine for "NO_x control and inlet fogging" (FSA, Page 4.9-10). This is not a use of water for "cooling" purposes as sited in Principle 1. It is clear from the language of the Resolution that the policy is intended to apply to "power plant cooling water". Power plant cooling requires large volumes of water to condense steam, usually for large base-load plants, such as combined cycle plants where water requirements are much greater than requirements for simple cycle facilities.

It is also clear that this Principle is to be used by regulators as guidance. The Commission is to consider "site specifics such as environmental, technical and economic feasibility" of any particular application. In this regard, the Commission should consider that the agricultural wastewater would be evaporated and percolated if not used by

Starwood. Also, use of the agricultural wastewater would be safer to process and result in a RO wastewater flow that is lower in TDS than the semi confined aquifer and can be evaporated and percolated. The RO wastewater from the semi-confined aquifer would require a large area for a double lined evaporation pond and has the potential to build up high salt and solid sludge that may be a hazardous material. . Lastly, there is no demand from other users for either the semi-confined water or the agricultural wastewater. This Commission has recognized the role of SWRCB resolutions in CEC deliberations: "under the relevant law as we see it, we are left to apply the general guidance provided by the SWRCB policies to the best of our ability" (Elk Hills Power Project, Final Decision, December 6, 2000, Page 254)

Finally, Staff is much too precise and technical in defining "irrigation return flow", especially in a guidance document. Staff argues that "return flow" is the water after irrigation use degrades the water with nutrients (FSA, Page 4.9-26). Applicant argues that the definition of "irrigation return flow" includes the wastewater, which is sent to holding ponds while the cleaned water is used for irrigation. It is doubtful that the SWRCB considered this distinction in 1975.

Principle 2

> "Where the Board has jurisdiction, use of fresh inland waters for powerplant cooling will be approved by the Board only when it is demonstrated that the use of other water supply sources or other methods of cooling would be environmentally undesirable or economically unsound."

Staff claims that the agricultural wastewater does not meet this section of SWRCB 75-58 as "the backwash does not meet the overall intent of Resolution 75-58 to use the most degraded water source reasonably available." We disagree.

First, this policy does not apply to the agricultural wastewater produced by Baker Farms. The definition of "fresh inland waters" is clear:

"Fresh Inland Waters – those inland waters which are suitable for use as a source of domestic, municipal, or agricultural water supply and which provide habitat for fish and wildlife." (Emphasis added)

It is clear that the agricultural wastewater does not provide habitat for fish and wildlife. This makes sense, as the SWRCB would have, as a first priority, the protection of California's rivers and inland lakes. Also, if the Board sought to extend the Principle to all waters in California, they would have used the defined term Inland Waters. "Inland Waters – all waters within the territorial limits of California exclusive of the waters of the Pacific Ocean outside of enclosed bays, estuaries and coastal lagoons."

Second, the policy is directed to water used for "power plant cooling". As discussed above, the Starwood facility will use water to inject into the engine for NO_x

control and inlet fogging. It would be a great stretch for the Staff to argue that these uses are power plant cooling.

Finally, the Commission is encouraged to determine if other sources of water, water from the semi-confined aquifer, would be environmentally undesirable or economically unsound. The use of agricultural wastewater has positive environmental consequences as the amount of water percolating through the soil would decrease by the amount consumed for NOx control and inlet fogging.

Principle 3

> "In considering issuance of a permit or license to appropriate water for power plant cooling, the Board will consider the reasonableness of the proposed water use when compared with other present and future needs for the water source and when viewed in the context of alternative water sources that could be used for the purpose. The Board will give great weight to the results of studies made pursuant to the Warren-Alquist State Energy Resources Conservation and Development Act and carefully evaluate studies by the Department of Water Resources made pursuant to Sections 237 and 462, Division 1 of the California Water Code."

Staff does not appear to rely on this Principle in recommending the use of water from the semi-confined aquifer. However, this principle contains extremely important guidance for the Commission. Here, the Commission is asked to look at the reasonableness of the agricultural wastewater and compare its use to the use of water from the semi-confined aquifer. The Commission can consider present and future uses of the water sources. Both water sources are unlikely to be used for any other purpose in the foreseeable future. But use of the agricultural wastewater provides an overall environmental benefit.

The three principles are guidance; SWRCB does not require a cascading analysis, nor does it require that one principle take precedence over another. Rather, they should be taken together to guide the Commission to a reasonable and acceptable result.

SWRCB 88-63

Staff relies on this resolution, which requires regional boards to identify potential sources of drinking water, to declare that the agricultural wastewater should be considered "fresh inland water". Of course, the regional board has made no such designation. It seems to be a great stretch to ignore the role of the regional board and designate a source of water to be protected as potential drinking water, when that water is wastewater and will never be used for domestic or agricultural use.

California Constitution, Article X, Section 2

Staff, at FSA, Page 4.9-26, describes this Constitution provision as:

> "...the water resources of the state be put to beneficial use to the fullest extent possible and states that the waste, unreasonable use or unreasonable method of use of water is prohibited."

The actual wording of the Constitutional provision is:

> "...the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented." (emphasis added)

There is a difference in emphasis between Staff's re-wording of the provision and the actual wording of the provision. The actual wording appears to require an analysis of the water source and a determination that the water source is capable of being used for drinking water. The agricultural wastewater is not capable of being used as drinking water due to its quality, variable volumes and flow rate and isolated location. Also, it is evident that using agricultural wastewater is not an unreasonable use to be prevented.

2003 IEPR

In its 2003 Integrated Energy Policy Report, the Commission reiterated state policy, correctly characterized by Staff at FSA, Page 4.9-26. The 2003 IEPR uses the term "fresh water for cooling purposes", which raises the issues of the agriculture wastewater not being fresh water and the use is not for power plant cooling. Further, as this policy is based on SWRCB 75-58, and the agriculture wastewater is acceptable under all three principles of the policy, it stands to reason that the use of agriculture wastewater should be acceptable under the 2003 IEPR.

Reliability.

The agricultural wastewater system represents a reliable water delivery system. Applicant anticipates that the annual water demand for the project will be 13.6 Acre-feet (Staff rounds to 14 acre feet – FSA page 3-3). The agricultural wastewater system can deliver approximately 160 acre-feet per year (AFC , Section 5.5.2.1) Applicant anticipates that the majority of its operating hours will be in the summer when available wastewater is the greatest. The project will consume about 9% of the available supply. The Baker family has been farming this land for over 20 years and Applicant is very confident in the available supply of backwash filter water.

Conclusion

Applicant believes that the Commission can approve the use of agricultural wastewater for the Starwood project using a number of theories:

1. The Commission can recognize that the volume of water to be used in Applicant's simple cycle units is very small in relation to water requirements of combined cycle facilities, and make the determination that the Applicant's preferred water use represents a de minimus amount of water. Given the very small amounts of water involved there is no need to go through the detailed evaluation of applicable LORS. This is especially appealing given that the agricultural wastewater could not be used for any other useful purpose.

2. The Commission could consider the body of LORS as guidance principles and find that the agricultural wastewater meets the overall intent of SWRCB 75-58 and the 2003 IEPR because the water is degraded and would not be used for any other purpose. Also, use of the agricultural wastewater has environmental advantages over Staff's preferred alternative.

3. The Commission could go through all of the LORS relied on by Staff and make proper conclusions about the use of the agricultural wastewater.

a. SWRBC 75-58. Principle 1 does not apply as the water use is not for "powerplant cooling", but even if applicable, both water sources fall into the same category (number 3). Principle 2 does not apply as the agricultural wastewater is not defined as "fresh inland waters" and the use of this water source has environmental benefits. Principle 3 calls for the Commission to look at the "reasonableness" of the proposed water use and Applicant is confident that the agricultural wastewater represents the best choice of water for the state of California.

b. SWRCB 88-63. This resolution is guidance for regional boards in the protection of drinking water. The agricultural wastewater is not "fresh inland water" and neither source will ever be drinking water.

c. California Constitution, Article X, Section 2. The Constitution prohibits unreasonable uses of water and demands that waters be put to beneficial uses. Use of agricultural wastewater that would either percolate or evaporate certainly is a beneficial use of the water.

d. 2003 IEPR. The agricultural wastewater is not "fresh inland water" and will not be used for cooling purposes. Additionally, the Commission could take the opportunity to advise Staff that the interest of the State of California and the Energy Commission is in the protection, to the extent possible, of fresh waters and that degraded, non-potable waters that would likely not be used for other purposes, will be approved for power plant uses.

Applicant submitted sufficient information for the Staff and the public to evaluate the Applicant's preferred water source (See Attachment A hereto)

Applicant respectfully requests that the Committee reject Staff's SOIL & WATER-4, and replace it with the attached SOIL & WATER-4. Attachment B hereto also contains suggested changes to AQ-SC-6 and Noise-4 as clarification and a new Traffic -2

Respectfully submitted; October 19, 2007

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Counsel for
Starwood-Midway, LLC

URS

October 19, 2007

Docket Unit
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Subject: Starwood Power-Midway, LLC Pre-Hearing Brief
Starwood-Midway Project (06-AFC-10)
URS Project No. 27656131.00400

Attn Docket Unit:

On behalf of Starwood Power-Midway, LLC, URS Corporation Americas (URS) hereby submits the Starwood Power-Midway, LLC Pre-Hearing Brief which includes the following two attachments: Attachment A - Information on Irrigation Wastewater; and Attachment B - Revisions to Final Staff Assessment Proposed Conditions of Certification.

I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to submit the Alternative Water Supply Analysis for the Starwood-Midway Project on the behalf of Starwood Power-Midway, LLC.

Sincerely,

URS CORPORATION

Angela Leiba
Project Manager

AL:ml

URS Corporation
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San Diego, CA 92108
Tel: 619.294.9400
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ATTACHMENT B
REQUESTED REVISIONS TO FINAL STAFF ASSESSMENT PROPOSED CONDITIONS OF CERTIFICATION

AQ-SC6

The project owner shall demonstrate that residents in the multi-unit apartment property located on property adjacent and north of the project site are not subjected to prolonged exposure to dust from project construction. Applicant can make this demonstration by insuring that the property is vacated during the initial grading/site preparation phase of construction. If the residents vacate the premises, the property may be used residentially after the initial grading/site preparation construction phase is complete.

Verification: If the project owner chooses to relocate the residents of the adjacent multi-unit apartment, pursuant to the agreement filed in this proceeding, the project owner shall provide a written declaration to the CPM signed by the owner or residents of the multi-unit apartment property that the property has been vacated prior to the initial grading/preparation phase of construction. If the project owner chooses to insure that the residents are not subjected to dust during initial grading/site preparation by some other method, the project owner shall submit a plan describing what actions the project owner to the CPM at least 60 days prior to initial grading/site preparation.

Comments:

1. Applicant is uncomfortable with the Commission ordering, or being seen as ordering, residents out of their place of residences. The suggested change does not impact the probable removal of residents.
2. Applicant requests that language requiring Applicant to pay for residents to be relocated for a period that extends beyond the period of construction impacts is unnecessary.

NOISE-4 (first paragraph)

The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that operation of the project will not cause noise levels due to plant operation plus ambient, during the four quietest consecutive hours of the nighttime, to exceed an average of 45 dBA L_{50} as measured near monitoring stations ML2 (approximately 1,600 feet west of the center of the project site) should the residents at ML2 not be relocated, and ML3 (43405 West Panoche Road), should the residents at ML3 not be relocated. If both ML2 and ML3 are unoccupied, the survey shall be taken at the closest receptor unless it is more than one mile from the SPP.

NOTE: The suggested changes are intended to clarify the location to make noise measurements in the event the residents of both ML-2 and ML-3 have vacated their premises.

Deleted: ensure that

Deleted: or by other methods acceptable to the CPM

Deleted: T

Deleted: ; however, the applicant will, if requested by residents still under lease, pay for those residents to vacate the property for longer periods during the construction up to the time when the property needs to be vacated full time to comply with noise and public health Conditions of Certification.

Deleted: T

Deleted: Additionally, in the MCR the project owner shall provide documentation regarding any requests from the residents to be relocated for longer periods during construction and the project owner's actions to meet those requests.

SOIL & WATER-4

Water used for project operation for process, sanitary and landscape irrigation purposes shall be agricultural wastewater obtained from the Baker Farms agricultural backwash pond. Water use shall not exceed the annual water-use limit of 136 acre-feet without prior approval by the CPM. The project owner shall monitor and record the total water used on a monthly basis.

Deleted: groundwater from the upper semi-confined aquifer obtained from the adjacent CalPeak well.

TRANS-2

Prior to ground disturbance, the Project Owner shall develop and implement a Worker Traffic Safety program (WTSP) focusing on awareness of school buses and school children in the vicinity of the project. The plan shall include as a minimum the following:

1. A discussion of all applicable motor vehicle laws and penalties under the law, safe driving practices, potential road conditions (e.g., school bus stops, children who are walking to or from a bus stop, children boarding or exiting buses, ground fog, slow vehicles, etc.) along the expected travel corridors (i.e., West Panoche Road),
2. Required commute work travel times,
3. Expected school bus travel times,
4. A discussion of consequences in the event a worker is found driving in an unsafe manner, and
5. Construction of a safety barrier (e.g., concrete posts) placed at school bus stops on West Panoche Road between Highway 5 and the project site.

Verification: The project owner shall provide a copy of the WTSP to the CPM for review and approval 30 days prior to ground disturbance. The training may be presented in the form of a video if the video has been reviewed by the CPM, and all measures required by the WTSP may be performed in conjunction with the Panoche Energy Center project.

ATTACHMENT A
INFORMATION ON IRRIGATION WASTEWATER

Information on Irrigation Wastewater
Contained in AFC

Applicant filed the Application for Certification with the California Energy Commission on November 17, 2006. The following information on the agricultural wastewater option for supplying water for the Starwood-Midway project is contained in the AFC:

Area Covered	AFC
Water Source Option.	Section 1.2.4 "The Midway site has three equally viable sources for supplying water . . . 2) Irrigation return flow from the local farming operation's agricultural backwash pond (Baker Farming Company, LLC) Section 3.4.9 "Three viable alternate water supply sources 2. Irrigation return flow – agricultural backwash pond"
Source of Water.	Section 3.4.9.1.2 "The Midway site is located on a 128-acre parcel of land owned by PAO Investments, LLC. A large portion of this parcel and approximately 7,000 acres of land in the region is farmed by Baker Farming Company, LLC. To take advantage of the economies of scale, Baker has Developed a water delivery system that serves all of the property it farms in this area. The water system is owned and operated by Baker and utilizes approximately 24,000 acre-feet of water in the Bakers' farming operations, annually. Through a process described in Section 5.5 – Water Resources, the farming operation (primarily filter irrigation water filter backwash) produces approximately 160 acre-feet of wastewater on an annual basis which is discharged in an evaporative pond. Section 4.6.2 "A second viable alternative for supplying water to the project would be agricultural process wastewater. The Baker Farming Company, LLC which farms approximately 7,000 acres of land in the area produces sufficient quantities of filter backwash water from their irrigation practices to supply the Midway site with water required for operation. The Bakers purchase or obtain water from numerous sources for their farming operations. These include groundwater (wells) and surface water, although surface water is predominately used. Surface water, irrespective of the source, is delivered to the Baker water delivery system via the California Aqueduct.

Because most of the water is initially delivered to the Bakers via an open canal, before water can be used for agricultural purposes, it must be filtered to remove entrained suspended solids (algae, garbage, dirt, etc.). Filtration occurs through a series of san filters, placed strategically within the water delivery system. The filtered water is then distributed to the agricultural fields".

Backwash Process

Section 4.6.2 "Approximately 24,000 acre-feet of water is utilized in the Baker Farms operations annually. Due to the large volumes of water pumped, it is necessary to clean the sand filters every 3 to 6 hours, depending on the season. This is accomplished by backwashing the sand filters. Each backwash flush cycle takes 2 minutes with a water flow rate of 300 gallons per minute per filter. There are approximately 162 filters in the land surrounding the Midway site, which generates 97,000 gallons of wastewater each filter cleaning cycle. The filter wastewater contains suspended solids removed from the irrigation water. The Baker Farms operations produce 160 acre-feet of wastewater on an annual basis. The peak season for this water flow is during the irrigation period, April to September".

Backwash Collection System

Section 4.6.2 "The wastewater is sent to a number of local settling ponds where the suspended solids precipitate out of solution. Historically, the wastewater was disposed of through evaporation and percolation. To efficiently dispose of wastewater, Baker Farming Company, LLC is connecting a number of small wastewater settling ponds to a large, centrally located evaporation pond. The network of pipes that Baker Farms will install to tie the small ponds to the large pond will be, at the closest distance, 1.5 miles away from the Midway site running along an existing dirt road used and maintained by Baker Farms (refer to Figure 4.6-1). This 8.0-acre pond can store approximately 80 acre-feet of water".

Wastewater Quality

Section 3.4.9.2

"Source	TDS
CalPeak Panoche Well	3,400
Irrigation Return Flow	190
New Deep Well	1,090"

"Constituent	Concentration
Alkalinity (as $CaCO_2$)	72 mg/L
Ammonia (NH_3-N)	Not Detected
Bicarbonate (as $CaCO_3$)	Not Detected
Boron (B)	0.013 mg/L
Calcium (Ca)	14 mg/L
Carbonate (as $CaCO_3$)	62 mg/L
Chloride (Cl)	48 mg/L
Conductivity – Specific (EC)	310 $_u$mho/cm
Hardness (as $CaCO_3$)	61 mg/L
Iron (Fe)	0.076 mg/L
Magnesium (Mg)	6.3 mg/L
Nitrate (NO_3)	Not Detected
o-Phosphate (o-PO_4-P)	Not Detected
pH at 21.60°C	9.8 Standard Unit
Potassium (K)	Not Detected
Silica – Total ($Si0_2$)	10 mg/L
Sodium (Na)	38 mg/L
Sulfate (SO_4)	21 mg/L
Total Dissolved Solids (TDS)	170 mg/L
Total Solids (TS)	190 mg/L"

Wastewater Delivery System

Section 4.7

- "Pump station and filter would be located at Baker's Backwash pond approximately 1.5 miles away from the Midway site, making operation and maintenance more difficult
- Construction of a pump station, filters and an approximately 1.5 mile, 4-inch diameter pipeline is required to deliver the water to the Midway site.
- Water treatment will be less costly than using the CalPeak well water due to the lower expected TDS (200 mg/L).
- Less water treatment residue would be generated relative to the CalPeak Panoche well water option due to the lower TDS concentration."

Section 4.7.1 "This system would consist of an on-site unlined surface impoundment for disposal of wastewater via atmospheric drying and infiltration, resulting in residue that must be disposed of in a landfill system. This alternative is not suitable when the upper aquifer is used as the source water for Midway. The high concentration (13,600 mg/L) of TDS in the wastewater would not be

allowed to infiltrate into the upper aquifer. If the agricultural backwash pond is utilized as the source of water, this alternative would be acceptable from a regulatory standpoint because the concentration of TDS in wastewater resulting from agricultural backwash water is expected to be less than 2,000 mg/L, which would not impair the groundwater.

This alternative comprises an unlined pond, approximately 4,000 square feet of surface area, and a 4-inch PVC gravity pipe from the RO treatment facility to the pond. An access road would be provided on-site to allow for pond maintenance."

Annual Wastewater Availability

"Allowing for normal evaporation and the seasonal flow into the pond, the profile of available water from the large agricultural backwash pond would be approximately:

Section 5.5.2.1

"Period	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Water Available Acre-feet"	12.9	59.3	71.6	15.7

NOTE: No data requests were received on this topic

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE *STARWOOD POWER PLANT*

Docket No. 06-AFC-10
PROOF OF SERVICE
(Revised 3/16/07)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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DECLARATION OF SERVICE

I, Amy Gramlich, declare that on 10/19/07, I deposited copies of the attached Pre-Hearing Brief, 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]