

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:) DOCKET No. 06-AFC-10
)
Modification of the Certification)
for the STARWOOD-MIDWAY ENERGY PROJECT) October 26, 2007
_____)

DOCKET 06-AFC-10	
DATE	OCT 26 2007
RECD.	OCT 26 2007

STAFF'S PREHEARING CONFERENCE STATEMENT

In a notice dated October 15, 2007, the Energy Commission's committee overseeing the Starwood-Midway Energy Project ("Starwood") case directed parties to file a prehearing conference statement for the October 30, 2007 prehearing conference. The Order stated that the Prehearing Conference Statements must be filed no later than October 26, 2007. This is staff's Prehearing Conference Statement.

1. Topic Areas that are Complete and Ready for Hearing

Staff's analyses in the following areas are complete and ready to proceed to hearing: Air Quality, Geologic Hazards, Socioeconomics, Visual Resources, Hazardous Materials, Geology and Paleontological Resources, Noise, Traffic, Public Health, Transmission Line Safety, Worker Safety, Transmission Systems Engineering, Facility Design, and Reliability.

2. Topic Areas that are Incomplete

The following analyses are not ready for hearing due to the recent material change in the applicant's proposal regarding its preferred water source: Water Resources, Biological Resources, Cultural Resources, Land Use and Waste Management.

3. Exhibits and Declarations

Staff will offer the Final Staff Assessment (FSA) as an exhibit and proposes admitting staff's testimony in all uncontested areas into the record through the declarations included within the FSA. Staff understands the applicant will be entering the determination of compliance from the air district as evidence of compliance with air district regulations.

4. Proposal for Continuation of the Evidentiary Hearing

On October 15, 2007, the applicant submitted its analysis of the agricultural backwash pond water as an alternative water supply for power plant cooling. On October 19, 2007, the applicant submitted a revised analysis. This submission arrived nine days after FSA publication and is a modification to the original AFC submitted by the applicant and analyzed in the FSA. Staff did

Proof of Service (Revised 3/16/07) filed with original.
Mailed from Sacramento on 10/26/07 *J*

not receive the applicant's revised Alternative Water Supply Analysis until October 22, 2007. The latest submittal made some changes to the October 15 submittal and, for the first time, announced that the agricultural backwash is now considered the applicant's *preferred water supply source*. Under the proposed alternative, Starwood would acquire backwash water from nearby agricultural operations and run a two-mile pipeline to connect the storage pond to the power plant. Although the original AFC did identify the backwash water as a potential source, it was not considered a reliable water supply and no additional details were provided until the Oct 15, 2007 submission. Moreover, on September 17, 2007, the applicant informed staff that, while it may continue to investigate the irrigation filter backwash as a potential source of water, its choice is to proceed with the original water supply proposal as described in the AFC. That proposal is to use non-potable water from the semi-confined shallow aquifer. The proposal to use backwash water now affects the following areas and, therefore, as noted above, staff's analyses in these areas are now incomplete: Water Resources, Biological Resources, Cultural Resources, Land Use, and Waste Management.

Status of the review process: Applicant's proposal to use agricultural backwash water for cooling purposes is a modification to its original proposal in the AFC. The modification must be analyzed by staff if the Commission is to decide whether to certify it as part of the project the applicant is seeking to have licensed. Staff is required to review the information provided by the applicant, assess whether the information is complete, assess the environmental effects of the modification, and publish an independent analysis, a supplement to the already-published FSA, which would serve as staff's testimony. (Cal. Code Regs., tit. 20, §§ 1742, 1742.5, and 1747.) The supplement, along with the already published FSA, would be offered as staff's testimony at the evidentiary hearings. Staff is obligated to perform an independent environmental review of any new proposal submitted by the applicant. ("The staff shall review the information provided by the applicant ... and assess the environmental effects of the applicant's proposal, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures." Cal. Code Regs., tit.20, § 1742.5.)

Status of Analysis: Currently, staff is in the process of reviewing this newly proposed water source that would include modifying an existing 8-acre pond and constructing a 2-mile water line. These items were not part of the original project description and will require a cultural resource survey and a biological resource survey before staff can complete its analysis of this project change. In addition, the United States Fish and Wildlife Service's (USFWS) Biological Opinion, issued on August 27, 2007, did not consider this proposed project change. The USFWS has been contacted and is considering whether additional habitat mitigation will be required. In the area of waste management, the Phase I Environmental Site Assessment did not include the footprint of the proposed project change and may need to be done for the modified site.

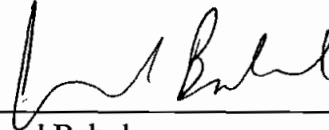
Staff anticipates completing its initial review of this new information and issuing any data requests by November 9, 2007. Once data responses are received from the applicant, staff will conduct its analysis in the areas identified above as being affected by the modification. In addition, staff believes an issue-resolution work shop should be held.

Schedule: Staff must have adequate time to assess the environmental effects of the newly proposed water source and publish a supplement to the FSA. At this time, staff respectfully

requests the Committee hold the prehearing conference as scheduled, but reschedule the evidentiary hearing for ten weeks to allow staff time to perform the required environmental analysis and hold an issue-resolution workshop. Alternatively, staff would agree to submit its testimony in all the uncontroverted areas identified above at an evidentiary hearing held immediately after the prehearing conference. In any event, staff requests postponement of the evidentiary hearing at least in those areas identified as being affected by the applicant's latest modification to its proposed water source.

Date: October 26, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jared Babula", written over a horizontal line.

Jared Babula

Attorney for Commission Staff

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, Julie Mumme, declare that on October 26, 2007, I deposited copies of the attached Staff's Prehearing Conference Statement, 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]