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

In the Matter of:
Modification of Certification
Docket No.
Starwood-Midway Energy Project
06-AFC-10

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 30, 2007
2:13 P.M.

ORIGINAL

Reported by:
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Contract No. 170-07-001
COMMITTEE MEMBERS PRESENT
Jeffrey D. Byron, Presiding Member
John L. Geesman, Associate Member

HEARING OFFICER AND ADVISORS
Garret Shean, Hearing Officer
Gabriel Taylor, Advisor

STAFF AND CONSULTANTS PRESENT
Jared Babula, Staff Counsel
Che McFarlin, Project Manager
James Adams
Shahab Khoshmashrab
Steve Baker

APPLICANT
Allan J. Thompson, Attorney
Ron Watkins
Richard H. Weiss, Project Manager
Starwood Power-Midway, LLC
Starwood Energy Group
J.J. Fair, General Manager
CalPeak Power
Starwood Energy Group
Angela Leiba
URS Corporation
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PROCEDINGS

2:13 p.m.

PRESIDING MEMBER BYRON: Good afternoon. I'm Commissioner Jeff Byron, and we are here today for a prehearing conference and possible evidentiary hearing on the Starwood-Midway Energy Project. And with me is Commissioner Geesman, our Hearing Officer Garret Shean and my Advisor, Gabriel Taylor.

I apologize that we're a few minutes late getting started; seems there are a few other issues that we had to get settled here today, as well.

I will turn it over to our Hearing Officer unless, Commissioner Geesman, do you want to say anything to start?

ASSOCIATE MEMBER GEESSMAN: No, thank you.

HEARING OFFICER SHEAN: At this point we'd like to have the parties identify themselves and we'll begin with the applicant.

MR. THOMPSON: Thank you, Mr. Shean. My name is Allan Thompson, representing the Starwood-Midway Project. To my left is Ron Watkins and to my right is Richard Weiss, both of whom represent
the project. In the first row of seats to my rear is J.J. Fair from CalPeak, also representing the project. And Angela Leiba of URS, environmental consultant to the project.

HEARING OFFICER SHEAN: Staff.

MR. BABULA: Hello. My name is Jared Babula; I'm Staff Counsel. Sitting next to me is Che McFarlin, the Project Manager for the project. And if staff does need to testify or come up later, we'll introduce them at that time.

HEARING OFFICER SHEAN: Are there any members of the public or people representing other agencies in the audience? And is anyone on the telephone yet? Apparently not.

All right. We have two documents, one each from the staff and applicant, the prehearing conference statements. And based upon the information that's contained in those, we will proceed in the following fashion.

There do not appear to be any contested issues in any other issue than water resources, that dealing with the water supply related to the use of filter backwash water.

So what I propose to do is to move ahead and take, under declaration, the applicant's
evidence, the PSA and the revised final
determination of compliance.

Then we'll discuss any changes to
conditions that were raised by the applicant and
about which the Committee may have some questions.

And lastly we'll go into a discussion of
water resources and the specifics of the matter
that appears to be in contest.

So, with that we'll go to you, the
applicant, Mr. Thompson. And you've basically
offered in your prehearing conference statement
the application for certification, supplemental
information in response to CEC's data adequacy,
responses to data requests, responses to data
requests air quality modeling files, responses to
data requests for follow-up questions, additional
information by Mr. Weiss dated April 20, data
response number 23 additional information, and
comments on the PSA.

Is there objection to admission of this
material into the record?

MR. BABULA: No objection.

HEARING OFFICER SHEAN: All right, then
it is admitted. Is that complete, other than the
water supply and materials, all the information
you would like in the record for the purposes of the basis of the PMPD?

MR. THOMPSON: Yes, it does. As you state, the only document that we wanted admitted into evidence besides the ones you mentioned were the October 9 water resource memo.

HEARING OFFICER SHEAN: All right. We'll go to the staff. We have your staff's final assessment. I believe it's the only document that staff has to offer at this point, to serve as the basis in the record for staff's testimony, is that correct?

MR. BABULA: That is correct.

HEARING OFFICER SHEAN: All right. Is there objection to admission of the staff's FSA?

MR. THOMPSON: None.

HEARING OFFICER SHEAN: All right, then it is admitted.

On I think it was September 5th the San Joaquin Valley Air Pollution Control District submitted its revised final determination of compliance. Is there objection to admitting into the record the District's revised final determination of compliance?

MR. THOMPSON: No.
MR. BABULA: No.

HEARING OFFICER SHEAN: All right. The Committee has a couple of matters related to the conditions that are proposed in the staff's FSA; and the applicant has submitted several suggested changes. And I'd like to go through, since they basically reflect concerns of the Committee, some of those.

So, if you could bring your traffic and transportation person up, we could discuss that.

MR. ADAMS: Good afternoon.

HEARING OFFICER SHEAN: Hi. Why don't you identify yourself for the record, please.

MR. ADAMS: James Adams, and I'm the primary author of the traffic and transportation analysis.

HEARING OFFICER SHEAN: All right, Mr. Adams, let me just indicate that after reading the FSA in detail on traffic and transportation it occurred to me, based upon my experience, that there was a matter that was not going to be sufficiently covered based upon the conditions that I saw in the FSA.

Specifically this relates to the safety of school children either waiting for the school
bus, which picks children up essentially directly in front of the project, as well as the safety of the school children on the buses that proceed west on West Panoche, I forget Avenue, Boulevard, whatever it is, to west of I-5, and then return the children to school in the Mendota Unified School District.

This concern was heightened by the fact that in the Panoche project it appears that they are going to fundamentally overlap in time, given that they are to be completed up and ready for operation in the summer of '09.

In the Starwood FSA staff's testimony indicates that they expect a ten-month construction period beginning in the summer of 2008. And the Panoche project is a 14-month schedule beginning in January of '08.

Everyone concedes that the typical commute times for workers and delivery trucks is going to be between 7:00 and 9:00 a.m. in the morning; and departing between 4:00 and 6:00 p.m.

As I totaled up the number of average construction workers and peak construction workers for the projects, we're showing an average of 75 for the Starwood with a peak of 110 for
approximately three months; and for the Panoche project 180 workers with a peak of 383.

Combined, that represents an average of 255 construction workers daily, and with a peak of 493, so almost 500.

In addition to that the combined total of heavy trucks either delivering equipment or materials is somewhere between 10 and 57. And while that seems like a huge range, what we know is there are going to be a substantial number of truck deliveries.

The school bus for serving the Unified School District of Mendota picks up somewhere between 15 to 20 children, plus those in the five-plex at 7:15 and drops them off at 3:45.

And I guess I'd notice one thing. There was similar to a case that we've had in the past, which was the SMUD Cosumnes case, where there was going to be a similar issue of school buses traveling along the worker commute routes, as well as the truck delivery routes.

But there's no mention made in either the Starwood or Panoche projects of valley ground fog during a period essentially between mid-November and the end of February, which will cover
some of the period that school is in session, and
would aggravate safety issues related to both the
children standing at their school bus stop, as
well as, if I understand correctly, the bus going
west on West Panoche to west of I-5 picking
children up, and then traveling eastbound in the
direction of the commuting traffic, the commuting
workers and trucks, until it passed the projects
and went on into the City of Mendota.

Have I captured, or is there anything
incorrect about what I characterized here?

MR. ADAMS: That's essentially it,
Commissioner -- Hearing Officer, yes.

HEARING OFFICER SHEAN: Okay. If that's
the case, then I think we need to have more
protection for school children under these
circumstances. Because it appears we have more
for the kit fox than these kids.

So I would like to refer both the
applicant and the staff to both the description of
the manner in which the Committee and Commission,
as it ultimately adopted the decision in the
Cosumnes Power Plant project dealt with this.
Which would be that there be some signage
indicating -- and I'll hand this out and you can
see it; it's on the Commission's website -- signage as shown on page 150, which is a large, orangish sign depicting a school bus. And advising drivers that they're in a school bus stop area.

In addition to that, it would seem appropriate that the conditions that are in the SMUD case, that would be condition trans-5, trans-8 and trans-10, be adopted, though modified to some degree for this particular case.

Trans-5 requires the signage; trans-8 establishes a complaint process so that if it appears that there are complaints from the parents of children who are either standing at the bus stop or noticing that there's either illegal passing or dangerous passing on the roads by construction workers, they can address it to the Commission's compliance unit.

In addition, that there be worker safety program in which workers for -- and since we have half of the Panoche Committee here -- there would be a worker safety program for both cases, describing to construction workers the fact that they are going to be in the presence of school bus that's going to be either traveling coming on to
them, or in their direction. And that they need to understand what the laws are with respect to stopping when school buses stop, as well as just general good driving habits, particularly in the fog.

And the last item would be that there be a protected pad at the school bus pickup area near the project.

Now, I understand that there's a possibility that if the residents of the five-plex are moved out that that will no longer be a pickup area for students.

MR. THOMPSON: If you got that from me, Mr. Shean, I could have been wrong on that.

HEARING OFFICER SHEAN: Okay.

MR. THOMPSON: I actually checked with someone who knew.

HEARING OFFICER SHEAN: Well, anyway, I think what we're going to do is let me ask the applicant, then if you will, to prepare something that reflects what we just discussed and run it through the staff and get it to the Committee.

And at this point, since the record does not -- since neither the AFC nor the FSA mention the word fog, I'm going to ask for a stipulation
from the parties that -- because we could get this through official notice, but I think this is the better way to do it -- that the project area, including West Panoche Avenue, is subject to valley ground fog essentially for half the month of November, December, January and the month of -- let's see, half of November, December, January and February. Can I get that stipulation from the parties?

MR. THOMPSON: We so stipulate.

MR. BABULA: That's fine.

HEARING OFFICER SHEAN: All right. That will take care of that.

I do have a question -- thank you, Mr. Adams.

MR. ADAMS: You're welcome.

HEARING OFFICER SHEAN: All right, we have a question with respect to noise. And that goes to noise-4. Is the staff representative on noise here?

MR. McFARLIN: Yes, he is.

HEARING OFFICER SHEAN: All right. I'm trying to find this -- am I correct that in noise-4 you have conditions with regard to initial noise measurements, and -- well, first of all, you've
already accomplished them at locations ML-2 and
-3, which are what, 16 -- ML-2 being 1600 feet
from the project, and ML-3 being approximately
1300 feet from the project, right?

MR. KHOSHMASHRAB: Yes.

MR. BABULA: Would you like them to
introduce themselves, first?

HEARING OFFICER SHEAN: Oh, yes, I'm sorry.
Please go ahead and do that.

MR. KHOSHMASHRAB: Shahab Khoshmashrab,
co-author of noise and vibration.

MR. BAKER: Steve Baker.

HEARING OFFICER SHEAN: All right, I'm
not finding what I'm looking for. I thought I had
seen some retesting -- oh, here we go, I beg your
pardon.

Let's go to noise-5 and your first
dotted paragraph there that says: If the new
location is within one mile when the project first
achieves sustained output of 90 percent or
greater. That the project owner would conduct a
short-term noise survey at that new location.

And I guess my question is this: If I
am reading the FSA correctly, I understand that at
ML-2, the 1600 feet from the project, the staff
found that there would be compliance with the
applicable LORS because at that location you would
not hear the effect of the project, isn't that
correct? Page 4.6-12.

MR. KHOSHMAHAR: ML-2, okay.

HEARING OFFICER SHEAN: Third full
paragraph. The predicted noise level at.

MR. KHOSHMAHAR: Yes.

HEARING OFFICER SHEAN: Okay. So at
1600 feet it would comply with the LORS limit of
45 dba, that's for ML-2. And for ML-3, which we
know to be at 1300 feet, it would be a bump of 1
dba, which we generally consider to be inaudible,
is that correct?

(Pause.)

MR. KHOSHMAHAR: So it's in compliance
with the LORS.

HEARING OFFICER SHEAN: Okay. My
question is your condition says if there's a new
location within a mile, which is almost 5300 feet,
why, if they're in compliance at 1300 or 1600
feet, you're going to measure out to 5280 feet?
Why is that not something closer to the distance
where you know it complies, which would be like
somewhere within 2500 feet or 2000 feet?
I mean you've got almost 3000 feet where it doesn't seem possible that the project could be heard.

(Pause.)

MR. KHOSHMAshrAB: I get your point.

HEARING OFFICER SHEAN: Okay. So if the Committee were to change that to 2500 feet, you wouldn't have any problem with that?

MR. BAKER: Perhaps a quarter of a mile would make sense.

HEARING OFFICER SHEAN: Okay, quarter mile.

MR. BAKER: That's 1320 feet.

HEARING OFFICER SHEAN: All right, we'll do that. That's it. Thank you, gentlemen.

MR. THOMPSON: We will accept that change.

HEARING OFFICER SHEAN: All right. I figured. Okay.

The next change relates to two conditions, one of them being AQ-SC-6; the other being -- let me make sure I have it, I think it's a noise condition -- yeah. And the noise condition with regard to the removal of residents from the five-plex.
And I guess the question that I have is, I haven't yet seen -- in all my days, as they would say, I haven't yet seen a condition that says residents who are lawfully living at a house have to be removed as a condition for compliance with CEQA and the Commission's decision.

If I understand correctly, the applicant has a previously-entered-into agreement with the owner of that property that will result in the termination of the tenancy of the residents based upon the agreement, not based upon any specific condition that we have here at the Commission.

And I notice the applicant has taken a crack at rewording this. And I think what we want to say is that rather than couch a condition either in air quality or noise that requires the removal of residents from their home in order to not create an impact, that what the condition be is that we want evidence that the applicant has executed its agreement with the owner of that property.

Do you understand the nature of that difference? Okay.

The applicant's taken a crack at it.

Why don't we split the load and have the staff do
that. So that covers what I had in mind.

And the only other condition that you
had suggested changes on is the water condition,
so we're going to deal with that later. All
right.

So, is there any comment or question
about what we've done so far? Because we're now
ready to move into water. Okay, let's do that.

Well, here's what we've got in the
staff's prehearing conference statement; it's
characterizing the filing of October 19th by the
applicant of the alternative water supply analysis
that relates to the use of agricultural filter
backwash water as a modification to its original
APC proposal. And that this newly proposed water
source would meet the, essentially evaluated as it
would have been evaluated if it had arisen earlier
in the case. Meaning discovery, an evaluation
period, and the preparation of a section of the
FSA to address it.

All that taking sufficient time that the
staff suggests that the earliest an evidentiary
hearing could be for it to have that material
prepared in that way would be ten weeks. Is that
especially correct?
MR. BABULA: That's essentially correct.

HEARING OFFICER SHEAN: All right. The applicant, in its prehearing conference statement, disagrees with the staff; says that it had submitted this proposal as part of its original application, and has submitted a significant amount of information that it had requested after the preliminary staff assessment was published, that this backwash water option be included in the FSA.

And that to the extent it was included in the FSA, let me just indicate by my reading it was essentially that the staff had found that the option was eliminated by virtue of its noncompliance with state water policy as a low TDS inland water. Is that a fair characterization of your position?

MR. BABULA: That, at the time that was what was put in the FSA. However, post-FSA they provided a little bit more detail. And so at this point we're really not able to fully articulate whether or not staff's position is that it violates water policy or doesn't. Because now that they have elaborated on this water use, we need to do the investigation to then determine all
aspects of it.

And so I don't want to say that we're not going to agree to that water. It very well may be that that water is suitable use. But at this point in time, given that we're looking at a two-mile pipeline, there's some sort of pond changes that are happening on this Baker Ranch. So there's stuff that's happening that we need to address.

HEARING OFFICER SHEAN: Okay. Well, let's just get into this. My reading of the FSA would essentially be that other than the -- a statement made in the FSA that the backwash water would not have caused an impact to water supplies and water quality, there was no essentially CEQA-based analysis of backwash water in the FSA.

MR. BABULA: That's correct. The analysis was up to what we were given at the time. You have to know that what they were seeking certification for was to use the upper aquifer.

And even though in their AFC they did address two possible sources, the upper aquifer was acceptable. There was no substantial impact, staff found that there was no impacts. Therefore there was no need to look for mitigation; there
was no need to look for alternatives as CEQA would require.

And so the analysis ended. And they specifically pointed out in their AFC that the backwash was not a reliable source. But if it were to become a reliable source during the project process, they would then bring forward an environmental assessment and bring that to our attention.

So, with that in mind, we went forward and said, okay, you have an acceptable water source. Here it is; we've done the analysis; it's done. You may have mentioned about some other type of water source, but it's not reliable.

I mean they could have put in their thing, we also might do cold fusion. But that's not reliable. So, we're not going to give you any of the details.

And so it wasn't until October 15th and 19th when they did finally come forward with that full environmental assessment. So now staff is looking at it.

And, of course, a lot of the groundwork has been laid. We're not saying we need to start the whole process over because there are a lot of
areas that this does not impact, and we're ready
to move forward. In fact, the upper aquifer
water, if that was the water they were going to
use, we're ready today.

So now they have a new source and we're
going to look at it. And we're certainly amenable
to working with them to work on the timeline. I
mean the ten weeks was sort of what, based on
staff's workload and what we foresaw, but
certainly that's not etched in stone, and we'll be
willing to work with the project applicant to get
a reasonable timeline to get this forward.

And certainly we're not saying that this
is a water use that's not going to be acceptable
right now. We started the process. We have some
data requests we want to do. We have staff here
to address particular issues, if need be, if the
Commission wants to get some rationale of what
they're looking for.

But, all in all, the original
application and what they are looking for
certification for was the upper aquifer, and that
was acceptable. And so that's what we moved
forward on. And even in discussions that was
always been, that's our water source. There might
be this other thing, but it's not reliable. And so staff had to go with what we had in front of us.

And as for their environmental analysis that they provided, although it's helpful, sections of Title 20, section 1742.5 and 1747, 1742 all require staff's independent analysis. Staff shall review the information provided by the applicant.

So, even though they have done their analysis, we have to do ours. And that's the bottomline, and that's what we're trying to do.

HEARING OFFICER SHEAN: I think for the Committee's purposes, in terms of how we're going to go forward, and when and under what conditions, the real issues are: Is this a true project modification which, on the one hand staff asserts that it is. Or is this a dispute that has arisen between the applicant and the staff after the staff published its FSA, which is properly before the Committee as part of an evidentiary hearing, which could proceed on the basis of the evidence in the record at that time.

So, Mr. Thompson.

MR. THOMPSON: Thank you. I guess it
should be no surprise that from our side of the
table we see the facts a little differently.

Number one, if you'll look at the AFC
there is a substantial amount of information on
this alternative, which we believe is superior.

We are prepared to put a witness on the
stand to talk about the timeline of how this
alternative got freed up and made more available.
Some initial determinations by Regional Water
Quality Control Board that staff's preferred
alternative would result in the creation of
hazardous waste, which made us all more inclined
than ever to convince Mr. Baker to come to an
agreement.

When we received the preliminary staff
analysis we were pretty surprised that the ag
backwash water, which we had touted as an
alternative all the way along, was not even
mentioned. Neither in the alternative section nor
in the water section.

And in our comments to the PSA we
requested that soil and water-4 be amended to show
that the ag backwash water should be considered an
alternative source of water for the project.

In the intervening period of time
between the PSA and the FSA staff did an amount of
work analyzing the ag backwash water and found
that it would not have any impacts on water
supply, and there would be no cumulative impacts.
But stopped short of any further analysis and
relied on, it seems to us, a legal opinion about
whether or not this source of water complies with
state LORS.

We have a very different view of whether
or not this water supply complies with LORS, and
we think it does. But I guess our bottomline is
that having relied on the legal opinion it is
almost disingenuous then to come in and say if we
lose on the legal opinion then you're going to now
look at this water as a source of water. We're
going to kill your project by taking it into
February or March. And that puts us in a very
difficult position.

We are prepared to go forward with
witnesses today to discuss how we got there. And
we would offer these witnesses for any questions
that staff has had. And, indeed, over the last
few weeks we have told staff that if there's any
questions they have about this ag backwash plan
that we'd be more than happy to answer any
questions.

Now, keep in mind that what we're talking about here is a three-inch PVC pipe that runs down two miles between rows of pomegranate trees. An electric pump. And the owner of Baker Farms is in the process of combining a number of smaller ponds into one big pond, which makes this feasible.

We have trouble believing that it takes three months to get there. And if there is any way that staff can clarify any of its concerns by asking our witnesses questions this afternoon, that's really where we would like to go.

HEARING OFFICER SHEAN: All right. I think what happened after the Committee got both the prehearing conference statements of the staff and the applicant, it was to go back into the record of the proceeding and to determine whether or not, first of all, what was presented in the original application. And then what happened after that.

And to the extent that we have read that in the AFC at page 1-3, it states that the Midway site has three equally viable sources of supply water. Number one, water from the well at the
adjacent CalPeak Panoche project. Two is irrigation return flow water from the local farming operation's agricultural backwash pond, Baker Farming Company, LLC. Or three, water from a deep well.

Further examination of the record in this AFC indicates that for purposes of data adequacy, that the data adequacy sheets that were presented by the staff to the applicant for supplemental information before the project was deemed acceptable and adequate, the information was adequate and the Commission should accept it, did it contain any references to this backwash water.

And after the acceptance of the AFC in January of '07, none of the 67 data requests posed by the staff to the applicant related to this filter backwash water. And that by virtue of the PSA there is -- I have been unable to find any mention, either in the water section or the alternative section or the project description section, any reference to the backwash water that would lead one to believe that it even existed at the time of the preparation of the PSA.

What we do find is in early August there
are written comments by the applicant to the staff requesting that this be included. They submitted to you a draft change to I think it was water-4, or soil and water-4, which indicated it wanted this as a viable option if it did not choose to use the degraded well water. And it did indicate that additional environmental information would be provided.

And then we get to October 10th about, when the FSA comes out. And the FSA, pretty much solely on legal grounds, eliminates because of the low TDS of this water source, filter backwash water as a viable option for the project.

There fundamentally is no -- and, let me say, in between the PSA workshop and the FSA there are no data requests related to this topic, either.

So, I think a fair reading of the FSA is that the staff put forth a one-pony show; and that was, that as a matter of law, based upon the TDS level of water, this was not and could not become a viable water supply option.

Now, the applicant simply disagrees with you, both as to the law and it has the facts that it wants to present to make it a viable option.
The fact that the staff has not included any information with respect to the other CEQA-related topics is fundamentally not the applicant's choice, but the staff's choice.

And that the PFA, as you note in your own introduction, is the final testimony of the staff. And it seems to the Committee you're going to need to ride that pony into the evidentiary hearings. And if you want to put on some rebuttal testimony to that that's been presented by the applicant, you're entitled to do that.

But that does not constitute an amendment to the original AFC. Because all of the information, perhaps not all, but sufficient information was in the AFC, and the time and opportunity to ask discovery has passed. And we're now at the evidentiary hearings.

So, I don't believe we can go forward today because this rollover from prehearing conference into evidentiary hearing is essentially reserved to totally uncontested matters.

But the Committee has reserved a date of November 19th for the conduct of a continued evidentiary hearing which will address this issue. And so we think that will give staff sufficient
opportunity, since you will have had basically
this document for a month by the time of the
hearing, to address the issues that are important
to the Committee.

First of all, let me indicate to the
staff that while we understand that under our
regulations staff is to conduct these
investigations and inquiries and analyses, that
fundamentally at this particular point of the
proceeding the record, which can be used to
support the Commission decision, only needs one
piece of information. If that happens to come
from the applicant, then the record is complete.

We do not need to have a study that
essentially would be duplicative of anything
presented by the applicant, and therefore, legally
cumulative. So, we do not need, in our eyes,
given where we are in the proceeding, the kind of
analysis that you have described.

So fundamentally what we would like the
staff to do is to address whether or not it
believes that, based upon the information you've
been provided, whether or not there is the
potential for a significant adverse environmental
impact. And whether or not the conditions that
are currently contained in the FSA are sufficient
to cover any potential and anticipated, not
speculative, environmental impact, or whether
something needs to be added.

And if you have anything in addition to
those to points you want to provide us, of course
it's your option to do that, it's your testimony.

And I think what we have in mind is that
given the standard rules from the evidentiary
hearing, that you provide that to the applicant
ten days in advance of the hearing, in writing.

And given that the applicant has filed a
prehearing brief discussing the legal issue of
whether or not its project, which has no cooling,
as that has been traditionally used to describe
projects, it has no steam turbine, it has no
condenser, and it has no cooling tower, how it is
that the staff -- we would like a brief back from
you, so long as you maintain the position, how it
is that the staff believes that the State Water
Board Resolution 7558 and the Commission's policy
documents compel this project, without cooling as
that's been used in its traditional regulatory
application, how those policies apply, since they
expressly state that they are for cooling water.
If you don't want to maintain that position into the evidentiary hearing then you don't have to do it. But if you do, we'd like to have a brief so that we can have, at that hearing on the 19th, some further discussion of the issue.

MR. BABULA: When would that be due?

HEARING OFFICER SHEAN: Well, it's nonevidentiary, so what would be acceptable to you?

MR. THOMPSON: Tomorrow. No, just -- (Laughter.)

MR. THOMPSON: It would be helpful to get it the 9th, that would give ten days. Is that --

HEARING OFFICER SHEAN: Well, the --

MR. THOMPSON: I mean that's ten days, ten days.

HEARING OFFICER SHEAN: -- 19th is the date of the hearing.

MR. THOMPSON: Right.

HEARING OFFICER SHEAN: So testimony filed by the 9th gives you ten days. All right. So, I guess the 9th then. And let me indicate, if you want to make arrangements for some other date based upon your discussions with them, the
Committee is not locked into that. But that's what the rule provides. And if, for some reason, you are amenable to something less, that's going to be between the two of you.

MR. BABULA: Are you eliminating any potential for data requests, then? Are you saying that what's now in the record's done? Or staff, could they have additional information?

If you'd like, I have the water people here that might be able to address just minimally what the concern is. And I know the applicant said that they have people available to answer questions, so.

HEARING OFFICER SHEAN: Well, I think what we're going to do is -- and the answer to data requests is no. But, what you need to understand, the reason the answer is no is they're going to be relying upon what they've submitted. If it's not sufficient, or it's not clear, or it doesn't convince the Committee that this is a viable option, they're done.

And the same sort of thing with you. If you can convince the Committee that the policies that relate to cooling water absolutely apply to this, they're done because, as you've stated in
the FSA, if they don't comply there's no reason to ask the environmental questions.

So, given that it's 3:00 I think the Committee is willing to essentially flip this over into some kind of a workshop format so that the staff and the applicant can remain here and discuss as much of this matter as you want.

There's an open phone line so that if anybody is calling in to inquire what's going on you should take them into account. And that will afford you an opportunity to discuss this matter.

But as matters stand now, we're continued for an evidentiary hearing to November 19th. Direct testimony for the staff would be due on November 9th, as well as a brief arguing the points related to the use of the application of the cooling water water policy doctrines of the state and the Commission to this facility that does not use cooling in its traditional sense.

MR. THOMPSON: It does not sound like you anticipate any further filings on behalf of applicant, either testimony on the 9th or anything else on the legal standard. And I think we're fine with that. I think we're very happy with the record and what we have submitted so far. With
the caveat that if we see something on the 9th
that we very much disagree with, would it be
permissible to the Committee to file something
within a couple days of the 9th?

HEARING OFFICER SHEAN: You could file
that. And traditionally what we've done is if
there is rebuttal based upon the evidence that's
filed within the ten days, we allow rebuttal and
surrebuttal to be oral.

MR. THOMPSON: Will do.

HEARING OFFICER SHEAN: So anticipate
that on both sides. That if there's a
disagreement at that point we will allow just
straight-up oral cross and oral direct and
redirect and so on and so on like that.

All right, is there anything further?

MR. THOMPSON: We were hoping that we
could submit all parts of the record except water
today, but we can't do that unless we go into
evidentiary hearings.

Part of the reason we wanted to do that
was to -- is to give as much assurance as we can
that we will have a decision in time to make
financing, allow for the 30-day rehearing period,
financing, and start construction before the
project disappears.

Those are still valid points that we'd like to make, but I'm assuming that those are also in the minds of the Commission and the Committee. And that there's nothing that we need to do to convince you that we need a decision in a fairly short amount of time.

HEARING OFFICER SHEAN: Why don't you just tell us what the factors are that, you know, you consider significant. If I understand correctly, the 12 months will be some time in early January.

Now, you know, we've always had difficulties getting through the holidays and getting these, and so why don't you just tell us what your --

MR. WEISS: You know, the way the project stands with the --

HEARING OFFICER SHEAN: Would you just introduce yourself for the record.

MR. WEISS: My name is Richard Weiss; I'm the Project Manager for Starwood. The way the project stands with our EPC contract to build out to the PPA requirements with PG&E, we have to release our contractor by March 1. And to release
our contractor we need funds available to
demonstrate we can pay his bill as he starts work.

To do that we need to close financing
sometime in February. We can't close financing
until 30 days after you'll give us your opinion
because there's an appeal period and I guess
there's some documentation period.

So it backs us up basically -- and you
get to the holiday period. It backs us basically
up to the end of the year.

And so we need a decision by the end of
the year so that you add 30 days, you're into
January, and you add a couple weeks for us to
close the project. We're closing in February; and
we kick off our contractor March 1.

Otherwise, we're exposed to delay
damages to the tune of $17,000 a day to our
contractor. I mean, and one of the, you know,
schedule issues, you know, the staff proposed a
ten-week delay. A ten-week delay to this project
is worth $1.1 million, and it would probably kill
it. It's not a big project; it's a, you know, 120
megawatt project; it's $70 million. So a million
dollars is a very meaningful impact to us.

So, we've been -- and I've been
communicating with Che and Eileen and staff, you know, we really need to get this done by year end. And they, you know, up to this point I thought we've had good cooperation. But just for the Commissioners information, that's the schedule we need to keep the project viable.

HEARING OFFICER SHEAN: All right.

Well, we understand that. I don't think there's any Committee that doesn't, as soon as it gets the record closed, you know, bust their hump to get this done. And that'll be the case in this proceeding, as well.

All right, if there's nothing further, and if the staff and the applicant wish to, we'll allow you to roll this over into a staff-sponsored workshop so long as you keep the lines open. You don't obviously have to have a reporter, given what's going on. And this will allow you to have an exchange of information which we hope will be beneficial.

Otherwise, we will see you on the 19th at 1:00. Thank you.

(Whereupon, at 3:01 p.m., the hearing was adjourned, to reconvene Monday, November 19, 2007.)
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 Prehearing Conference and Evidentiary Hearing; 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 4th day of November, 2007.

[Signature]

PETER PETTY