

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 22, 2008

Ms. Angela Leiba
Starwood Power-Midway, LLC
591 West Putnam Avenue
Greenwich, CT 06830

DOCKET	
06-AFC-10	
DATE	FEB 22 2008
RECD.	FEB 22 2008

RE: Application for Confidentiality: Wastewater Supply Agreement,
Starwood Power-Midway Project,
Docket No. 06-AFC-10

Dear Ms. Leiba:

On January 22, 2008, the Starwood Power-Midway (Starwood) project filed an application for confidential designation of its Wastewater Supply Agreement (hereinafter "Agreement") as part of the above referenced Application for Certification (AFC) with the California Energy Commission (Energy Commission). Your application states, in part:

The Applicant requests that the full Wastewater Supply Agreement and all other information included with this document be designated as confidential. . . . The information should be kept confidential through the end of the term of the agreement to protect the Applicant and project's economic/financial trade secrets identified in the materials. . . . The information includes data used to calculate the costs of obtaining emissions offsets as well as records that relate to volatile organic compounds which are exempted from disclosure by sections 6254(h) and 6254.7(d) of the Public Records Act, respectively

The California Public Records Act allows for non-disclosure of trade secrets. (Gov. Code, § 6254(k), Evid. Code, § 1060.) The California Courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

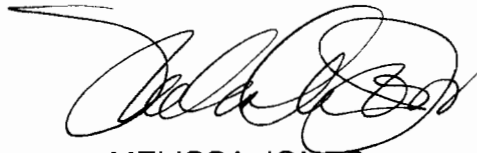
(*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207-208, 96 Cal.Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.)

Your application for confidentiality does not make a reasonable argument under the Energy Commission's regulations for classifying the Agreement as a trade secret. (Cal. Code Regs., tit. 20, § 2505.) Much of the information contained in the Agreement was publicly disclosed at a recent Energy Commission hearing concerning the Starwood project, including Agreement cost and term information. Moreover, the application fails

to demonstrate how the Agreement would harm Starwood, if made public. Finally, Starwood's statement that the Agreement contains "emissions offsets" information and material related to "volatile organic compounds" is in error. For these reasons, I must deny your request for confidentiality.

The procedures and criteria for appealing this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal of this decision must be filed within 14 days from my decision. If you have any further questions regarding this decision, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Jones', with a large, sweeping flourish extending to the left.

MELISSA JONES
Executive Director

cc: Project Manager, 06-AFC-10
Docket Unit