

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON
ANNE J. SCHNEIDER
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS
LYNN M. HAUG
PETER J. KIEL

ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE (916) 447-2166 FAX (916) 447-3512

ELIZABETH P. EWENS, OF COUNSEL
BRIAN S. BIERING
TERESA W. CHAN
SHANE E. CONWAY
KATHRYN C. COTTER
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SAMANTHA G. POTTENGER

October 3, 2011

DOCKET
09-AFC-1
DATE <u>OCT 03 2011</u>
RECD. <u>OCT 03 2011</u>

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

Re: 09-AFC-1 – Applicant’s Identification of Contested Issues

Dear Docket Clerk,

Attached please find the Applicant’s Identification of Contested Issues Filed, with the Witness List and Exhibit List attached, submitted in response to the September 12, 2011 Notice of Prehearing Conference and Evidentiary Hearing.

Very truly yours,

Karen Mitchell
Legal Assistant to Christopher T. Ellison

Ellison, Schneider & Harris L.L.P.
Attorneys for Watson Cogeneration Company

cc: Hearing Officer Raoul Renaud
Commissioner Peterman, Presiding Member
Commissioner Douglas, Chairman and Presiding Member
Mr. Alan Solomon, Compliance Project Manager

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the Watson)
Cogeneration Steam and Electric Reliability Project) Docket No. 09-AFC-1
)
)
_____)

**APPLICANT’S IDENTIFICATION OF
CONTESTED ISSUES**

Pursuant to the *Notice of Prehearing Conference and Evidentiary Hearing* dated September 12, 2011, Applicant Watson (“Watson”) files *Applicant’s Identification of Contested Issues* for those contested issues that have arisen between Watson and Energy Commission Staff at this point in the proceeding for the proposed Watson Cogeneration Steam and Electric Reliability Project (“Project”). Provided herewith are the Applicant’s Witness List (Attachment A) and Applicant’s Exhibit List (Attachment B).

The Project as proposed does not involve an increase in freshwater use over the current usage at the Watson Cogeneration Facility. Watson has agreed to use reclaimed water for water use above the current freshwater usage. With the freshwater cap proposed by Watson, there is no change in the baseline amount of freshwater use, and no significant impacts associated with freshwater use. As such, there is no basis for further regulation of the Project’s water use because there is no change to the baseline for freshwater use, no significant impacts as a result of the Project, and no conflict with applicable laws, ordinances, regulations, and standards.

At this time, we anticipate that Soil & Water resources may require adjudication to resolve multiple outstanding contested issues. First, Watson opposes conditioning Project operation on the existence of a contract for reclaimed water. Although Watson is not required to use reclaimed water if its freshwater consumption remains below a capped amount, the Final Staff Assessment conditions Project operation upon execution of agreements for reclaimed water with or between parties Watson cannot control.

Second, Watson contests Staff’s position requiring that reclaimed water supplied to the five trains of the Watson Cogeneration be a supply above and beyond reclaimed water already being supplied to either Watson Cogeneration or the BP Refinery, as such a condition would

effectively regulate and seek information from an entity (the BP Refinery) not under the Commission's jurisdiction.

Third, Watson has proposed to cap the use of freshwater at all five trains of Watson Cogeneration at an amount based on the most recent eleven years (2000-2010) of use by the existing four trains (4,609 AFY). The Staff, however, seeks to impose a cap based on the most recent three years of freshwater use (4,219 AFY), which Watson maintains is too restrictive as it does not capture the range of variables affecting historical freshwater demand at the four trains.

Fourth, Watson contests Staff's condition Soil & Water-9, which requires that condensate return to the Project from Watson Cogeneration or the BP Refinery be from steam supplied from the Project or Watson Cogeneration, and that condensate not be augmented with additional water at Watson Cogeneration or the BP Refinery. However, because Watson Cogeneration is not the sole steam supply source for the BP Refinery, the BP Refinery's condensate system will contain condensate that did not originate as steam from Watson Cogeneration. Also, as steam produced by the BP Refinery is generated from reclaimed water, this does not constitute a use of freshwater.

Applicant's Soil & Water testimony demonstrates that the Project's proposed water use complies with all applicable LORS, and compliance with LORS has not been contested by Staff. Watson and Commission Staff continue to discuss the contested issues identified herein, and our ongoing effort to resolve these issues may change what remains contested by the prehearing conference, scheduled for October 17, 2011.

October 3, 2011

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  _____

Christopher T. Ellison

Chase Kappel

2600 Capitol Avenue, Suite 400

Sacramento, California 95816

Telephone: (916) 447-2166

Facsimile: (916) 447-3512

Attorneys for Watson Cogeneration Company

ATTACHMENT A

Applicant's Witness List

ATTACHMENT A
Applicant's Witnesses and Topic Areas

TOPIC	WITNESS
Project Description	Ross Metersky, Stephen Garrett, Omar Olivares, Stephen Moore, Gene Amrhein, Joseph Landwehr, Philip French, and Charles Schwartze
Air Quality	Gregory S. Darvin
Biological Resources	David Kisner
Cultural Resources	Jeremy Hollins, MA
Hazardous Materials	Tricia Winterbauer and Gregory S. Darvin
Land Use	Jean Sanson, AICP
Noise and Vibration	Ronald E. Reeves
Public Health	Richard B. Booth
Socioeconomic Resources	Katie Carroz
Soil and Water Resources – Water	Bob Collacott, Omar Olivares, Stephen Moore, and Stephen Garrett
Soil and Water Resources – Soil	Andrea Parker
Traffic and Transportation	Noel Casil, PE, TE, PTOE
Transmission Line Safety and Nuisance	Stephen Garrett
Visual Resources	Brian Madigan and Angela Leiba
Waste Management	Tricia Winterbauer and David Bernal
Worker Safety	Tricia Winterbauer
Facility Design, Power Plant Efficiency, and Power Plant Reliability	Stephen Garrett, Omar Olivares, Gene Amrhein, Joe Landwehr, Philip French, and Charles Schwartze
Geology and Paleontology – Geologic Resources	Casey Lee Jensen and Arnel Bicol
Geology and Paleontology – Paleontological Resources	Stephen Blakely and Lanny H. Fisk, PhD
Transmission System Engineering	Charles Schwartze, Stephen Garrett, and Ross Metersky
Alternatives	Ross Metersky

ATTACHMENT B

Applicant's Exhibit List

ATTACHMENT B
Applicant's Exhibit List

Docket Number: 09-AFC-1

Date: October 3, 2011

Project Name: Watson Cogeneration Steam and Electric Reliability Project

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
1	50584	Watson Cogeneration Steam and Electric Reliability Project, Application for Certification (AFC), dated March 2009, and docketed on March 19, 2009. [Note: Appendices J (Cultural Resources Technical Report) and K (Paleontological Resources Technical Report) were previously filed separately under the rules of confidentiality and have not been reproduced here.]			
2	52187	Watson Cogeneration Steam and Electric Reliability Project, Supplement in Response to CEC Data Adequacy Review, dated June 2009, and docketed on June 29, 2009.			
3	53444	Watson Cogeneration Steam and Electric Reliability Project, Responses to CEC Data Requests #1-39, dated September 2009, and docketed on September 25, 2009.			
4	53529	Watson Cogeneration Steam and Electric Reliability Project, Responses to CEC Data Requests (#1-39), Air Quality Response #4, Status Report 1, dated October 2009, and docketed on October 1, 2009.			
5	53800	Watson Cogeneration Steam and Electric Reliability Project, Remainder of Responses to CEC Data Requests #1-39, dated October 2009, and docketed on October 23, 2009.			
6	53971	Watson Cogeneration Steam and Electric Reliability Project, Responses to CEC Data Requests (#1-39), Air Quality Response #4, Status Report 2, dated November 2009, and docketed on November 2, 2009.			

ATTACHMENT B
Applicant's Exhibit List

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
7	54193	Watson Cogeneration Steam and Electric Reliability Project, Response to SCAQMD Questions (Additional Information Request for Watson Cogeneration Steam and Electric Reliability Project, A/Ns 496922,496924, and 496925), dated November 2009, and docketed on November 18, 2009.			
8	54708	Watson Cogeneration Steam and Electric Reliability Project, Responses to CEC Data Request Set 1 (32) and Set 2 (40-48), dated January 2010, and docketed on January 6, 2010.			
9	55692	Watson Cogeneration Steam and Electric Reliability Project, Responses to Questions from the January 20, 2010 Issues Resolution Workshop, dated February 2010, and docketed on February 25, 2010.			
10	55803	Watson Cogeneration Steam and Electric Reliability Project, Addendum Application for Using Aqueous Ammonia in Watson Cogeneration Steam and Electric Reliability Project, AA/Ns 496922, 496924, and 496925 [Reference: Watson Cogeneration Company, Electric Generation (Process 17), BP Carson Refinery, Facility ID 131003] and Application for Change of Condition to Watson Cogeneration Units 1-4 (Watson Cogeneration Steam and Electric Reliability Project) [Reference: Watson Cogeneration Company at the BP Carson Refinery (Facility ID 131003; Process 17, Systems 1-4), dated February 24, 2010, and docketed on March 2, 2010.			
11	55801	Watson Cogeneration Steam and Electric Reliability Project, Aqueous Ammonia Off-Site Consequence Analysis, dated March 2010, and docketed on March 4, 2010.			
12	56201	Watson Cogeneration Steam and Electric Reliability Project, Supplement to Responses to Questions from the January 20, 2010 Issues Resolution Workshop, dated April 2010, and docketed on April 2, 2010.			
13	56222	Watson Cogeneration Steam and Electric Reliability Project, Aqueous Ammonia Off-Site Consequence Analysis, Revised April 2010, and docketed on April 12, 2010.			

ATTACHMENT B
Applicant's Exhibit List

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
14	56861	Watson Cogeneration Steam and Electric Reliability Project, Responses to Questions from SCAQMD, dated May 21, 2010, and docketed on May 25, 2010.			
15	57099	Watson Cogeneration Steam and Electric Reliability Project, Response to Questions from California Energy Commission Staff, dated June 2010, and docketed on June 11, 2010.			
16	59501	Watson Cogeneration Steam and Electric Reliability Project, Comments on the Preliminary Staff Assessment, dated January 2011, and docketed on January 17, 2011.			
17	60150	Watson Cogeneration Steam and Electric Reliability Project, Responses to CEC Requests from the February 3, 2011 PSA Workshop Continuation, dated March 2011, and docketed on March 28, 2011.			
18	61388	Watson Cogeneration Steam and Electric Reliability Project, Responses to June 15, 2011 CEC Data Requests, dated July 2011, and docketed on July 14, 2011.			
19	61490	Watson Cogeneration Steam and Electric Reliability Project, Responses to June 30, 2011 LARWQCB Response to CEC Participation Request, dated July 2011, and docketed on July 21, 2011.			
20	61490	Watson Cogeneration Steam and Electric Reliability Project, Comments on the Final Staff Assessment, dated September 2011, and docketed on September 22, 2011.			
21	53444	Watson Cogeneration Steam and Electric Reliability Project, Authority to Construct Permit Application [SCAQMD ATC Application], dated March 23, 2009 [Docketed as Response 8 in Responses to CEC Data Requests #1-39, dated September 2009], and docketed on September 25, 2009.			
22	55803	Watson Cogeneration Steam and Electric Reliability Project, Addendum Application [SCAQMD ATC Application] for Watson Cogeneration Facility Authority to Construct Permit Application, dated February 24, 2010 [Docketed with the Addendum for Aqueous Ammonia], and docketed on March 2, 2010.			

ATTACHMENT B
Applicant's Exhibit List

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
23	Not yet assigned	Watson Cogeneration Steam and Electric Reliability Project, Applicant's Opening Testimony, dated October 2011, and docketed on October 3, 2011.			

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the WATSON)
COGENERATION STEAM AND ELECTRICITY) Docket No. 09-AFC-1
RELIABILITY PROJECT)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on October 3, 2011, I served the attached *Applicant's Identification of Contested Issues* via electronic and U.S. mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Karen A. Mitchell

**SERVICE LIST
09-AFC-1**

APPLICANT

Ross Metersky
BP Products North America, Inc.
700 Louisiana Street, 12th Floor
Houston, Texas 77002
ross.metersky@bp.com

APPLICANT'S CONSULTANTS

URS Corporation
Cynthia H. Kyle-Fischer
8181 East Tufts Avenue
Denver, Colorado 80237
cindy_kyle-fischer@urscorp.com

COUNSEL FOR APPLICANT

Christopher T. Ellison
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
cte@eslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

California Unions for Reliable Energy
c/o Tanya A. Gulesserin
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

**ENERGY COMMISSION
DECISIONMAKERS**

Carla Peterman
Commissioner and Presiding Member
cpeterma@energy.state.ca.us

Jim Bartridge
Adviser to Commissioner Peterman
jbartrid@energy.state.ca.us

Karen Douglas
Commissioner and Associate Member
kldougla@energy.state.ca.us

Galen Lemei
Adviser to Commissioner Douglas
glemei@energy.state.ca.us

Raoul Renaud
Hearing Officer
rrenaud@energy.state.ca.us

ENERGY COMMISSION STAFF

Alan Solomon
Project Manager
asolomon@energy.state.ca.us

Christine Hammond
Staff Counsel
chammond@energy.state.ca.us

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Public Adviser's Office
e-mail service preferred
publicadviser@energy.state.ca.us