

DOCKETED

Docket Number:	06-AFC-10C
Project Title:	Starwood Power Project
TN #:	226546
Document Title:	PETITION TO CHANGE OPERATIONAL CONTROL
Description:	MIDWAY PEAKING, LLC'S PETITION TO CHANGE OPERATIONAL CONTROL OF THE MIDWAY PEAKING PROJECT
Filer:	Keith Winstead
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/15/2019 11:16:19 AM
Docketed Date:	2/15/2019

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

In the Matter of:

Midway Peaking, LLC
Midway Peaking Project

Docket 06-AFC-10C

**MIDWAY PEAKING, LLC
PETITION TO CHANGE
OPERATIONAL CONTROL OF
MIDWAY PEAKING PROJECT**

**MIDWAY PEAKING, LLC'S PETITION TO CHANGE OPERATIONAL
CONTROL OF THE MIDWAY PEAKING PROJECT**

King & Spalding LLP

By: /s/ Evan R. Korngold
attorney

Attorneys for **MIDWAY PEAKING, LLC**

February 8, 2019

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

In the Matter of:

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MIDWAY PEAKING, LLC
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**MIDWAY PEAKING, LLC’S PETITION TO CHANGE OPERATIONAL
CONTROL OF THE MIDWAY PEAKING PROJECT**

Pursuant to California Code of Regulations, Title 20, Section 1769(b), Midway Peaking, LLC, a Delaware limited liability company, hereby submits this petition to change operational control of the Midway Peaking Project (the “Project”), a nominal one hundred and twenty (120) megawatt, simple-cycle natural gas-fired peaking plant located in the county of Fresno, California.¹ This proposed change in operational control proposes no changes to any conditions of certification nor will such change affect the analyses set forth in the California Energy Commission’s January 16, 2008 final decision granting certification for the Project and any subsequent decisions approving amendments thereto.

I. BACKGROUND

On December 18, 2018, MRP CalPeak Holdings, LLC, a Delaware limited liability company, entered into a definitive agreement to acquire 100 percent of the equity ownership interests in the upstream owners of Midway Peaking, LLC, the direct owner of the Project (the “Acquisition”). MRP CalPeak Holdings, LLC is a direct, wholly-owned subsidiary of MRP CalPeak Holdings II, LLC (“MRP CalPeak Holdings II”), a Delaware limited liability

company. MRP CalPeak Holdings II is a direct, wholly-owned subsidiary of MRP CalPeak Holdings III, LLC, a Delaware limited liability company, which in turn is a direct, wholly-owned subsidiary of Middle River Power IV, LLC (“MRP IV”), a Delaware limited liability company. MRP IV is ultimately controlled by two individual persons: Marc Lasry and Sonia Gardner (collectively, the Avenue Managers”).²

II. NOTICE OF NEW CONTACT INFORMATION

Following the Acquisition, the contact information for the direct owner will change to:

*Middle River Power LLC
200 W. Madison St., Suite 3810,
Chicago, IL 60606
Attention: Jim Suehr, Chief Financial Officer; Ed Karas, Director of Finance &
Accounting
Email: jsuehr@mrpgenco.com; ekaras@mrpgenco.com*

III. PETITION FOR CHANGE IN OPERATIONAL CONTROL

In connection with the Acquisition, Midway Peaking, LLC will enter into a new Operations and Maintenance (“O&M”) agreement with NAES Corporation, a Washington corporation. Pursuant to California Code of Regulations, Title 20, Section 1769(b), Midway Peaking, LLC submits this petition for approval to change operational control of the Project.

Currently, CalPeak Operating Services, LLC, a Delaware limited liability company, is contracted to provide a number of O&M services under an existing O&M

¹ Formerly known as the Starwood Power Project.

² There may be various passive, limited partner investors in the ownership structure above MRP CalPeak Holdings, LLC. None of these passive investors will have any rights to make decisions with respect to running the business portfolios of MRP IV, or to participate in the day-to-day operations of CalPeak Power-Border, LLC. Upon the consummation of the proposed transaction, MRP IV will manage CalPeak Power-Border, LLC. MRP IV is ultimately controlled by the Avenue Energy Managers. Any ownership rights that the passive investors will have will confer only very limited veto/consent rights necessary to protect their economic investments.

agreement with Midway Peaking, LLC.³ Under this existing O&M agreement, CalPeak Operating Services, LLC provides services for the Project, including, but not limited to, procuring of all goods and materials required to operate the Project, maintaining control over the inventory of the Project to ensure reliable operations, performing routine and as-needed inspections, coordinating all environmental allowances and causing the Project to comply with all permits. The existing O&M agreement has been in place since November 11, 2013. Upon signing of a definitive agreement with respect to the Acquisition on December 18, 2018, Midway Peaking, LLC provided CalPeak Operating Services, LLC with notice of termination of the O&M agreement.

The new O&M agreement between Midway Peaking, LLC and NAES Corporation will require NAES Corporation to perform all of the same services as those provided by CalPeak Operating Services, LLC, including, but not limited to, planning and oversight of all key maintenance activities, ensuring compliance with all applicable permits and laws. The effective date of the new O&M agreement by and between Midway Peaking, LLC and NAES Corporation is expected to be not later than March 1, 2019.

Pursuant to the requirements of Section 1769(b), attached hereto as Exhibit A is the Affidavit of Norman Escover in Support of Change in Operational Control attesting that, as the operator of the Project under the new O&M agreement described above, NAES Corporation understands the conditions of certification applicable to the Project and agrees to

³ The existing O&M agreement is by and between Starwood Power-Midway, LLC (renamed Midway Peaking, LLC in January 2014) and CalPeak Operating Services, LLC. O&M services for the Project also are governed by a Three-Party Agreement among Starwood Power-Midway, LLC, CalPeak Power LLC and CalPeak Operating Services, LLC, which agreement consolidates certain O&M services for the Project and affiliated power projects. In connection with the Acquisition, notice of termination of the Three-Party Agreement also was provided to CalPeak Operating Services, LLC on December 18, 2018.

comply with those conditions of certification as of the effective date of the new O&M agreement.

IV. CONCLUSION

Midway Peaking, LLC respectfully requests approval of this Petition pursuant to Section 1769(b)(2) as soon as practicable, in anticipation of the expected March 1, 2019 effective date of the new O&M agreement.

Dated: February 8, 2019

Respectfully submitted,

MIDWAY PEAKING, LLC

By: King & Spalding LLP

By: /s/ Evan R. Korngold
attorney

Its: Outside counsel to Midway Peaking, LLC

**EXHIBIT A TO THE PETITION TO CHANGE OPERATIONAL CONTROL OF THE
MIDWAY PEAKING PROJECT**

AFFIDAVIT

State of Washington
County of King

THE UNDERSIGNED, does hereby attest, under penalty of perjury, that the following is truthful and accurate to the best of my knowledge:

- a. That I am the Sr. Vice President & General Counsel of NAES Corporation, a Washington corporation (“New Operator”), and in such capacity, I am authorized to make this affidavit (“Affidavit”);
- b. This Affidavit is given as a requirement of the California Code of Regulations, Title 20, Section 1769(b) in support of the Petition to Change Operational Control of the Midway Peaking Project (the “Project”);
- c. On December 18, 2018, MRP CalPeak Holdings, LLC, a Delaware limited liability company, entered into a definitive agreement to acquire 100 percent of the equity ownership interests in the upstream owners of Midway Peaking, LLC and direct owner of the Project (the “Acquisition”);
- d. In connection with the Acquisition, Midway Peaking, LLC will enter into a new Operations and Maintenance agreement (“New O&M Agreement”) with the New Operator;
- e. The New O&M Agreement will require the New Operator to perform all of the same services as those provided by CalPeak Operating Services, LLC prior to the Acquisition, including, but not limited to, procuring of all goods and materials required to operate the Project, maintaining control over the inventory of the Project to ensure reliable operations, performing routine and as-needed inspections, coordinating all environmental allowances and causing the Project to comply with all permits, planning and oversight of all key maintenance activities, ensuring compliance with all applicable permits and laws.
- f. The effective date of the New O&M agreement is expected to be not later than March 1, 2019; and
- g. The New Operator understands the conditions of certification applicable to the Project and agrees to comply with those conditions of certification as of the effective date of the new O&M agreement by executing this Affidavit.

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**NAES Corporation., a
Washington corporation**

By: 
Norman Escover, Sr. Vice President & General Counsel