

STATE OF CALIFORNIA
California Energy Commission

DOCKET 06-AFC-10
DATE _____
RECD. OCT 29 2007

In the Matter of:)
Application for Certification of the)
Starwood Power-Midway, LLC)
Peaking Project)
_____)

Docket No. 06-AFC-10

STARWOOD POWER-MIDWAY, LLC
PREHEARING CONFERENCE STATEMENT

Applicant Starwood Power-Midway, LLC ("Starwood") hereby submits its Prehearing Conference Statement. Applicant submitted a document entitled "Prehearing Brief" on October 19, 2007 which addressed the legal issues surrounding the test to be used in evaluating the appropriateness of Applicant's preferred water source.

1. Topic Areas Complete and Ready for Hearing. Applicant believes that all topic areas are complete and further urges the Committee to hear all topic areas as soon as possible.
2. Topic Areas That Are Incomplete. No topic areas are incomplete.
3. Exhibits and Declarations. Applicant anticipates moving its exhibits into the record with live witnesses at the scheduled hearings. Starwood anticipates requesting that the following documents be submitted into the record:

<u>Proposed Witness</u>	<u>Document</u>
Richard Weiss and Angela Leiba	Application for Certification, dated November 17, 2006
Angela Leiba	Supplemental Information in Response to CEC Data Adequacy, Dated December 29, 2006
Angela Leiba	Responses to Data Requests 1-67, Dated March 9, 2007
Angela Leiba	Responses to Data Requests 1-67, - Air Quality Modeling Files, Dated
Angela Leiba	Responses to Data Requests (1-67) Follow-up Questions, Dated April 12, 2007

Richard Weiss Additional Information, Dated April 20, 2007

Angela Leiba Data Response 23, Additional Information, Dated April 24, 2007

Richard Weiss Applicant's Comments on CEC PSA, Dated August 9, 2007

Angela Leiba URS's Alternative Water Supply Analysis, October 19, 2007

4. Staff's Request for Additional Time. Staff has requested that the Committee hold the Prehearing Conference as scheduled, but delay the taking of evidence in certain environmental areas so that Staff can evaluate the Applicant's agricultural wastewater environmental impacts. Applicant opposes this request for additional time and requests that the hearing be held immediately following the Prehearing Conference or as soon thereafter as possible. In support of this position, Applicant offers the following:

A. The Analysis Should Have Been Performed by Staff. Applicant submitted a significant amount of information in its Application for Certification. Applicant anticipated that the agricultural wastewater option would, at the very least, have been described in the "Alternatives" section of the Preliminary Staff Analysis as Applicant has consistently requested that the backwash water be treated as an option. This is not a modification to the AFC. In its comments to the PSA, filed on August 9, 2007, Applicant requested that Staff include this alternative water supply source in its Final Staff Analysis. Additionally, Mr. Weiss will testify that he had a conversation with Staff at the August 16, 2007 workshop where Mr. Weiss asked if there was a problem with using either water source, and Staff indicated that Staff had no problem with the agricultural wastewater source. The first written indication received by the Applicant that Staff had a problem with this water source was the Final Staff Assessment. A week before the FSA was issued staff called to say the water source did not meet state policy. Staff should have evaluated the agricultural wastewater source in its PSA. Applicant should not be penalized because of Staff's refusal to evaluate this alternative in a timely manner. Also, staff refers to the backwash water as cooling water – it is process water as discussed in our Prehearing Brief.

B. Any Potential Environmental Impacts are De Minimus. Staff has identified five areas where they want ten weeks of additional time to evaluate the agricultural wastewater option.

- Water Resources. Applicant is at a loss to understand what additional information Staff would request and what additional studies Staff would perform in this area. Staff has already made its case that this water source does not satisfy State LORS, so they must have already evaluated the water source. Applicant believes that Staff's legal analysis is flawed and stands by its Prehearing Brief.
- Biology and Cultural Resources. Staff wants additional time to review the surveys of the pipeline route, which were included in

Applicant's October 19, 2007 filing. Applicant believes these impacts are de minimus due to the minimal footprint of the impacts. Applicant accepts the Conditions of Certification that protect Biological and Cultural Resources as applying to this water delivery linear route.

- Land Use. Applicant is unsure of the additional information needed by Staff, but believes there are no additional land use issues outstanding.
- Waste Management. Applicant has discussed the proposed backwash water alternative with the regional water quality control board. Board representatives have reviewed the water quality analysis found in the AFC and is in the process of determining if a lined pond will be required. Applicant will agree to the determination made by the regional board.

In summary, Applicant requests that the Prehearing Conference be held as scheduled and that the Committee hold hearings as soon as possible thereafter.

Respectfully submitted: October 26, 2007



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Energy Resources Conservation and Development Commission
State of California

In the Matter of:)
)
The Application for Certification)
for the Starwood Power Plant)
_____)

Docket No. 06-AFC-10

CERTIFICATE OF SERVICE

I, Allan J. Thompson, hereby declare that on October 26, 2007 I transmitted a copy of "Applicant's Prehearing Conference Statement" to all below listed parties via electronic mail consistent with the requirements of 20 CCR 1209, 1209.5 and 1210.

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