

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET

SACRAMENTO, CA 95814-5512

www.energy.ca.gov



October 27, 2008

Mr. Peter H. Weiner, Attorney at Law
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105-3441

DOCKET	
01-AFC-21C	
DATE	OCT 27 2008
RECD	OCT 29 2008

ENERGY COMMISSION AUTHORIZATION TO CONSTRUCT RECLAIMED WATER
PIPELINE - TESLA POWER PROJECT, 01-AFC-21C

Dear Mr. Weiner:

This is in response to your letter of October 15, 2008, regarding the pending transfer of ownership of the Tesla Power Project (Tesla) to Pacific Gas and Electric Company (PG&E).

In your letter, you bring to my attention Section 3.3.17 of the Purchase and Sale Agreement for the transfer of ownership. That section requires that specific evidence be provided to the buyer from the Energy Commission that construction of the reclaimed water pipeline for the project is authorized by the Energy Commission. Therefore, you are requesting a letter containing a statement that will satisfy that requirement.

In response to your request, I am issuing the following statement: Provided all applicable conditions of certification in the Energy Commission Decision for the Tesla Power Project are satisfied, the Energy Commission authorizes the construction of the pipeline described in the Decision for the purpose of conveying reclaimed wastewater to the Tesla facility pursuant to contracts with PCCP Mountain House, LLC and Mountain House Community Services District. Per the Commission Decision, the Mountain House entities will not be the reclaimed water provider, but they are involved in the pipeline construction process. In providing this authorization, the Energy Commission concurs with the statements of understanding provided in the last two sentences of the fourth paragraph of your letter (copy enclosed).

Please let me know if you have any questions. Thank you in advance for your assistance and cooperation. If you have any questions, you may call me at (916) 653-0062 or Steve Munro at (916) 654-3936.

Sincerely,

Jack W. Caswell
Compliance Program Manager
Siting, Transmission and
Environmental Protection Division

Enclosure

cc: Scott Galati, GalatiBlek

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(415) 856-7010
peterweiner@paulhastings.com

October 15, 2008

70940.00004

Mr. Jack Caswell
California Energy Commission
1516 Ninth Street
Sacramento, CA 96814-5512

Dear Mr. Caswell:

You will find enclosed a letter responding to your letter of September 23, 2008 regarding construction of a 190 foot segment of pipeline at the intersection of Grant Line Road and Mountain House Parkway associated with the Midway Power LLC (Midway)/FPL Energy, LLC (FPLE) Tesla Power Project. Included in that response are a number of supporting documents. I believe that the answers accompanied by these documents provide comprehensive responses to your questions.

In your September 23 letter you stated that "the Energy Commission staff is not aware of the issues regarding the construction of a segment of the reclaimed water pipeline being germane to a future issue concerning the possible transfer of ownership of the facility." We were pleased to receive this news because of the pending transfer of ownership of Midway, the owner of the facility, to PG & E.

Section 3.3.17 of the Purchase and Sale Agreement between Midway and Pacific Gas and Electric Company (PG & E) states that one of the conditions precedent to the closing of the transfer of ownership of Midway is the following:

Buyer shall have received evidence, in form and substance reasonably acceptable to Buyer, from the CEC authorizing the construction of a pipeline for the purpose of conveying reclaimed wastewater to the Facility pursuant to Contracts with PCCP Mountain House, LLC and Mountain House Community Services District as set forth in Schedule 4.2.6, provided all applicable conditions are satisfied.

Assuming that the enclosed responses meet your requirements, Midway/FPLE would very much appreciate a letter stating that, provided all applicable conditions are satisfied, the CEC authorizes the construction of a pipeline for the purpose of conveying reclaimed wastewater to the Facility pursuant to Contracts with PCCP Mountain House, LLC and Mountain House Community Services District. We understand that the actual permission to go forward must be issued by the CBO, and seek only assurance that the project is free to move forward with that and other legal restrictions in place. We also understand that

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Mr. Jack Caswell
October 15, 2008
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such permission does not necessarily resolve the legacy compliance issue regarding the construction of the 190 foot pipeline segment.

As always, please do not hesitate to call or email if you have follow up questions or would like to discuss the project or the content of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Weiner". The signature is fluid and cursive, with the first name "Peter" being more prominent.

Peter H. Weiner
of PAUL, HASTINGS, JANOFSKY & WALKER LLP