

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
Filed May 6, 2010

**OPENING COMMENTS OF STARWOOD POWER-MIDWAY, LLC ON
PROPOSED DECISION ON SYSTEM TRACK I AND RULES TRACK III
OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING
AND APPROVING SETTLEMENT**

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2nd Avenue
San Diego, California 92103
Telephone: (619) 993-9096
Facsimile: (619) 296-4662
Email: liddell@energyattorney.com

Attorneys for
STARWOOD-MIDWAY LLC

March 12, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
Filed May 6, 2010

**OPENING COMMENTS OF STARWOOD POWER-MIDWAY, LLC ON
PROPOSED DECISION ON SYSTEM TRACK I AND RULES TRACK III
OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING
AND APPROVING SETTLEMENT**

Pursuant to Rule 14.3 of the California Public Utilities Commission’s Rules of Practice and Procedure, Starwood Power-Midway, LLC (“Midway”) submits these Opening Comments on Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Proceeding and Approving Settlement (“Proposed Decision”).

I. INTRODUCTION.

The Commission is well aware that some contracts that were entered into between utilities and independent power producers prior to the passage of AB 32, including Midway’s, do not include contractual provisions to explicitly cover the cost of complying with the cap and trade provisions of the California Air Resources Board’s (“CARB’s”) regulations implementing AB 32. Since the auctions of greenhouse gas (“GHG”) emission allowances will begin in the second half of 2012, affected independent power producers such as Midway need a clear understanding of how to achieve compliance so that they may continue to operate after AB 32 compliance obligations take effect on January 1, 2013. The Proposed Decision directly addresses this issue in a way that may provide meaningful relief if it is made clear and expanded somewhat to include more detailed guidance that will be very helpful to all affected stakeholders.

II. THE COMMISSION SHOULD PROVIDE CLEAR ACTIONABLE GUIDANCE TO THE UTILITIES TO RENEGOTIATE ANY CONTRACTS THAT CURRENTLY DO NOT ADDRESS THE ALLOCATION OF AB 32 COMPLIANCE COSTS WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE COMMISSION'S DECISION.

Midway supports the Opening Comments filed today by the Independent Energy Producers Association (“IEP”) and the Western Power Trading Forum (“WPTF”) as they relate to contracts that do not address the allocation of AB 32 compliance costs. Midway specifically supports Section II(C) of IEP’s Opening Comments and Section IV(D) of WPTF’s Opening Comments.

If negotiations are not successful, parties will be compelled to return to R.11-02-012 where this issue was first raised. R.11-03-012 deals with the disposition of revenues that utilities will receive from the sale of CHG allowances for the GHG costs the utilities incur. In the case of independent energy producers such as Midway, the subject would be the most reasonable way to account for a clear windfall since the utilities do not incur any GHG costs. Midway urges the Commission to consider directing the utilities to include contract language in their agreements with independent power producers that is comparable to the provisions set forth in the Attachment to these opening comments.

III. CONCLUSION.

Midway thanks the Commission for the opportunity to submit these opening comments.

Respectfully submitted,



Donald C. Liddell
DOUGLASS & LIDDELL

Attorneys for
STARWOOD POWER-MIDWAY, LLC

March 12, 2012

ATTACHMENT

ATTACHMENT

GREENHOUSE GAS EMISSIONS AMENDMENT

A. New Defined Terms. The following terms shall have the following meaning for purposes of this Agreement:

“GHG Limit” means the GHG Rate times the Maximum Gas Quantity associated with a Dispatch Notice.

“GHG Charges” has the meaning set forth in Section 9.3.b of this Agreement.

“GHG Rate” means the rate in pounds of CO₂ equivalent Greenhouse Gas emitted per MMBtu of natural gas combusted and, with respect to any particular GHG Charges, shall be equal to the rate adopted and/or applied by the Governmental Authority that imposes the requirements resulting in such GHG Charges. For purposes of the cap and trade program approved by the California Air Resources Board (“CARB”) on October 20, 2011 (Cal. Code Regs., title 17 §§ 95800, *et seq.*), the GHG Rate shall be equal to the rate calculated pursuant to CARB’s cap and trade program and the relevant sections incorporated therein of the United States Environmental Protection Agency’s rule for Mandatory Greenhouse Gas Reporting (40 C.F.R. Part 98), as may be amended from time to time.

“Greenhouse Gas” means emissions into the atmosphere of gases that are regulated by one or more Governmental Authorities as a result of their contribution to the greenhouse effect heating of the surface of the earth. Greenhouse gases include carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined, or expressed, in terms of a ton of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment.

“Maximum Gas Quantity” means, for any Dispatch Notice, the quantity of Gas (expressed in MMBtu) equal to the sum of (i) the maximum quantity of Gas required for each CAISO settlement period of the Dispatch Notice, calculated by multiplying (a) the Delivered MWh’s in such CAISO settlement interval by (b) the applicable Guaranteed Heat Rate; plus (ii) the Start-Up Fuel for each Start-Up in the relevant Dispatch Notice.

“Start-Up Fuel” means for each Start-up of a combustion turbine in a Dispatch notice, [tbd] MMBtu.

B. Greenhouse Gas Emissions Charges. Subject to the limitations and qualifications set forth below Buyer shall reimburse Seller for taxes, charges, fees, or costs for, or resulting from, Greenhouse Gas (“GHG Charges”) attributable to a Dispatch Notice, within forty-five (45) days of Buyer’s receipt from Seller of documentation reasonably establishing: (a) that Seller is actually liable for such GHG Charges as a result of operation of the Facility during

the Delivery Term; (b) that such GHG Charge was not effective or scheduled to become effective as of the Effective Date; (c) the specific amount of such GHG Charge; (d) that such GHG Charge was imposed upon or incurred by Seller as a result of a requirement issued, enforced or otherwise implemented by an authorized Governmental Authority in whose jurisdiction the Facility is located, or which otherwise has jurisdiction over Seller or the Facility; (e) that Seller has paid the full amount of such GHG Charge for which Seller seeks reimbursement from Buyer, and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Charges, provided, the reasonable steps shall not be deemed to require Seller to make capital improvements to the Facility unless the Parties, after meeting and conferring in good faith, agree on an allocation between the Parties of the costs for such capital improvements.

(1) If Seller has the right to obtain allowances or credits attributed to the Facility to offset the GHG Charges for the Facility, then Seller shall utilize such allowances or credits to mitigate any GHG Charge hereunder resulting from a Dispatch Notice. Furthermore, if allowances or credits are not allocated to or otherwise provided for specific generating units but Seller has the right to obtain allowances or credits attributed to its portfolio of generating units (all or some of the generating units owned, managed, or controlled by Seller), then Seller shall utilize a proportional amount of such allowances or credits to mitigate any GHG Charge hereunder resulting from a Dispatch Notice. If Seller is allocated or receives revenues, whether specific to each Facility or to Seller's portfolio of generating units, associated with any allowance or credit associated with Greenhouse Gas emissions attributable to a Dispatch Notice, then Seller shall remit any such revenue or, if allocated to Seller's portfolio of generating units, the proportional amount of such revenue, to Buyer to mitigate any GHG Charge that Buyer is responsible for hereunder. The proportional amount of allowances, credits, or revenues, as applicable, shall be calculated based on the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of the Facility that would be subject to GHG Charges compared to the sum of the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of all generating units within Seller's portfolio that would be subject to GHG Charges.

(2) The Parties intend that Buyer shall be responsible for acquiring the emission allowances or credits associated with Greenhouse Gas emissions attributable to a Dispatch Notice, less any emission allowances or credits that Seller may have acquired and allocated to the Facility, the Parties shall cooperate and take commercially reasonable actions (including amending this Agreement as reasonably necessary, executing such documents or instruments as reasonably necessary, and complying with all applicable Law that address such Greenhouse Gas cap and trade scheme) to establish procedures to effectuate this intent; provided, however that the failure to agree on these procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in this agreement.

(3) Notwithstanding the foregoing, in no event shall Buyer be responsible for GHG Charges that exceed the GHG Limit or for GHG Charges that are attributable to any dispatch of the Facility that is not pursuant to a Dispatch Notice or a CAISO order to dispatch.