GRATTAN & GALATI
COUNSELORS & ADVOCATES

PLAZA TOWERS
55 CAPITOL MALL
SUITE 600
SACRAMENTO, CA 95814

OFFICES ALSO IN
GLENDALE, CA

June 05, 2002

Ms. Theresa Epps
Dockets Unit
California Energy Commission
1516 9th Street
Sacramento, CA 95814

DOCKET
01-AFC-21
DATE JUN 05 2002
RECD. JUN 05 2002

RE: The Tesla Power Project (01-AFC-21)

Dear Ms. Epps:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the **Air Quality Mitigation Agreement between San Joaquin Valley Unified Air Pollution Control District and the Applicant, dated May 16, 2002, as further response to Data Requests # 11 and # 207 for the Tesla Power Project (01-AFC-21).**

Sincerely,

Carole Phelps for

Scott A. Galati
on behalf of
Midway Power, LLC

SAG/mf
Enclosures

...Admin\Tesla\Dockets\Cover 6-05-02

STATE OF CALIFORNIA

State Energy Resources
Conservation and Development Commission

In the Matter of:	**Docket No. 01-AFC-21**
Application for Certification for the Tesla Power Project By Midway Power LLC	PROOF OF SERVICE

I, Carole Phelps, declare that on June 05, 2002, I deposited copies of the attached **Air Quality Mitigation Agreement between San Joaquin Valley Unified Air Pollution Control District and the Applicant, dated on May 16, 2002, as further response to Data Requests # 11 and # 207 for the Tesla Power Project (01-AFC-21)** with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT
I have sent the original signed document plus the required 12 copies to the address below:

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
ATTN: Docket No. 01-AFC-21
1516 Ninth Street
Sacramento, CA 95814-5512

****
I have also sent individual copies to:

APPLICANT

Midway Power, LLC.
Attn: Derrel A. Grant, Jr.
Attn: Scott Busa
700 Universe Blvd.
Juno Beach, FL. 33408-2683

COUNSEL FOR APPLICANT

Grattan & Galati
John Grattan
555 Capitol Mall, Suite 600
Sacramento, CA 95814

INTERVENORS

CURE
C/o Marc D. Joseph, Esq.
Mark R. Wolfe, Esq.
Adams, Broadwell, Joseph & Cardozo
651 Gateway Blvd., Suite 900
S. San Francisco, CA 94080

Robert Sarvey
501 W. Grantline Rd.
Tracy, CA 95376

Seyed Sadredin
Director of Permit Services
San Joaquin Valley APCD
4230 Kiernan Avenue, Suite 130
Modesto, CA 95356

INTERESTED AGENCIES

Regional Water Quality Control Board
Attn: Judy Huang
San Francisco Bay Region #2
1515 Clay Street, Suite 1400
Oakland, CA 94612

OTHER INTERESTED PARTIES

Bay Area Air Quality Management District
Attn: Dennis Jang
939 Ellis Street
San Francisco, CA 94109

San Joaquin Valley Unified Air Pollution
Control District, Northern Region
Attn: Jim Swaney, Permit Srvcs. Mgr.
4230 Kiernan Avenue
Modesto, CA 95356

Alameda County Community Development
Agency, Planning Department
Attn: Bruce H. Jensen, Planner
399 Elmhurst Street, Room 136
Hayward, CA 94544

Alicia Torre
Calpine Corporation
4160 Dublin Blvd.
Dublin, CA 94568

Susan Strachan
P.O. Box 1049
Davis, CA 95617-1049

Jerry Salamy
CH2M Hill
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833-2937

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

Carole Phelps

Carole Phelps

TESLA POWER PROJECT
AIR QUALITY MITIGATION AGREEMENT

This Air Quality Mitigation Agreement ("Agreement") is entered into this 16th day of May, 2002 by and between Midway Power, LLC ("MPLLC"), and the San Joaquin Valley Unified Air Pollution Control District (the "District"). MPLLC and the District may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, on October 12, 2001, MPLLC filed an Application for Certification ("AFC") with the California Energy Commission ("CEC") for the Tesla Power Project, a nominal 1,120 megawatt electrical generating power plant with commercial operation planned for the fourth quarter of 2004 (the "Project"). MPLLC is seeking approval from the CEC to construct and operate the Project; and

WHEREAS, the Project site is located on a 60-acre portion of a 160-acre parcel, Assessor parcel No. 99B-7825-1-4 Section 30, Township 2S, Range 4E, in Alameda County within the Bay Area Air Quality Management District ("BAAQMD"); and

WHEREAS, though the Project site is located within the BAAQMD, the Project will be positioned near the border of the Northern Region of the San Joaquin Valley Air Basin (the "Northern Region"); and

WHEREAS, the District is concerned about the general migration of air pollutants from the BAAQMD region and the migration's affect on the ability of the District to meet its air quality attainment goals; and

WHEREAS, the District believes that due to the proximity of the Project to the District, the emissions from the Project will mostly impact the District without corresponding benefits from offsets provided from sources within the BAAQMD; and

WHEREAS, MPLLC believes that any and all air quality impacts from the Project will be fully mitigated by its BAAQMD emission reduction credit offset package. However, it is MPLLC's belief that, while under no obligation to do so, it desires to cooperate with the District to address its air quality concerns and assist the District by providing additional air quality benefits; and

WHEREAS, the District and MPLLC have determined that payment of an air quality mitigation fee to be used for air quality benefit programs within the San Joaquin Valley, and particularly in the Northern Region within or near the City of Tracy, is the appropriate method for MPLLC to address District concerns and to ensure localized benefits within the District.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants set forth herein, MPLLC and the District hereby agree as follows:

1. Air Quality Mitigation Fee. Subject to the conditions precedent set forth in Section 2 below, MPLLC agrees to contribute to the District the sum of nine hundred fifty-seven thousand seven hundred fifty-one dollars ($957,751.00) to ensure localized benefits in the Northern Region, particularly within or near the City of Tracy (the "Air Quality Mitigation Fee"). An outline of the methodology used to determine the Air Quality Mitigation Fee is attached hereto as Exhibit A-1, and is incorporated herein by reference. A list of the four (4) tables setting forth the calculation of the Air Quality Mitigation Fee is attached hereto as Exhibit A-2, and is incorporated herein by reference. MPLLC agrees to pay the Air Quality Mitigation Fee to the District within thirty (30) days after physical delivery of the first combustion turbine generator to the Project site.

2. Conditions Precedent. The Parties acknowledge and agree that MPLLC's obligation to pay the Air Quality Mitigation Fee shall be subject to the fulfillment or waiver (such waiver to be in MPLLC's sole discretion) of the following conditions precedent:

(a) Issuance of the final CEC permit for the Project; and

(b) Physical delivery of the first combustion turbine generator to the Project site.

Notwithstanding the above, if a final CEC permit for the Project has not been issued by December 31, 2003, and if the AFC with the CEC has been cancelled or withdrawn, then this Agreement shall automatically terminate, and neither Party shall have any further obligations hereunder.

3. Use of Air Quality Mitigation Fee. The District agrees to set up a specific account into which the Air Quality Mitigation Fee will be deposited. The District agrees to use the Air Quality Mitigation Fee exclusively to establish specific programs that create real time air quality benefits within the District and to the extent possible within the Northern Region, particularly within or near the City of Tracy. Such emission reduction programs shall include, but not be limited to, one or more of the following:

(a) Bus retrofitting and/or replacement;

(b) Lawnmower replacement; and

(c) Replacement or retrofitting of internal combustion engines.

The District agrees not to place the Air Quality Mitigation Fee into any operating account, or to use the Air Quality Mitigation Fee for any purpose other than those designated in this Agreement.

4. Only Mitigation Payment Required. The District acknowledges and agrees that payment of the Air Quality Mitigation Fee pursuant to this Agreement is the appropriate method for MPLLC to address the District's concerns relating to migration of pollutants from the Project and to ensure localized benefits in the Northern Region, and that payment of such Air Quality Mitigation Fee is the only action requested by the District in connection with the development, construction, operation and maintenance of the Project. Nothing in this Agreement shall be deemed a waiver of any cause of action or remedies the District may pursue against other entities related to transport of air pollution from the Bay Area into the San Joaquin Valley.

5. Cooperation. The Parties agree to cooperate with each other with respect to any requests or actions related to this Agreement from the CEC, the Environmental Protection Agency, BAAQMD, the California Air Resources Board, and/or any interveners in the Project, and to do or cause all things necessary, proper or advisable to help consummate and make effective the transaction contemplated by this Agreement.

6. Governing Law. This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California.

7. Authority. Each Party acknowledges and agrees that it has the full right, power and authority to execute this Agreement, and to perform its obligations hereunder.

8. No More Favorable Terms. With respect to any other applicant for an energy license before the CEC as of the date of this Agreement which is similarly situated near the Northern Region, the District agrees not to enter into any air quality mitigation arrangement based on methodology which utilizes a lower calculation value (expressed in dollars per ton) than the value set forth in Table 4 of Exhibit A-2 to this Agreement, without also offering such an arrangement to MPLLC.

9. Relationship of the Parties. Nothing herein is intended to create or is to be construed as creating a joint venture, partnership, agency or other taxable entity between the Parties. The rights and obligations of the Parties shall be independent of one another and shall be limited to those expressly set forth herein and, except as expressly provided to the contrary, shall not be construed to apply to any affiliate of the Parties.

10. No Third Party Beneficiary. The Parties mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party.

11. Notices. All notices necessary to be given under the terms of this Agreement, except as herein otherwise provided, shall be in writing and shall be communicated by prepaid mail, telegram or facsimile transmission addressed to the respective Parties at the address below or to such other address as respectively designated hereafter in writing from time to time:

To MPLLC: 700 Universe Boulevard
Juno Beach, FL 33408
Attn: Mr. Harris Rosen
Phone: (561) 691-7085
Fax: (561) 691-7305

To District: 1990 East Gettysburg Avenue
Fresno, CA 93726-0244
Attn: Mr. Seyed Sadredin
Phone: (559) 230-5900
Fax: (559) 230-6061

12. Assignment. This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. No Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the above, the Parties agree that MPLLC may freely assign its rights and delegate its duties under this Agreement, without District's prior written consent, to: (a) an affiliate of MPLLC; (b) a successor-in-interest by merger, consolidation or reorganization; or (c) a purchaser or other transferee of the Project.

13. Entire Agreement. This Agreement, together with the Exhibits attached hereto, contains the entire understanding between the Parties with respect to the subject matter herein. This Agreement may not be amended except by an instrument in writing signed by each Party.

14. Joint Effort. The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it, and accept its terms and conditions. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

* * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and date first above written.

MIDWAY POWER, LLC

By: _____
Name: Derrel A. Grant, Jr.
Title: Vice President

Approved as to Legal Form:

By: _____
Name: HARRIS M ROSEN
Title: SENIOR ATTORNEY

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

By: _____
Name: DAVID L. CROW
Title: APCO

Approved as to Legal Form:

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and date first above written.

MIDWAY POWER, LLC

By:_____
Name:_____
Title:_____

Approved as to Legal Form:

By:_____
Name:_____
Title:_____

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

By:_____
Sam Armentrout, Chair
Governing Board
San Joaquin Valley Unified APCD

Approved by:
David L. Crow
Executive Director / APCD
San Joaquin Valley APCD

Approved as to Legal Form:

By:_____
Philip M. Jay
District Counsel

EXHIBIT A-1

Outline of Methodology for Determining SJV Net Mitigation Value

- Table 1 - Estimate Project Emissions Into SJV During Non-Attainment Period
  - NOx/VOC – Apr/Nov Ozone Attainment – i.e., Calculation Period = 8 mo
  - PM10 – Q1/Q4 PM10 Attainment – i.e., Calculation Period = 6 mo
  - Multiply Calculation Period Emissions By Wind Vector Fraction for Calculation Period from Tracy Windrose to Estimate Emissions Into SJV During Non-Attainment Quarters

- Table 2 – Estimate BAAQMD ERC Benefit to SJV
  - Use Actual ERC Package To Be Provided To BAAQMD (1.15:1 ratio for NOx/VOC, 1:1 ratio for PM10)
  - Estimate Fraction of ERCs Benefiting SJV
    - For ERCs on BAAQMD Side of Altamont Pass, Use 27% (SJV website)
    - For ERCs on SJV Side of Altamont Pass, Use Windrose Factors From Table 1
  - Multiply BAAQMD ERC Amounts By Fraction to Estimate Benefit to SJV

- Table 3 – Determine Net Mitigation Balance
  - Emissions To Be Offset From Table 1
  - Subtract ERCs Benefiting SJV (From Table 2)
  - Result is Net Mitigation Balance
  - Project Would Provide Funding to a SJVAPCD Air Quality Mitigation Account That Would Be Used By SJVAPCD to Create Emission Reductions In Northern Region of SJVAPCD With Preference For Reductions In/Near the City of Tracy

- Table 4- Calculate Air Quality Mitigation Amount using $15,000/ton

EXHIBIT A-2

Table 1 - Tesla Emissions Impact In SJV

Pollutant	Project Emissions (tpy)	% of time wind blows into San Joaquin Valley		Emissions into San Joaquin Valley During Non-Attainment Quarters, tpy	
		Q1/Q4	Apr/Nov	Q1/Q4	Apr/Nov
NOx	249.85		77.5%		129.01
VOC	60.44		77.5%		31.21
PM10	196.05	66.2%		64.89	

Table 2 - Tesla ERC Benefits In SJV

Pollutant	ERCs (BAAQMD)[1] - tpy	SJV Contribution Factor	SJV Benefit from BAAQMD ERCs, tpy
NOx	251.5	27%	67.9
VOC	105.4	27%	28.5
PM10	196.1	66.2%	129.8

Table 3 - Determination of Net Mitigation Balance

Pollutant	Emissions into San Joaquin Valley During Non-Attainment Quarters, tpy	SJV Benefit from BAAQMD ERCs, tpy	SJV Mitigation Balance, tpy
NOx	129.01	67.9	61.1
VOC	31.21	28.5	2.7
PM10	64.9	129.8	0.0
		Total	63.9

Table 4 - Determination of Net Mitigation Value

SJV Mitigation Balance, tpy	Mitigation Value, $/ton	Net Mitigation Value, $
63.9	15,000	$957,751