



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF THE COMPLAINT AGAINST

00-AFC-1C

*GATEWAY GENERATING STATION*

BROUGHT BY *ACORN, LOCAL CLEAN  
ENERGY, ALLIANCE, CARE* et al.

**DOCKET**

**00-AFC-1C**

DATE July 27 2009

RECD. July 27 2009

## NOTICE OF HEARING, DECISION, AND ORDER

**PLEASE TAKE NOTICE** that the Siting Committee of the California Energy Commission has scheduled a first-phase Evidentiary Hearing in the above-captioned matter, as follows:

**The first phase of the Evidentiary Hearing will be conducted on:**

***WEDNESDAY, AUGUST 5, 2009***

**Beginning at 10:00 a.m.**

**California Energy Commission**

**Hearing Room A**

**1516 Ninth Street**

**Sacramento, CA 95814**

### **Purpose of Hearing**

On June 3, 2009, the Association of Community Organizations for Reform Now (ACORN) filed a Complaint alleging noncompliance with a Commission Decision against Gateway Generating Station (GGS) pursuant to Cal. Code Regs., tit. 20 §1237. Similar complaints were filed by Local Clean Energy Alliance on June 29, 2009 and by CARE on July 17, 2009.

The Siting Committee (Committee) has found that there is good cause to set the matter for a hearing on the Complaints. The Committee will hear the evidence on the complaints in two phases. The first phase will be limited to the question of whether GGS

has failed to comply with the Final Decision of May 30, 2001. The Complainants will have the burden of proving non-compliance by a preponderance of evidence. After hearing all the evidence on the question of non-compliance, the Committee will issue a Decision. If the Committee finds in favor of GGS, there will be no further hearings on the matter. If the Committee finds non-compliance, in favor of the Complainants, the Committee will Notice a second phase hearing, at a later date, limited to the issue of penalty. After hearing all the evidence on the question of penalty, the Committee will issue an Order setting any administrative civil penalty.

### **Prehearing Statements**

Each party shall serve and file a **Prehearing Statement**. Each party's Prehearing Statement shall be provided to and received by the other parties and the Commission's Docket Unit, 1516 9th Street, MS-15, Sacramento, California 95814-5512, **no later than 3:00 p.m., Friday, July 31, 2009**. The parties shall e-mail their statements to the Hearing Officer as well as to the Docket Unit and the parties as indicated on the Proof-of-Service list.

Each Prehearing Statement shall set forth under a separate heading:

1. The identity of each witness called to testify; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness.
2. A list identifying exhibits and declarations that each party intends to offer into evidence and a brief summary of its relevance to the proceedings. Each document shall be numbered and identified on an **Exhibit List**:
  - ACORN's documents shall be numbered consecutively as Exhibits 1-99.
  - Local Clean Energy Alliance's documents shall be numbered consecutively as Exhibits 100-199.
  - CARE's documents shall be numbered consecutively as Exhibits 200 - 299.
  - PG&E's documents shall be numbered consecutively as Exhibits 300 - 399.
  - Staff's documents shall be numbered consecutively as Exhibits 400-499.

### **DECISION**

Pursuant to Cal. Code Regs., tit. 20 §1237, Staff's motion to dismiss the Complaint for insufficiency or lack of merit is **DENIED**.

The Complaints of ACORN, Local Clean Energy Alliance and CARE are consolidated into a single proceeding due to indenticality of issues.

The Petition to Intervene attached to the Complaint of CARE is moot in light of their status as real parties in interest as complainants. Therefore, the Petition is **DENIED**.

## **ORDER**

PG&E is ordered to appear as a party in the above-noticed Evidentiary Hearing and file a Prehearing Statement in accordance with this Notice, Decision, and Order. Additionally, PG&E is ordered to answer the Complaints and respond to the following questions in its Prehearing Statement:

1. Has GGS begun commercial operation?
2. If GGS has been operating commercially, when did commercial operations begin?
3. Is GGS operating in conformity with the Conditions of Certification specified in the May 30, 2001 Final Decision on the Application for Certification including all subsequent Amendments to those Conditions of Certification approved by the Energy Commission?
4. Has GGS implemented the modifications specified in the May 7, 2009 Petition to Amend the project?
5. If the answer to question 4 is "yes," when were the modifications specified in the May 7, 2009 Petition to Amend the project implemented?
6. If any modifications described in questions 4 and 5 above require changes to any Conditions of Certification in the Final Decision or in subsequent amendments approved by the Energy Commission, please specify which Conditions of Certification require changes.

## **Public Adviser and Public Participation**

The Energy Commission's Public Adviser, Elena Miller, is available to assist the public in participating in the application review process. For those individuals who require general information on how to participate, please contact the Public Adviser's Office at 916-654-4489 or 800-822-6228 or e-mail at: [\*\*\[publicadviser@energy.state.ca.us\]\*\*](mailto:publicadviser@energy.state.ca.us).

If you have a disability and need assistance to participate in this event, contact Lourdes Quiroz at least 5 days in advance of the hearing at 916-654-5146 or e-mail: [\*\*\[lquiroz@energy.state.ca.us\]\*\*](mailto:lquiroz@energy.state.ca.us).

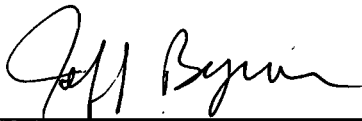
## Information

Questions of a legal or procedural nature should be directed to Kenneth Celli, the Hearing Officer, at (916) 651-8893 or e-mail: [[kcelli@energy.state.ca.us](mailto:kcelli@energy.state.ca.us)].

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: [[mediaoffice@energy.state.ca.us](mailto:mediaoffice@energy.state.ca.us)].

Information concerning the status of the project, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page at: [<http://www.energy.ca.gov/sitingcases/gateway/index.html>].

Dated July 27, 2009, at Sacramento, California



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JEFFREY D. BYRON  
Commissioner and Presiding Member  
Siting Committee



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KAREN DOUGLAS  
Chairman and Associate Member  
Siting Committee



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COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)

IN THE MATTER OF THE COMPLAINT AGAINST

Docket No. 00-AFC -1C

**GATEWAY GENERATING STATION**

**PROOF OF SERVICE**

**PROJECT OWNER**

Pacific Gas & Electric Company  
Gateway Generating Station  
3225 Wilbur Avenue  
Antioch, CA 94509  
(925) 522-7801

**PROJECT OWNER'S COUNSEL**

Scott Galati  
Galati-Blek LLP  
455 Capitol Mall, Ste. 350  
Sacramento, CA 95814

**INTERESTED AGENCIES**

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Bay Area Air Quality Management  
District  
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Fax: (415) 749-5103  
[www.baaqmd.gov](http://www.baaqmd.gov)

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**COMPLAINANTS**

ACORN C/O  
Deborah Behles, Esq.  
James Barringer, Esq.  
Lucan Williams, Graduate Fellow  
Golden Gate Univ. School of Law  
Environmental Law & Justice Clinic  
536 Mission Street  
San Francisco, CA 94105-2968  
John Adams  
2401 Stanwell Drive  
Unit 320  
Concord, CA 94520  
(925) 689-1001

Rory Cox  
Local Clean Energy Alliance  
436 14<sup>th</sup> Street  
Oakland, CA 94612  
(510) 459-0933  
[rcox@pacificenvironment.org](mailto:rcox@pacificenvironment.org)

CARE  
c/o Bob Sarvey and Rob Simpson  
27216 Grandview Avenue  
Hayward CA 94542

**ENERGY COMMISSION**

Jeffrey D. Byron  
Commissioner and Presiding Member  
Siting Committee  
[jlevin@energy.state.ca.us](mailto:jlevin@energy.state.ca.us)

Karen Douglas  
Chair and Associate Member  
Siting Committee  
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Elena Miller  
Public Adviser's Office  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, Maggie Read, declare that on 7/27/09, I served and filed copies of the attached NOTICE OF HEARING, DECISION, AND ORDER. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

**(Check all that Apply)**

**For service to all other parties:**

x sent electronically to all email addresses on the Proof of Service list;

x by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

**For filing with the Energy Commission:**

x sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

**OR**

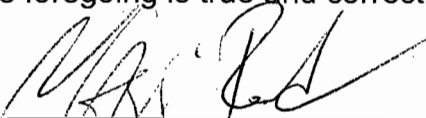
       depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 07-AFC-8  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

docket@energy.state.ca.us

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

  
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MAGGIE READ