

DEBORAH N. BEHLES (Cal. Bar No. 218281)
Environmental Law and Justice Clinic
Golden Gate University School of Law
536 Mission Street
San Francisco, CA 94105
Telephone: 415-442-6647
Facsimile: 415-896-2450
dbehles@ggu.edu

DOCKET	
00-AFC-1C	
DATE	Jul 31 2009
RECD.	Aug 03 2009

Attorney for Complainant
Contra Costa Branch of the Association of
Community Organizations for Reform Now

RORY COX
436 14th Street
Oakland, CA 94612
rcox@pacificenvironment.org

Representative of Local Clean Energy Alliance

ROBERT SIMPSON
27216 Grandview Avenue
Hayward, CA 94542
rob@redwoodrob.com

Representative of CALifornians for Renewable Energy

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:)	Docket No. 00-AFC-1C
)	
)	AMENDED JOINT
)	PREHEARING STATEMENT
)	
GATEWAY GENERATING STATION)	
_____)	

This Amended Joint Prehearing Statement is submitted pursuant to communications with Hearing Officer Kenneth Celli and PG&E counsel Scott Galati, and pursuant to the Notice of Hearing, Decision, and Order issued July 27, 2009,

Complainants Contra Costa Branch of Association of Community Organizations for Reform Now (ACORN), CALifornians For Renewable Energy (CARE), and Local Clean Energy Alliance (LCEA) provide this list of witnesses and exhibits for the Evidentiary Hearing scheduled on August 5, 2009 at 10am. ACORN, CARE, and LCEA have consolidated exhibits and witnesses to most efficiently present the evidence related to PG&E's noncompliance with the Commission Decision.

WITNESS LIST

WITNESS¹	SUMMARY OF TESTIMONY TO BE OFFERED	SUMMARY OF QUALIFICATIONS OF WITNESS	ESTIMATED TIME TO PRESENT DIRECT TESTIMONY²
John Adams	<p>1. ACORN Contra Costa Description - Who the organization is, who they represent, what issues they work on.</p> <p>2. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.</p> <p>3. ACORN's Non-compliance Issues:</p> <p>a. General Compliance with Certification - based on reference to statements in Ex 14.</p> <p>b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Attach. C, Ex. 6, Ex. 13.</p> <p>c. Change to Gas Preheater related</p>	<ul style="list-style-type: none"> • ACORN Organizer for past three years. • Prior to ACORN, several years of experience with political and community organizations. • Received B.S. degree in political science at the University of Oregon in 2003 and is currently in the Masters program at John F. Kennedy University studying Consciousness and Transformative Studies. 	45 minutes (this estimation includes all ACORN witnesses)

¹ We reserve the right not to call all of these witnesses.

² These times may be longer if the parties are not able to reach stipulations on the admissibility of exhibits.

	<p>to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3.</p> <p>d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23.</p> <p>e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 14 (Attach. C).</p> <p>f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13.</p> <p>g. Changes to Optional Monitoring of O2 - based on reference to statements in Ex. 14, Ex. 1, Ex. 4.</p> <p>h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7.</p> <p>i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24 at 19.</p> <p>j. Commissioning Period Issues - based on reference to statements in Ex. 10 at 1, 4 and 5, Ex. 12.</p> <p>4. Conclusion / Summary Based on Review of Above Referenced Documents.</p>		
Marie Dreyer	1. ACORN Contra Costa description - Who the organization	• Member of Contra Costa ACORN and former	(see above)

	<p>is, who they represent, what issues they work on.</p> <p>2. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.</p> <p>3. ACORN's Non-compliance Issues:</p> <p>a. General Compliance with Certification - based on reference to statements in Ex 14.</p> <p>b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Attach. C, Ex. 6, Ex. 13.</p> <p>c. Change to Gas Preheater related to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3.</p> <p>d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23.</p> <p>e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 14 (Attach. C).</p> <p>f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13.</p> <p>g. Changes to Optional Monitoring of O2 - based on reference to</p>	<p>chairperson of Pittsburg ACORN.</p> <ul style="list-style-type: none"> • Has been active with ACORN for four years. Has been active in the community for over 15 years and involved with various organizations. • Taken courses in biological sciences and ecology. • Participated in various regulatory agency public hearings by providing public comments. • Previously a maritime library and museum technician. 	
--	---	---	--

	<p>statements in Ex. 14, Ex. 1, Ex. 4.</p> <p>h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7.</p> <p>i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24 at 19.</p> <p>j. Commissioning Period Issues - based on reference to statements in Ex. 10 at 1, 4 and 5, Ex. 12.</p> <p>4. Conclusion / Summary Based on Review of Above Referenced Documents.</p>		
<p>Erik Kochketola</p>	<p>1. ACORN Contra Costa description - Who the organization is, who they represent, what issues they work on.</p> <p>2. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.</p> <p>3. ACORN's Non-compliance Issues:</p> <p>a. General Compliance with Certification - based on reference to statements in Ex 14.</p> <p>b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Attach. C, Ex. 6, Ex. 13</p> <p>c. Change to Gas Preheater related to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008</p>	<ul style="list-style-type: none"> • Chairperson of the Pittsburg chapter of Contra Costa ACORN since December 2008. • Participated in regulatory agency public hearing providing public comments through his tenure with ACORN. Has experience reading and interpreting regulatory documents through his involvement with ACORN and as concerned community member. • Studied history at Indiana University. 	<p>(see above)</p>

	<p>PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3.</p> <p>d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23.</p> <p>e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 14 (Attach. C).</p> <p>f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13.</p> <p>g. Changes to Optional Monitoring of O2 - based on reference to statements in Ex. 14, Ex. 1, Ex. 4.</p> <p>h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7.</p> <p>i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24 at 19.</p> <p>j. Commissioning Period Issues - based on reference to statements in Ex. 10 at 1, 4 and 5, Ex. 12.</p> <p>4. Conclusion / Summary Based on Review of Above Referenced Documents.</p>		
Rory Cox	1. Description of LCEA - Group of around 200 organizations including Sierra Club.	<ul style="list-style-type: none"> • Representative of LCEA. • Four years of experience 	15 minutes

	<p>2. How LCEA learned of Gateway Facility - saw complaint filed by ACORN.</p> <p>3. Basis for Knowledge about Gateway facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.</p> <p>4. ACORN's Non-compliance Issues:</p> <p>a. General Compliance with Certification - based on reference to statements in Ex 14.</p> <p>b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Attach. C, Ex. 6, Ex. 13.</p> <p>c. Change to Gas Preheater related to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3.</p> <p>d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23.</p> <p>e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 14 (Attach. C).</p> <p>f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13.</p>	<p>intervening in administrative proceedings regarding energy policy.</p> <ul style="list-style-type: none"> • Has written extensive comments and filings for cases before the California Public Utilities Commission (CPUC), the State Lands Commission (SLC), the California Coastal Commission, the Federal Energy Regulatory Commission, and the California Air Resources Board. • Has testified before the CPUC and the SLC. 	
--	--	---	--

	<p>g. Changes to Optional Monitoring of O2 - based on reference to statements in Ex. 14, Ex. 1, Ex. 4.</p> <p>h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7.</p> <p>i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24 at 19.</p> <p>j. Commissioning Period Issues - based on reference to statements in Ex. 10 at 1, 4 and 5, Ex. 12.</p>		
--	---	--	--

<p>Robert Simpson</p>	<p>1. Description of CARE - represents group of citizens stands for Californians for Renewable Energy.</p> <p>2. How CARE learned of Gateway Facility - commented in 2001, Sarvey commented on draft permit (Ex. 24), Simpson's EAB proceeding.</p> <p>3. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-24 that are listed in our exhibit list. Involvement with EAB proceeding. Review of publicly available documents.</p>	<ul style="list-style-type: none"> • Representative of CARE. • Has participated in and filed extensive comments in proceedings before the EPA Environmental Appeals Board, CPUC, and the Commission. 	<p>30 minutes</p>
-----------------------	--	--	-------------------

	<p>4. ACORN complaint - Ask if agree with complaint based on review.</p> <p>5. Ask if agree with the following findings of non-compliance (which will have been presented by ACORN witness/es):</p> <p>a. General Compliance with Certification - based on reference to statements in Ex 14.</p> <p>b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Attach. C, Ex. 6, Ex. 13.</p> <p>c. Change to Gas Preheater related to AQ5, AQ24, AQ47 - based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3.</p> <p>d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23.</p> <p>e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 14 (Attach. C).</p>		
--	---	--	--

	<p>f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13.</p> <p>g. Changes to Optional Monitoring of O2 - based on reference to statements in Ex. 14, Ex. 1, Ex. 4.</p> <p>h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7.</p> <p>i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24 at 19.</p> <p>j. Commissioning Period Issues - based on reference to statements in Ex. 10 at 1, 4 and 5, Ex. 12.</p> <p>6. Involvement in EAB hearing - describe generally.</p> <p>7. Issue of whether facility has permit - description of statements made in Exs. 15, 16, and 17.</p> <p>8. Description of compliance issues with BACT requirements</p>		
--	---	--	--

	based on involvement in Russell City proceeding, Exs. 14, 15, 16, 17, 18, 19.		
--	---	--	--

EXHIBIT LIST

EXHIBIT #	DOCUMENT	RELEVANCE
1	Bay Area Air Quality Management District (BAAQMD) Final Determination of Compliance (FDOC) of Contra Costa Power Plant Unit 8 (February, 2 2001), <i>available at</i> http://web.archive.org/web/20070623220836/http://www.ba.aqmd.gov/pmt/public_notices/1999_2001/1000/index.htm .	Original 2001 FDOC for the Gateway Generating Station (GGS).
2	BAAQMD Commission Decision on Contra Costa Unit 8 Power Project Application for Certification (May 30, 2001), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/documents/index.html#053001 .	Provides GGS May 2001 certification conditions.
3	Letter from BAAQMD to Mirant Delta, LLC, re: Authority to Construct (July 24, 2001).	Specifies the original equipment that Mirant was authorized to construct.
4	Commission Order Clarifying that PG&E Is Now Sole Owner of the Gateway Power Plant Unit 8 Project (January 3, 2007), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/2007-01-18_order_sole_owner.html .	Establishes that PG&E is responsible for compliance with certification.
5	Order Amending Commission Decision to Eliminate Use of San Joaquin River Water as the Cooling Water Source and Complete Ten Associated Design Changes (August 1, 2007), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/index.html .	Relevant to power augmentation issue.
6	Petition to Amend Air Quality Conditions in the Gateway Generating Station Project Final Decision (January 15, 2008), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/index.html (includes as attachment Application for Modifications to Authority to Construct Gateway Generating Station (December 18, 2007)).	Relevant to PG&E's compliance with air quality requirements and conditions.

7	Notice of Receipt of Petition to Amend Air Quality Conditions (January 28, 2008), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/index.html .	Relevant to PG&E's requirement to amend certification conditions.
8	Letter from Dale Edwards, CEC to BAAQMD, re: Application 17182 (Proposed Amendments to GGS Authority to Construct) (July 14, 2008), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/index.html .	Relevant to PG&E's compliance with air quality requirements and conditions.
9	Letter from PG&E to BAAQMD, re: Commissioning Plan for GGS (September 23, 2008).	Relevant to PG&E's compliance with conditions of certification relating to commissioning period.
10	Letter from PG&E to BAAQMD, re: Enforcement Agreement for Anticipated Violation of Permit Conditions During Commissioning Period (November, 3, 2008).	Relevant to PG&E's compliance with conditions of certification relating to commissioning period.
11	Letters from PG&E to BAAQMD and EPA, re: Commencement of Commercial Operations (November 17, 2008).	Relevant to PG&E's compliance with requirement to amend conditions of certification.
12	Letter from PG&E to BAAQMD, re: Completion of Discrete Commissioning Activities Without Fully Operational SCR and Oxidation Catalyst Systems (January 22, 2009).	Relevant to PG&E's compliance with conditions of certification regarding commissioning period.
13	Withdrawal of Petition to Amend Various Air Quality Conditions of Certification (February 13, 2009), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/index.html (included as an attachment Withdrawal of Application for Modifications of Authority to Construct Gateway Generating Station (February 13, 2009)).	Relevant to PG&E's compliance with requirement to amend certification conditions before construction.
14	Petition to Amend Various Air Quality Conditions of Certification (May 7, 2009), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/compliance/index.html (included as attachment Letter from PG&E to BAAQMD, re: Request for Additional Exemptions and Administrative Amendments to Permit Conditions (April 14, 2009)).	Relevant to whether PG&E's constructed facility complies with conditions of certification.

15	BAAQMD Reply In Support Of Motion To Stay Proceedings, U.S. EPA Environmental Appeals Board PSD Appeal No. 09-02 (June 12, 2009), <i>available at</i> http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/e21ed03510b6c284852575ae006ce586!OpenDocument .	Relevant to PG&E's requirement to comply with federal law.
16	Declaration of Sandy Crockett and attachments, filed with BAAQMD's Brief On Jurisdictional Issues, U.S. EPA Environmental Appeals Board PSD Appeal No. 09-02 (June 22, 2009), <i>available at</i> http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/e21ed03510b6c284852575ae006ce586!OpenDocument .	Relevant to PG&E's requirement to comply with federal law.
17	Proposed Intervenor PG&E's Reply to Petitioner's Response to Motion for Stay, U.S. EPA Environmental Appeals Board PSD Appeal No. 09-02 (June 15, 2009), <i>available at</i> http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/e21ed03510b6c284852575ae006ce586!OpenDocument .	Relevant to PG&E's requirement to comply with federal law.
18	Proposed Amended Prevention of Significant Deterioration Permit for Russell City Energy Center, <i>available at</i> http://www.baaqmd.gov/Divisions/Engineering/Public-Notices-on-Permits/2009/080309-15487/Russell-City-Energy-Center.aspx .	Relevant to PG&E's requirement to comply with federal law.
19	BAAQMD Best Available Control Technology (BACT) Workbook <i>available at</i> http://hank.baaqmd.gov/pmt/bactworkbook/default.htm .	Provides information on BAAQMD's determination of BACT.
20	Summary of ACORN Witness Testimony.	Provides summary of relevancy of certain exhibits by ACORN.
21	Declaration of Robert Sarvey (including public comments filed in response to June 2008 Draft Air Permit).	Provides information related to PG&E's compliance with federal law and public participation requirements.
22	Documents Related to CARE's Participation in the Certification Proceedings, including Committee Ruling On CARE's Motion, re: Public Participation (December 14, 2000), <i>available at</i> http://www.energy.ca.gov/sitingcases/gateway/notices/2000-12-14_order.html .	Relevant to PG&E's requirement to comply with federal law.

23	BAAQMD Application No. 020242 for Authority to Construct 300 bhp Emergency Diesel Fire Pump (March 16, 2009).	Relevant to PG&E's compliance with requirement to amend conditions of certification before construction.
24	BAAQMD List of Facilities that Have Received Three or More Notices of Violation Between April 1, 2009 and June 30, 2009, from August 5, 2009 Board of Directors Meeting Agenda, <i>available at</i> http://www.baaqmd.gov/The-Air-District/Board-of-Directors/~/link.aspx?_id=48938EBF65A840798089FCF247EC91E6&_z=z .	Relevant to PG&E's compliance with air quality requirements and conditions.

Date: July 31, 2009

Respectfully Submitted,

/s/ Deborah Behles

Deborah Behles

Attorney for Complainant

Contra Costa Branch of the Association of
Community Organizations for Reform Now

/s/ Rory Cox

Representative of LCEA

/s/ Robert Simpson

Representative of CARE

DECLARATION OF SERVICE

I, Lucas Williams, declare that on July 31, 2009, I served and filed copies of the attached AMENDED JOINT PREHEARING STATEMENT. The document has been sent to 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:

For service on all other parties: sent electronically to all email addresses on the Proof of Service List;

AND

For filing with the Energy Commission: sent one electronic copy to the address below:

docket@energy.state.ca.us

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

/s/ Lucas Williams



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
GATEWAY GENERATING STATION

Docket No. 00-AFC-1C
PROOF OF SERVICE
(Revised 7/28/09)

PROJECT OWNER

Steve Royal
Pacific Gas & Electric Company
Gateway Generating Station
3225 Wilbur Avenue
Antioch, CA 94509
sgre@pge.com

PROJECT OWNER'S COUNSEL

Scott Galati
Galati-Blek LLP
455 Capitol Mall, Ste. 350
Sacramento, CA 95814
sgalatti@gb-llp.com

INTERESTED AGENCIES

Alexander G. Crockett, Esq.
Assistant Counsel
Bay Area Air Quality Management
District
939 Ellis Street
San Francisco, CA 94109
scrockett@baaqmd.gov

California ISO
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
www.ggu.edu/law/eljc

ACORN C/O
John Adams
2401 Stanwell Drive
Unit 320
Concord, CA 94520
caacornbpro@acorn.org

Rory Cox
Local Clean Energy Alliance
436 14th Street
Oakland, CA 94612
rcox@pacificenvironment.org

CARE
c/o Bob Sarvey and Rob Simpson
27216 Grandview Avenue
Hayward CA 94542
SarveyBob@aol.com
rob@redwoodrob.com

ENERGY COMMISSION

Jeffrey D. Byron
Commissioner and Presiding Member
Siting Committee
jbyron@energy.state.ca.us

Karen Douglas
Chair and Associate Member
Siting Committee
kldougla@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Ron Yasney
Compliance Project Manager
ryasney@energy.state.ca.us

Kevin W. Bell
Staff Counsel
kbell@energy.state.ca.us

Elena Miller
Public Adviser's Office
publicadviser@energy.state.ca.us