

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

CALifornians for Renewable Energy, Inc.,  
(CARE)

Complainant,

v.

Pacific Gas and Electric Company (PG&E),  
And California Energy Commission (CEC)  
Respondents.

Docket No. EL09-73-000

<b>DOCKET</b>	
<b>00-AFC-1C</b>	
DATE	<u>OCT 13 2009</u>
RECD	<u>OCT 13 2009</u>

**ANSWER OF CALIFORNIANS FOR RENEWABLE ENERGY  
TO MOTIONS TO DISMISS OF PG&E AND CEC**

Pursuant to the Federal Power Act (“FPA”) and Rule 213, 16 C.F.R. 385.213 (2008) of the Rules of Practice and Procedure (“Rules”) of the Federal Energy Regulatory Commission (“FERC”), CALifornians for Renewable Energy, Inc. (“CARE”)<sup>1</sup> hereby answers the Motions to Dismiss Complaint of Pacific Gas and Electric Company (“PG&E”) for operating its Gateway Generating Station (“Gateway Facility”) without permits that limit emissions regulated by the Clean Air Act (“CAA”) and the California Energy Commission (“CEC”) for its August 26, 2009 actions to approve PG&E’s amended permit allowing continued operations of the Gateway project under CEC Docket Number 00-AFC-1C, Gateway Generating Station (“GG”), without a PSD permit.

**Answer of CARE**

PG&E’s Motion to Dismiss is improper because it presumes that FERC lacks review authority over “a non-jurisdictional Clean Air Act permitting matter regarding PG&E’s Gateway Generating Station”. The statutory authority cited in CARE’s Complaint specifies FERC’s authority where it states “FPA section 31(a) grants the Commission the authority to monitor and investigate compliance with licenses, permits”.

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<sup>1</sup> CARE in behalf of itself, and members Robert Sarvey, and Rob Simpson individually.

CEC's Motion to Dismiss is improper because it presumes the term "any person" does not apply to the State of California, or State agencies of the State of California. Additionally CEC provides no statutory authority under the state's Warren Alquist Act to authorize the Gateway Generating Station's continued operation without compliance with all Laws Ordinances Regulations and Standards (LORS) first; including the provisions of the Act for a federal PSD permit, which is a federal LORS.

The statutory authority cited criminal penalties "for any person who knowingly violates any SIP or permit requirement more than 30 days after the date of issuance of a FNOV, Section 113 (c) of the Act provides for criminal penalties, imprisonment, or both. 42 U.S.C. § 7413 (c) (3)." Since the FNOV was issued August 13, 2009, and the consent decree was filed in the Federal District Court on September 24, 2009, both PG&E and CEC should be cited for operating the Gateway Generating Station in violation of the FNOV from September 12 to September 24, 2009 when the consent decree was filed, at a minimum.

Since to our knowledge US EPA Region IX has been aware of this matter since Mr. Simpson filed his Appeal to the US EPA Environmental Appeals Board<sup>2</sup>, PG&E has continued the Gateway project operations un-abated purportedly with the CEC's approval we with the utmost of caution notified the CEC on September 3, 2009 of 60-day Notice of Intent to bring Clean Air Act Citizens Suit Pursuant to 42 USC § 7604<sup>3</sup> for the CEC's approval of PG&E's amendment allowing continued operations of the Gateway project under CEC Docket Number 00-AFC-1C, Gateway Generating Station, without a PSD permit. Therefore this complaint

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<sup>2</sup> See [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Dockets/PSD+09-02](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Dockets/PSD+09-02)

<sup>3</sup> 42 USC § 7604. Citizen suits

included CEC's August 26, 2009 actions to approve PG&E's amended permit to the degree CEC includes "any person" under 42 U.S.C. § 7413 (c) (3).

The Clean Air Act authorizes under this provision CARE to commence a civil action against CEC and this constituted 60 days notice to do so and additionally served as a complaint under the CAA against the CEC and as such a copy of this complaint was sent by US Mail to the US EPA Administrator Lisa Jackson, and Mr. Rios at US EPA Region IX by e-mail.

This in no way implies we believe this consent decree to be lawful since we provide a 60-day to US EPA to bring a citizens suit under 42 USC § 7604 prior to the consent decree being filed, and the Notice notified US EPA that CARE would bring legal action if US EPA entered in to an agreement with PG&E that allowed the plant's continued operation without a PSD.

#### **Conclusion**

For the foregoing reasons, CARE respectfully requests that FERC Deny the Motions to Dismiss Complaint of PG&E and CEC and grant the relief requested herein.

Respectfully submitted,



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### Verification

I am an officer of the complaining corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on October 13<sup>th</sup> 2009, at Soquel, California

A handwritten signature in cursive script that reads "Michael E. Boyd".

Michael E. Boyd – President, CARE  
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