

DOCKET

00-AFC-1C

DATE OCT 28 2009

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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)
)
GATEWAY GENERATING STATION) Docket No. 00-AFC-1C
)
) CORRECTION OF STAFF BRIEF
) REGARDING APPLICABLE
) CONDITIONS OF CERTIFICATION
) IN GATEWAY COMPLAINT
) PROCEEDING
_____)

On June 5, 2009, the Association of Community Organizations for Reform Now (ACORN) filed a document entitled a "Complaint" regarding the operational status and efficiency of the Gateway Generating Station (Gateway), which is owned and operated by Pacific Gas and Electric (PG&E). On June 29, Rory Cox of the Local Clean Energy Alliance filed a document entitled "Complaint" in the same matter. On July 17, a document was submitted by Californians for Renewable Energy (CARE), Bob Sarvey, Rob Simpson, and Mike Boyd entitled "Complaint Request for Official Notice Comments on Staff Report Comments on Amendment Petition to Intervene." (The three filings are hereafter referred to as the "Complaints.")

Staff reviewed the "Complaints" for compliance with the requirements of Title 20, California Code of Regulations section 1237. Staff noted numerous legal and factual insufficiencies in the documents filed by the complainants, and recommended that the Complaints be dismissed pursuant to Section 1237(e)(1). Staff further recommended that any outstanding issue that was raised by the Complaints be consolidated into the then pending Amendment proceeding. Staff's recommendations were denied, and the parties were ordered to appear at a hearing on the Complaints on August 5, 2009.

On August 5, the hearing on the Complaints was held. At the end of the hearing, as requested by the hearing officer, the parties had produced a list that attempted to identify with more specificity ACORN's allegations. Many of these issues pertained to a separate permit issued by U.S. EPA -the federal PSD permit - and are therefore not within the purview of this compliance proceeding. Others, while identifying specific Energy Commission license conditions, were identified in an imprecise manner that left it unclear as to what or how PG&E had failed to comply with those identified conditions.

On September 10, complainants filed a Joint Opening Brief that set forth a series of allegations arguing Gateway's non-compliance with the Energy Commission's Certification. For the first time, the complainants identified for the Committee in writing numerous specific conditions of certification that they alleged had been violated. Staff analyzed those allegations, and on October 1 filed its brief in response. Staff's brief divided the specific conditions of certification that had been

identified by complainants into two groups: those that were applicable to these proceedings, and those that were not.

In the section entitled "Applicable Conditions," staff mistakenly included conditions AQ-SC5 (regarding the change to the dewpoint heater), and AQ-SC6 through AQ-SC11 (regarding the change to the use of a diesel fire pump). None of these conditions were in effect at the time that the alleged violations occurred as set forth by the complainants. These conditions were only recently adopted by the Energy Commission at the August 26 business meeting. Because the Complaints pre-date the Energy Commission's adoption of AQ-SC5 and AQ-SC6 through AQ-SC11, these conditions are outside the timeframe of the alleged violations and, therefore, should be struck from further consideration in this complaint proceeding.

Nevertheless, PG&E failed to obtain prior approval of the inclusion of the diesel fire pump for use at the project site. The project as built thus deviated from the project description, which was for an electric fire pump. Public Resources Code Section 25500 provides that "the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility." Title 20, California Code of Regulations Section 1769(a)(1) requires an applicant, after certification of the project, to "file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements." PG&E failed to file a Petition to Amend prior to the installation the diesel fire pump. To reiterate staff's reply brief, the committee should therefore find that PG&E's installation of the diesel fire pump was unauthorized until the Energy Commission's approval on August 26, 2009.

CONCLUSION

The original "Complaints" filed by the parties were legally and factually insufficient under Title 20, California Code of Regulations, section 1237. It was not until after the hearing on August 5 that any specific conditions of certification were identified as required pursuant to section 1237(a)(4), which requires "a statement indicating the statute, regulation, order, decision or condition of certification upon which the complaint is based." Even now, a review of the brief filed by the complainants demonstrates a lack of explanation as to how the majority of those specific conditions of certification have been violated. Except for the matter of the project owner's failure to file a petition to amend the project prior to the installation of the diesel fire pump, the complaints should be dismissed for insufficiency and lack of merit.

Date: October 28, 2009

Respectfully Submitted,

/s/ Kevin W. Bell
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Senior Staff Counsel



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**IN THE MATTER OF THE COMPLAINT AGAINST
GATEWAY GENERATING STATION**

**Docket No. 00-AFC-1C
PROOF OF SERVICE
(Revised 10/23/09)**

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DECLARATION OF SERVICE

I, Lynn Tien-Tran, declare that on October 28, 2009, I served and filed copies of the attached Correction of Staff Brief Regarding Applicable Conditions of Certification in Gateway Complaint Proceeding. 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:

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

by personal delivery or by depositing in the United States mail at Sacramento, CA 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:

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

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

/s/ Lynn Tien-Tran