

**DOCKET**

**09-AFC-4**

DATE Apr 27 2011

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April 27, 2011

California Energy Commission  
Docket Unit  
1516 Ninth Street  
Sacramento, CA 95814-5512

Subject: **CCGS LLC'S COMMENTS ON THE PRESIDING MEMBER'S  
PROPOSED DECISION AND STAFF'S ERRATA  
OAKLEY GENERATING STATION  
DOCKET NO. (09-AFC-4)**

Enclosed for filing with the California Energy Commission is the original of, **CCGS  
LLC'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION AND  
STAFF'S ERRATA**, for the Oakley Generating Station (09-AFC-4).

Sincerely,



Marie Mills

Scott A. Galati  
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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application for Certification for the  
**OAKLEY GENERATING STATION**

**DOCKET NO: 09-AFC-4**

**CCGS LLC'S COMMENTS ON THE  
PRESIDING MEMBER'S PROPOSED  
DECISION AND STAFF'S ERRATA**

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**INTRODUCTION**

Contra Costa Generating Station LLC (CCGS LLC), a wholly owned subsidiary of Radback Energy Inc., hereby files its Comments on the Presiding Member's Proposed Decision (PMPD) issued on April 11, 2011 and Staff's Errata to its Testimony filed on April 1, 2011. CCGS LLC thanks the Committee for publishing the PMPD in time to support a full decision by the Commission at its May 18, 2011 Business Meeting.

**STAFF ERRATA**

CCGS LLC has reviewed Staff's Errata to its Testimony and agrees with the minor changes to Conditions of Certification as proposed except for the modification to the Verification to Condition of Certification **AQ-17**. Staff's modification changes the noticing for combustion tuning requirement from 7 days to 24 hours. This change is inconsistent with the condition which requires noticing 7 days prior to combustion tuning unless exigent circumstances are demonstrated in which case the noticing can be done 24 hours prior to combustion tuning. Therefore the modification should be rejected.

## PMPD

CCGS LLC offers the following comments on the PMPD and requests modifications be made accordingly.

### Project Description

#### **Page 1, Facility Address**

The facility address has been recently assigned and therefore “6000” should be modified to “5950” Bridgehead Road.

#### **Page 6, Last Bullet**

The last bullet should be modified as follows to more accurately reflect the sewer connection.

- Connection to an existing ~~onsite~~ sanitary sewer pipeline **located in Main Street via a new 0.44-mile force-main in Bridgehead Road.** (Exs. 1, pp. 2-1, 2-13 - 2-25; 300, pp. 3-2 - 3-4.)

#### **Page 13, Second Paragraph**

The paragraph reflects the recommendations of the FSA which were subsequently modified by the Joint Stipulation (Exhibit 57) as it relates to Condition of Certification **SOIL&WATER-4**. CCGS LLC recommends the following modification.

Following commencement of project operation, **if the conditions outlined in Condition of Certification SOIL&WATER-4 are met, the project owner will file a Petition For Amendment with the Commission to** ~~and within 18 months of compliance with requirements set forth in Condition of Certification~~ **SOIL&WATER-4, the project shall use recycled water from Ironhouse Sanitary District or another entity capable of providing recycled water, as the project’s primary water supply for project operations including all process and landscape irrigation.**

#### **Page 13, Third Paragraph**

The following modification is necessary to accurately describe the sewer connection.

The wastewater, consisting of process and sanitary wastewater, will discharge to the ISD sewer system by way of an ~~existing ISD~~ **new** sewer line **to be** located in Bridgehead Road.

## **Biological Resources**

### ***Condition of Certification BIO-20***

CCGS LLC does not agree with the Committee's revisions to Condition of Certification **BIO-20**. It is inconsistent with the identical issue and mitigation requirement contained in this Commission's Final Decision issued just last year in the Marsh Landing Proceeding.<sup>1</sup> The Committee has included a reporting requirement with which CCGS LLC can easily comply by requiring the third party contractor (California Wildlife Association or other party approved by United States Fish and Wildlife Service (USFWS)). But the Committee then requires the CCGS LLC to undertake noxious weed mitigation activities itself on land owned and managed by the USFWS. CCGS LLC has no way to access the Antioch Dunes NWR and perform such activities as any and all activities would require approval by the USFWS. The Committee's concern that the funding would not accomplish the objectives outlined in the Condition is not warranted. The third party contractor has to be approved by the USFWS. If such third party contractor absconds with the funds or does not apply them to noxious weed abatement, the USFWS can easily "dis-approve" such third party contractor and select another. The California Environmental Quality Act (CEQA) allows a lead agency to rely on the fact that another agency with exclusive jurisdiction will do its job. There is no evidence in the record that would suggest that the USFWS is not committed to mitigating weed growth at the Antioch Dunes NWR; in fact all of the evidence is to the contrary.

CCGS LLC respectfully requests that the Committee delete the requirement contained in **BIO-20** requiring CCGS LLC to perform the activities itself and replace it with a requirement that if the third party approved by USFWS is not performing, at USFWS's request, CCGS LLC contract with a new third party.

**BIO-20** The project owner shall provide an annual payment to California Wildlife Foundation or other third-party approved by USFWS to assist in noxious weed management and its effects at the Antioch Dunes National Wildlife Refuge. Management activities funded may include but are not limited to: captive breeding and release of Lange's metalmark butterfly; propagation and transplantation of naked-stem buckwheat, Contra Costa wallflower, and Antioch Dunes evening primrose; noxious weed eradication using grazing animals, hand tools, and/or appropriate mechanical equipment. The first annual payment shall be no less than \$5,000.78.

Each subsequent annual payment shall be adjusted for inflation in accordance with the Employment Cost Index – West or its successor, as reported by the U.S. Department of Labor's Bureau of Labor Statistics. Payment shall be made annually for the duration of project operation.

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<sup>1</sup> Marsh Landing Generating Station (08-AFC-03) Final Decision, page 77, Condition of Certification BIO-8

The project owner also shall request an annual report from the California Wildlife Foundation or other third-party approved by USFWS documenting how each annual payment required hereunder was used and applied to assist in noxious weed management at the Antioch Dunes National Wildlife Refuge. The project owner shall provide copies of such reports to the CPM within 30 days after receipt. If the CPM determines that the **USFWS has determined that the** funds are not being applied as specified by this condition, then the project owner ~~or an agent of the owner~~ shall **contract with another third party approved by the USFWS to** ~~directly implement noxious weed management until the CPM receives verifiable proof that the California Wildlife Foundation or other approved agency is using the funds as required.~~

**Verification:** No later than 30 days following the start of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that the first-annual payment was made to California Wildlife Foundation or other third-party approved by USFWS in accordance with this Condition of Certification. The project owner shall provide evidence that it has specified that its annual payment to California Wildlife Foundation or other third-party approved by USFWS can be used only to assist in noxious weed management and remediation of its effects (e.g., activities to support continued survival of Lange's metalmark butterfly, Contra Costa wallflower, and Antioch Dunes evening primrose) at the Antioch Dunes National Wildlife Refuge **as directed by USFWS.**

Thereafter, within 30 days after each anniversary date of the commencement of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that payment has been made to the California Wildlife Foundation or other third-party approved by USFWS in accordance with this Condition of Certification. This verification shall be provided annually for the operating life of the project.

### **Condition of Certification BIO-21**

CCGS LLC requests a slight modification to the Verification timeline for this condition. This condition requires the project owner to pay the mitigation fees to the East Contra County Habitat Conservancy. The payment is required 30 days prior to pre-construction site mobilization. CCGS LLC understands that the payment must be made prior to pre-construction site mobilization but request the timeline be revised to "five days" in order for the payment to be rolled into the project financing. There is no need for the CPM to need 30 days to verify that in fact payment has been made. Proof of payment is easily verified by examining a receipt. Therefore, since the CPM can verify payment quickly there is no need for the payment to be made prior to the close of project financing.

### ***Condition of Certification BIO-23***

CCGS LLC also requests the Committee delete Condition of Certification **BIO-23** which was added to the PMPD. The evidence in the record conclusively shows that the OGS is not required to obtain any USFWS permit or amendment to satisfy LORS. This is consistent with the Commission Final Decision in the Marsh Landing Proceedings.

### **Soil & Water Resources**

CCGS LLC requests the Committee delete Conditions of Certification **SOIL&WATER-8** and **-9** in accordance with the Joint Stipulation Exhibit 62 as they are superseded by the revised Condition of Certification **SOIL&WATER-4**.

### **Hazardous Materials**

The Committee included new Condition of Certification **HAZ-10** even though it acknowledges it does not have permitting jurisdiction beyond the first point of interconnection and the evidence conclusively shows that the OGS will not impact Lines 303 or Lines 400 of the PG&E gas transmission system. This condition imposes a burden on CCGS LLC to monitor and report to the Commission changes in laws that do not necessarily apply to the OGS or its gas pipeline. The existing Facility Design Conditions of Certification require the Chief Building Official (CBO) a delegate of the Commission to approve the plans for and inspect the construction of the OGS gas pipeline. If there are any new laws applicable to the OGS pipeline, compliance will be ensured by this existing process. There simply is no need for this additional condition to ensure that the OGS natural gas pipeline is designed and constructed in accordance with the laws applicable at the time of the design and construction of the pipeline. While it is possible that the law could be changed in a way that requires the OGS pipeline to be modified, it is extremely unlikely that the current proceedings would affect the standards for new pipelines considering that these proceedings are investigating aged gas transmission pipelines that were not constructed according to the now-existing standards. If the Committee disagrees and wishes to keep this unnecessary condition, it should modify it as follows to ensure that CCGS LLC is not required to monitor and report changes in pipeline regulation that are not applicable to its own pipeline.

**HAZ-10** The project owner shall notify the CPM in writing of any new safety and/or reliability legislation, rules, regulations, or standards adopted for natural gas ~~transmission and~~ distribution pipelines by the CPUC, National Transportation Safety Board, or U.S. Department of Transportation or any other agency with jurisdiction during OGS pipeline construction or during OGS operation ***that are applicable to the OGS Project natural gas pipeline***. The project owner shall notify the Compliance Program Manager (CPM) of the regulations and thereafter, by the time prescribed by the

CPM, shall consult with PG&E and the CPM regarding the project's feasible compliance with and implementation of the measures if they are applicable to OGS Project **natural gas** pipelines.

**Verification:** Within 15 days of the adoption of any new safety and/or reliability legislation, rules, regulations, or standards for natural gas ~~transmission and distribution pipelines~~ **that are applicable to the OGS natural gas pipeline**, the project owner shall provide the CPM with a written copy of the rule.

### **Noise and Vibration**

To avoid any confusion, CCGS LLC requests that Noise Figure 1 from the FSA be included in the Final Decision as it shows the locations of M1 and M2 which are referenced in the Conditions of Certification.

### **Visual Resources**

Condition of Certification **VIS-1** has a list of requirements. There is no text associated with Item "f" and so the item should be deleted.

### **Worker Safety**

The verification of Condition of Certification **WORKER SAFETY-5** requires that the automatic external defibrillator (AED) be on the project site 30 days in advance of construction. Installing the AED before mobilization is allowed would not in this case be feasible, however, as the AED would be installed in or adjacent to construction support trailers. CCGS LLC therefore suggests the following modification.

**Verification:** At least 30 days prior to the start of construction, the project owner shall submit to the CPM proof that ***the owner has acquired or arranged delivery of a*** portable automatic external defibrillator (AED) ***for use*** exists on site ***during demolition, construction, and commissioning***, and a copy of the training and maintenance program for review and approval.

## CONCLUSION

CCGS LLC believes the PMPD accurately captures the evidence in the record and looks forward to a Final Commission Decision on May 18, 2011.

Dated: April 27, 2011

A handwritten signature in blue ink, appearing to read "Scott A. Galati", is positioned above a horizontal line.

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Scott A. Galati  
Counsel to Contra Costa Generating Station, LLC





**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**

**APPLICATION FOR CERTIFICATION  
FOR THE *OAKLEY GENERATING STATION***

**Docket No. 09-AFC-4  
PROOF OF SERVICE  
(Revised 4/5/2011)**

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\*indicates change

DECLARATION OF SERVICE

I, Marie Mills, declare that on April 27, 2011, I served and filed copies of the attached **CCGS LLC'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION AND STAFF'S ERRATA**, dated April 27, 2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/contracosta/index.html>]. The documents have 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;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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**

Attn: Docket No. 09-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



\_\_\_\_\_  
Marie Mills