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DOCKET

09-AFC-4

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

Subject: **CCGS, LLC'S INITIAL COMMENTS ON THE PRELIMINARY STAFF
ASSESSMENT
OAKLEY GENERATING STATION
DOCKET NO. (09-AFC-4)**

Enclosed for filing with the California Energy Commission is the original of **CCGS,
LLC'S INITIAL COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT**, for the
Oakley Generating Station (09-AFC-4).

Sincerely,

A handwritten signature in blue ink that reads "Marie Mills".

Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

DOCKET NO. 09-AFC-4

Application for Certification for the
OAKLEY GENERATING STATION

**CCGS, LLC'S INITIAL COMMENTS ON
THE PRELIMINARY STAFF
ASSESSMENT**

Contra Costa Generating Station LLC (CCGS LLC) hereby submits its Initial Comments on the Preliminary Staff Assessment (PSA) published on December 20, 2010 (Part A) and on January 14, 2011 (Part B) for the Oakley Generating Station (OGS). In preparation for the PSA Workshop on February 2, 2011 CCGS LLC offers its initial comments ahead of the Workshop so that the parties can be the more productive in resolving issues. CCGS LLC may file final comments on the PSA to incorporate the results of discussions held at the PSA Workshop.

Suggested additions are shown in ***bold italics*** and suggested deletions are shown in ~~strikethrough~~.

For clerical correction and ease to Staff, we are suggesting the following global corrections to descriptions of the various components of the project that are repeated throughout the PSA.

- The PSA incorrectly refers to Contra Costa County Generating Station, LLC (CCCGS, LLC) when describing the Applicant. The word "County " should be deleted and the abbreviation modified to CCGS LLC
- The PSA should reflect that the OGS is removing only one of the two existing 60 kV transmission lines from Dupont to Contra Costa. The PSA should also reflect that the work on the 60 kV transmission line will take place within an existing PG&E transmission corridor.
- The natural gas pipeline will be entirely within the OGS site or within the existing PG&E Antioch terminal therefore distance is 300 feet if the interconnection is to Line 303 and 410 feet if the interconnection is to Line 400.

EXECUTIVE SUMMARY

Page 1-2, paragraph 5, last line

The Atchison, Topeka, and Santa Fe (ATSF) merged with the Burlington Northern to form the Burlington Northern Santa Fe (BNSF) in 1996 and so the latter is the correct name of the railroad's current owner and operator, not the ATSF, as indicated in the AFC. Therefore the sentence should be modified as follows.

“...and to the south by the ***Burlington Northern Santa Fe (BNSF)***
~~Atchison, Topeka and Santa Fe~~ railroad.”

Page 1-8, Air Quality

CCGS, LLC has entered into agreements for emission reductions, proof of control and certificate numbers will be provided under separate cover. The Final Staff Assessment (FSA) should reflect this update.

PROJECT DESCRIPTION

Page 3-1, first paragraph, last line

On January 27, 2011 CCGS LLC docketed proof that the City of Oakley approved the lot line adjustment for the OGS parcel.

Page 3-1, paragraph 3, last line

See previous comment relating to the name of the railroad.

Page 3-1, paragraph 4, first line

The OGS will be more than a baseload plant and this section should be modified to reflect that the OGS will employ General Electric's new state-of-the-art Rapid Response combined-cycle technology with far lower emissions than many of those projects that have been permitted in recent years. The Rapid Response technology is also highly desirable for renewables integration.

Page 3-1, paragraph 4, lines 4 through 8

The PSA should be modified to reflect the CPUC approval of the Purchase-Sale Agreement between PG&E and CCGS, LLC.

PG&E has identified a near-term need for new power facilities that can be online by or before 2015 and that can support easily dispatchable and flexible system operation. ~~PG&E has recently issued a Request for Offers (RFO) to obtain these energy resources from qualified bidders and OGS is participating in this RFO.~~ ***CCGS LLC has entered into a Purchase-Sale Agreement with PG&E for the OGS to meet this need and the***

Page 3-5, line 1

CCGS LLC recommends the following modification to be consistent with the AFC analysis

“...is estimated at \$3.7 – ~~\$4.01~~ million.”

AIR QUALITY

Page 4.1-48, Condition of Certification AQ-SC7

AQ-SC7 The project owner shall provide emission reductions in the form of ~~offsets or~~ emission reduction credits (ERCs) in the quantities ***required by and satisfying the requirements of the Bay Area Air Quality Management District (BAAQMD) to offset*** ~~of at least 98.78 tons per year (tpy) of NO_x, and 29.4960 tpy of VOC, 63.88 tpy PM₁₀/PM_{2.5}, and 12.55 tpy SO_x emissions.~~ The project owner shall demonstrate that the reductions are provided in the form ***and amounts*** required by the ~~Bay Area Air Quality Management District~~ ***BAAQMD regulations.***

The project owner shall surrender the ERCs from among Bay Area Air Quality Management District Certificate Numbers to be shown in the Final Determination of Compliance, or a modified list, as allowed by this condition. If additional ERCs are submitted, the project owner shall submit a modified list including the additional ERCs to the CPM. The project owner shall request CPM approval for any substitutions, modifications, or additions to the listed credits.

The CPM, in consultation with the District, may approve any such change to the ERC list provided that the project remains in compliance with all applicable laws, ordinances, regulations, and standards, and that the requested change(s) will not cause the project to result in a significant environmental impact. The District must also confirm that each requested change is consistent with applicable federal and state laws and regulations.

The owner shall mitigate 63.78 tpy of PM₁₀/PM_{2.5} and 12.55 tpy of SO_x emissions by using either of the following methods or a combination of both methods:

- a. The project owner may provide ERC's for either or both pollutants satisfying the requirements of the BAAQMD. Such ERC's shall be from emission reductions occurring within the BAAQMD Air Basin and shall be applied at a 1:1 offset ratio.***
- b. The project owner may fund the Carl Moyer Program at a funding level of \$32,750 per ton of PM₁₀/PM_{2.5} and SO_x, which includes a BAAQMD administration fee of 20 percent. For the purpose of this project, the Carl Moyer Program shall include the following project-specific conditions:***

1. ***Emission reduction projects funded by the Carl Moyer Program shall be weighted for evaluation and selection, within a funding guideline value of \$19,200/ton of reduction, based on the proximity of the emission reduction project to the project site and the relative health benefit to the local community surrounding the project site.***
2. ***Funding shall initially be made available to all qualified projects located in Contra Costa County within a radius of 10 miles of the project site. After twelve (12) months from the start date, the program will expand to include all qualified projects located in Contra Costa County, Solano County, San Joaquin County, and Sacramento County within a radius of 30 miles of the project site.***
3. ***At all times, any identified qualifying Carl Moyer Project located within the City of Oakley will be selected over those projects not located within the City of Oakley.***

The project owner shall provide funding to the BAAQMD for the Carl Moyer Program administrative fees within 90 days of the issuance of the Authority to Construct. The project owner shall provide the remaining funding for the Carl Moyer Program to the BAAQMD on a quarterly basis as necessary to fund the qualifying emission reduction projects selected during that quarter. The project owner may, at any time up to 30 days prior to first turbine fire, surrender ERC's as defined in item (a) above to fulfill a portion or all of this mitigation obligation.

Verification: The project owner shall submit to the CPM records showing that the project's ***NOx and POC*** offset requirements have been met prior to initiating construction. If the CPM approves a substitution or modification to the list of ERCs, the CPM shall file a statement of the approval with the project owner and the Energy Commission docket. The CPM shall maintain an updated list of approved ERCs for the project.

The project owner shall submit to the CPM confirmation that the appropriate Carl Moyer Project administrative funding has been provided within 90 days of the issuance of the ATC. The project owner shall provide emission reduction project selection information to the CPM for review and comment at least 15 days prior to committing funds to each selected emission reduction project. The project owner shall submit to the CPM confirmation that the appropriate Carl Moyer Project funding, other emission reduction program funding, and or ERC's have been provided at least 30 days prior to turbine first fire.

Page 4.1-49, District Conditions of Certification

The Final Determination of Compliance (FDOC) was issued on January 21, 2011 and therefore the FSA should include those conditions verbatim.

BIOLOGICAL RESOURCES

Page 4.2-1, paragraph 1, line 1

The acreage of permanent disturbance has been recalculated at 16.7 acres.

Page 4.2-1, paragraph 1, line 5

Same comment under Executive Summary regarding the BNSF railroad.

Page 4.2-1, paragraph 2, line 5

The acreage of permanent disturbance has been recalculated at 16.7 acres (instead of 17.1 acres). Please see the revised draft Planning Study Report (PSR) docketed November 22, 2010 (Docket #59048).

Page 4.2-1, paragraph 2, line 11

The development fee has been recalculated at \$227,408 (instead of \$230,081). Please see the revised draft Planning Study Report (PSR) docketed November 22, 2010 (Docket #59048).

Page 4.2-7, paragraph 2, line 1

Same comment under Executive Summary regarding the BNSF Railroad.

Page 4.2-7, First Paragraph, Line 5

The reference to 20.2 acres should be changed to 20.3 acres

Page 4.2-7, First Paragraph, Line 6

The reference to 13.1 acres should be changed to 13.2 acres

Page 4.2-8, First Paragraph (Special Management Areas), Line 5

The FSA should reflect that 12 of the 18 transmission towers are within the City of Antioch instead of 13.

Page 4.2-9, Second Paragraph (Project Site, Construction Laydown Areas...), Second to last sentence

The PSA's statement that "Wetland E is excavated below the water table and holds water year round" is inaccurate. Wetland E was dry during the fall months of 2010 and may not be excavated below the water table.

Page 4.2-9, Third Paragraph (Project Site, Construction Laydown Areas...), First sentence

The reference to 20.2 acres should be changed to 20.3 acres and 13.1 acres should be changed to 13.2 acres

Page 4.2-10, Second Paragraph, Sentence 6

Same comment that 12 of the 18 transmission towers are within the City of Antioch instead of 13.

Page 4.2-28, Table 3, Temporary and Permanent Impacts to Vegetation

The values in this table have been slightly modified. Please see the revised draft Planning Study Report (PSR) docketed November 22, 2010 (Docket #59048).

Page 4.2-30, Construction Impacts to Special-Status Plant Species, Third Sentence:

This sentence refers to a follow-up survey that has already been completed and has been included in the most recent version of the PSR submitted to the ECCCHC (November 2010).

Page 4.2-32, paragraph 3, sentence 2

This sentence incorrectly states that construction work would be limited to the daytime hours of 7:30 a.m. to 7:00 p.m. on weekdays and 9:00 a.m. to 7:00 p.m. on weekends and references Condition of Certification **NOISE-8**. Please note that the City's noise ordinance and Condition of Certification **NOISE-8** does not prohibit all construction outside of the daytime hours of 7:30 am to 7:00 pm, but instead restricts 'noisy' construction' outside of these hours.

Page 4.2-34, Avian Collision and Electrocution, Sentence 5

This sentence should be modified as follows:

Three ~~One~~-additional 95-foot tall tubular steel poles...

Page 4.2-51, paragraph 3, line 6

Same comment regarding the BNSF Railroad.

Page 4.2-59, Condition BIO-7, #2

This condition requires installation of bird flight diverters and CCGS requests the requirement should only apply to that portion of the transmission line that crosses bird migration corridors rather than the entire transmission line. And therefore suggests the following modification.

Bird flight diverters shall also be installed ***along portions of the transmission line within bird migration corridors*** to reduce the likelihood of avian collisions with the transmission line. Bird flight diverters such as the Swan-Flight Diverter (Tyco Electronics) shall be installed."

Page 4.2-71, Condition of Certification BIO-17, Verification, first sentence:

The following typographical error has been corrected.

All avoidance and minimization measures related to ~~western pond turtle~~ **red-legged frog** shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported in the monthly compliance reports by the Designated Biologist.

Page 4.2-72, Condition of Certification BIO-18

Condition of Certification **BIO-18** and Condition of Certification **SOIL & WATER-6** are intended to create a plan to manage Wetland E which currently exists near the location of the OGS. Wetland E is subject to a conservation easement with the California Department of Fish and Game (CDFG). As described in the AFC and subsequent submittals, OGS will divert clean stormwater to Wetland E in a manner such that Wetland E will function more like a stable wetland and therefore be enhanced. This meets the objectives outlined in the conservation easement under which Wetland E is currently managed. The stated purpose of the conservation easement is “to retain forever in a natural condition and to prevent any use of the property that will significantly impair or interfere with the conservation values of the property.”

The OGS should not be held to a requirement to cause no changes to Wetland E but should instead be allowed to cause changes that will enhance the biological functions and values to meet the objectives of the conservation easement. Therefore, CCGS request that Condition of Certification **SOIL & WATER-6** be deleted and that the following modifications to Condition of Certification **BIO-18** be made.

Wetland E Post-construction Management Plan

BIO-18 The project owner shall develop and implement a Wetland E ~~Postconstruction~~ **Monitoring and Adaptive** Management Plan (Plan). The plan must include monitoring methods, planting design, responsible parties, long-term management, and maintenance requirements, contingency plan, and details on the funding source. The plan must be developed by the project owner in coordination with the CPM and CDFG, **consistent with purposes of the existing wetland easement on the property**. The Plan will include all proposed habitat improvements and enhancement goals, objectives and performance standards developed by the applicant in coordination with CDFG (CH2MHILL 2010k). Detailed baseline maps which show the current species composition or cover of wetland vegetation as well as current extent of noxious weed cover as determined by standard vegetation sampling methods will be included in the Plan. Sampling methods would also be fully described in the Plan.

For the CPM and CDFG to deem the enhancements successful:

1. The site will have 75 percent survivorship of planted coast live oak by year 5.
2. Surviving trees shall show leader growth for 2 out of the last 3 years of monitoring.
3. The site will have 75 percent survivorship of planted upland dune shrubs by year 5.

4. The native upland herbaceous species shall be established without reseeding for 2 out of the last 3 years of monitoring.
5. The site will not require watering or maintenance other than weed control after year 3.
6. The site shall not contain more than 5 percent invasive exotics (Cal-IPC rating High) after 5 years.

The project owner shall maintain wildlife habitat value and wildlife use of Wetland E.

E. For the CPM and CDFG to deem this successful:

1. ~~There shall be no significant change in the duration or extent of wetland ponding compared to pre-project conditions.~~ ***There shall be no significant decrease in the biological resources functions and values of Wetland E.***
2. There shall be no significant change in species composition or cover of wetland vegetation compared to pre-project conditions based upon standard vegetation sampling techniques ***unless the wetland vegetation changes are deemed beneficial and approved by the CPM and CDFG.***
3. Annual monitoring reports will be submitted to the CPM and CDFG for review and approvals for years 1, 2, 3, 4, and 5, with the first year beginning one year after the habitat improvements are implemented.

Habitat improvements are to be implemented concurrently with initiation of the OGS project. The plan should describe the monitoring methods proposed for:

1. Long-term management and maintenance requirements over the life of the project.
2. Contingency plans to address ***adverse*** changes in water delivery or water quality impacts to Mitigation Wetland E.
3. Identifying the responsible parties and funding source(s) for the implementation of the Monitoring and Adaptive Management Plan for the life of the project.

Verification: At least 60 days prior to the start of any construction-related ground disturbance the project owner shall submit to the CPM and CDFG a draft Wetland E ~~Post-construction~~ ***Monitoring and Adaptive*** Management Plan. At least 30 days prior to the start of any construction-related ground disturbance, the project owner shall provide the CPM with the final version of the Wetland E ~~Post-construction~~ ***Monitoring and Adaptive*** Management Plan that has been reviewed and approved by the CPM, in consultation with CDFG. All modifications to the Wetland E ~~Post-construction~~ ***Monitoring and Adaptive*** Management Plan shall be made only after approval from the CPM.

Once operational, the project owner shall provide in the annual compliance report information on the results of monitoring and maintenance activities. The project owner shall submit copies to the CPM of all correspondence between the project owner and DFG regarding the Monitoring and Adaptive Management of Mitigation Wetland E.

CULTURAL RESOURCES

Page 4.3-6, paragraph 2, lines 4-6.

The railroad spur is the eastern boundary of the laydown area and the small building is likely a railroad equipment box, but is outside of the laydown area.

It is bordered by a dirt road on the southern edge. ~~A **and by a** railroad spur **along its eastern edge** runs north through the area and an associated small building remains.~~

HAZARDOUS MATERIALS MANAGEMENT

Page 4.4-19, Condition of Certification, HAZ-2

Condition HAZ-2 requires review of the HMBP, SPCC, and RMP by Contra Costa County Health Services Department (CCCHSD) but does not set time limit on this agency's review. This condition also appears to require that all comments by the CCCHSD be incorporated into the plan without discussion, despite the CEC's overarching jurisdiction. CCGS LLC therefore suggests the following modifications.

HAZ-2 The project owner shall concurrently provide a Hazardous Materials Business Plan (HMBP), an updated Spill Prevention, Control, and Countermeasure Plan (SPCC), and an updated Risk Management Plan (RMP) prepared pursuant to the California Accidental Release Program (CalARP) to the Contra Costa County Health Services Department – Hazardous Materials Program (CCCHSD-HMP) and the CPM for review. ~~After receiving comments from the CCCHSD-HMP and the CPM, t~~**he project owner shall reflect *consider* all recommendations *made by the CCCHSD and CPM* in the final documents. *The CPM and CCCHSD-HMP shall review the proposed HMBP, SPCC, and RMP within thirty (30) days of submittal.*** Copies of the final updated HMBP, updated SPCC Plan, and updated RMP shall ~~then~~ be provided to the CCCHSD-HMP and the East Contra Costa Fire Protection District (ECCFPD) for information and to the CPM for approval.

Verification: At least thirty (30) days prior to receiving any hazardous material on the site for commissioning or operations, the project owner shall provide a copy of a final updated Business Plan and updated SPCC Plan to the CPM for approval. At least thirty (30) days prior to delivery of aqueous ammonia to the site, the project owner shall provide the final updated RMP to the CCCHSD-HMP and the ECCFPD for information and to the CPM for approval.

NOISE

Page 4.6-17, Condition of Certification NOISE-4

This condition sets a noise restriction at 49 dBA, measured at or near monitoring location M2. CCGS respectfully requests that the restriction be increased by 2 dBA to 51 dBA for

M2. This would be 7 dBA over background and would account for the fact that the land uses at M2 are nonconforming uses.

LAND USE

Page 4.5-25, Condition of Certification LAND-1

The City of Oakley has already approved and recorded the lot line adjustment which was docketed at the CEC on January 27, 2011. Therefore Condition of Certification **LAND-1** is no longer necessary and should be deleted.

Page 4.5-25, Verification to Condition of Certification LAND-2

In order to facilitate timely review of submittals to the City of Oakley and to facilitate the OGS construction schedule, CCGS request the following modifications to the Verification timeline for compliance with this condition.

Verification: At least ~~90~~ **45** calendar days prior to the start of construction, including any demolition, grading, or site remediation on the project site, the project owner shall submit the proposed development plan to the city of Oakley for review and comment and to the Compliance Project Manager (CPM) for review and approval. The development plan shall incorporate the elements normally required by city for review and permitting of a similar project and as detailed in Attachment 1 (City of Oakley, Recommended Conditions of Approval, Oakley Generating Station) of the city of Oakley letter to the California Energy Commission (COO 2010c), including site layout, design and landscaping, transportation and circulation improvements, and the required permits. The project owner shall also provide the CPM with a copy of the transmittal letter to the city.

At least ~~30~~ **15** calendar days prior to the start of construction, the project owner shall provide copies of any comment letters received from the city of Oakley, along with any changes to the proposed development plan, to the CPM for review and approval.

SOIL & WATER RESOURCES

Page 4.9-17, Groundwater – Dewatering, paragraph 1, Second sentence

This sentence incorrectly states that Wetland E has perennial ponding. Based on field observations in October 2010, the wetland does not have perennial ponding (see similar comment, above, regarding the Biological resources section).

Page 4.9-20, paragraph 2

This paragraph concludes that the OGS water use could *potentially impact* other water users. This conclusory statement is not supported by any analysis and should not be the basis for requiring the mitigation Staff then imposes in Condition of Certification **SOIL & WATER-4**. Staff fails to recognize that the OGS has already limited its water use in accordance with all state water law and policy and there is no basis to state that the OGS proposed minimal water use will create any impact to any other water user. Without supporting analysis, such speculation is not consistent with the California Environmental Quality Act and should be removed from Staff's analysis.

Page 4.9-22, paragraph 3

In this paragraph Staff identifies a number of concerns relating to the Best Management Practices identified in the preliminary design of the stormwater system. CCGS notes that the design is preliminary and specific performance standards have been identified in the Conditions of Certification and will be subject to design review by the Compliance Project Manager (CPM) and the Chief Building Official (CBO) as part of Conditions of Certification **SOIL & WATER-1** and **CIVIL-1**.

Page 4.9-31-32, Operations Water Supply

Staff's analysis is speculative and not adequately supported. Staff refers to policies and plans that in its own admission do not have regulatory force and then concludes that project area water supply agency allocations will be cut. CCGS has agreed to convert OGS to recycled water use when a recycled water supply comes available and economic through the ISD's future water treatment plant and recycled water distribution pipeline and when there is an alternative disposal option other than zero liquid discharge. The precise dates when the pipelines will be completed are not currently known, the economics of cost are not known, and there are no definite plans or costs for a waste disposal option. However, as has been CCGS's position since filing the AFC, it has designed the OGS in such a manner to not preclude the switch to recycled water should these issues be resolved.

CCGS maintains that the OGS complies with all applicable state water law and policy and objects to Staff's further regulatory creep as applied to this dry cooled plant.

Page 4.9-35, paragraph 1, last sentence

CCGS strongly disagrees with Staff's interpretation of the law to support its further conditioning in the area of water supply.

Page 4.9-39, Condition SOIL&WATER-1, Item 10

CCGS requests this item be deleted from the Condition as compliance with existing law maintaining stockpiles will be the responsibilities of DuPont and not CCGS. CCGS will maintain the piles in accordance with the Soil Stockpile Plan as long as the Stockpiles are within CCGS's ownership. Once they are transferred to DuPont, CCGS should be relieved of any further liability.

Page 4.9-40, Condition SOIL&WATER-1 – Verification, Sentence 2

CCGS requests a minor change in the verification that will take into consideration the possibility that agencies choose not to comment on the DESCP/SWPPP or do not comment timely.

No later than 60 days prior to start of site mobilization, the project owner shall submit the DESCP with the ***any comments received from the City's, CCCWP and or CV RWQCB's*** comments to the CPM for review and approval.

Page 4.9-40, Condition of Certification SOIL&WATER-2 – Verification, Line 4

"RWACB" should be "RWQCB"

Page 4.9-41, Condition of Certification SOIL&WATER-4

For the reasons discussed above, CCGS believes that this condition is not supported by any state water law compliance requirement or necessary to mitigate a significant impact. However, in the spirit of cooperation, CCGS agrees to modify the condition reflecting its prior commitment and the circumstances under which it would use recycled water.

SOIL&WATER-4: ~~For a maximum period of three (3) years following commencement of project operations, f~~ Freshwater supplied by the potable connection with Delta Diablo Water District (**DWD**) shall be used as the primary water supply for project operation for process, sanitary, and landscape irrigation purposes. Freshwater use shall not exceed the annual water-use limit of 250 acre-feet per year ~~during the three year bridge period.~~

~~Within three (3) years f~~ Following commencement of project operations ***and within eighteen (18) months of all of the following conditions being met and assuming the CEC approves a project amendment allowing the project to use recycled water and dispose of the associated high TDS wastewater***, the primary water supply for project operations including all process and landscape irrigation shall be exclusively recycled water provided by Ironhouse Sanitary District (ISD):

- ***ISD has constructed a recycled water pipeline passing within 0.5 mile of the Oakley Generating Station and capable of delivering a minimum of 409 gpm of disinfected tertiary recycled water meeting Title 22 requirements to the Oakley Generating Station.***
- ***ISD has constructed a high TDS wastewater pipeline passing within 0.5 mile of the Oakley Generating Station and capable of accepting a minimum of 200 gpm of wastewater having TDS and concentrations of individual constituents of up to four (4) times the TDS and concentrations of individual constituents of the recycled water supplied to the Oakley Generating Station.***
- ***ISD has acquired the necessary easements/rights of way to extend the recycled water and high TDS wastewater pipelines to the Oakley Generating Station.***

- ***ISD has established rates and charges for recycled water that are and will remain no greater than those of Diablo Water District for potable water.***
- ***ISD has established rates and charges for the discharge of high TDS wastewater that are and will remain no greater than those of ISD for discharge of sanitary wastewater.***
- ***ISD will charge no additional fees for connection to the recycled water and high TDS discharge pipelines beyond those fees paid by the project for the initial connection to the ISD sanitary sewer system.***
- ***DWD has agreed to waive any claims regarding duplication of service with respect to the use of recycled water at the Oakley Generating Station.***

Use of recycled water shall be limited to 280 acre-feet per year (or as determined in review of the project amendment). After the project switches to the primary recycled water supply, the backup water supply for project operation for process and landscape irrigation shall be freshwater provided by the potable connection with DWD. The use of freshwater from DWD ***for these purposes*** shall be limited to 25 acre-feet per year. The Project owner shall notify the CPM of any disruptions in the primary recycled water supply exceeding 24 hours. For any planned disruptions in the primary recycled water supply that will exceed 7 days, the Project owner shall obtain CPM approval on a water supply disruption plan that outlines the reasons and duration for the planned disruption, and the volume of secondary water that will be utilized during the planned disruption. Sanitary water shall be supplied by the potable connection with DWD. Use of groundwater other than that provided by DWD as a part of their supply is prohibited for operational uses.

Prior to using potable and recycled water for construction or operational uses, the project owner shall install and maintain metering devices as part of the water supply and distribution systems to monitor and record, in gallons per day, the total volume(s) of water supplied to OGS from DWD ***and ISD***. Those metering devices shall be operational for the life of the project.

The project owner shall monitor and record the total water used on a monthly basis including recycled water from ISD and potable water from DWD. For calculating the annual water use, the term “year” will correspond to the date established for the annual compliance report (ACR) submittal. For the first year of operation, the project owner shall prepare an annual Water Use Summary, which will include the monthly range and monthly average of daily potable and recycled water usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet. For subsequent years, the annual Water Use Summary shall also include the yearly range and yearly average water use by the project. The annual Water Use Summary shall be submitted to the CPM as part of the ACR.

Verification: At least sixty (60) days prior to commercial operation of OGS, the project owner shall submit to the CPM evidence that metering devices have been installed and are operational on the water supply and distribution systems. When the metering devices

are serviced, tested and calibrated, the project owner shall provide a report summarizing these activities in the next annual compliance report. The project owner, in the annual compliance report, shall provide a Water Use Summary that states the source and quantity of potable and recycled water used on a monthly basis and on an annual basis in units of acre-feet. Prior annual water use including yearly range and yearly average shall be reported in subsequent annual compliance reports (ACR).

Once recycled water is being used as the primary supply for process and landscaping uses, the CPM shall verify that any planned disruptions in the recycled water supply are short in duration and do not result in total fresh water ***for process and landscaping uses*** exceeding the 25 AFY limit. In the ACR, the project owner shall provide a discussion of any disruptions in the primary recycled water supply exceeding 24 hours including the cause of the disruption and all efforts to address the disruption.

Page 4.9-42, Condition SOIL&WATER-6

For the reasons discussed above under the Biological Resources comments, CCGS requests that this duplicative condition be deleted so that one plan to manage Wetland E be directed by Condition of Certification **BIO-18**. CCGS believes that the requirement to monitor water levels in Wetland E daily for one year before construction starts is infeasible given that construction may begin as early as late May 2011. Such a requirement is also not warranted. In addition the Verification requires review by the RWQCB. Such review is unnecessary since Wetland E is under a conservation easement with CDFG with the RWQCB having no jurisdiction.

TRAFFIC AND TRANSPORTATION

Page 4.10-25, Condition of Certification TRANS-1

This condition requires the development of a Traffic Control Plan. CCGS believes the restrictions on avoiding intersections are too onerous and has proposed alternative mitigation strategy for consideration that will ensure impacts to these intersections are appropriately mitigated.

- TRANS-1** The project owner shall consult with the city of Oakley and prepare and submit to the Compliance Project Manager (CPM) for approval a Construction Traffic Control Plan and implementation program. The Construction Traffic Control Plan must be prepared in accordance with Caltrans Manual on Uniform Traffic Control Devices and the WATCH Manual and must include but not be limited to the following issues:
- Construction-related vehicles ***other than local Oakley or Brentwood residents*** shall avoid the intersections of Main Street/Bridgehead Road (4:00 PM – 6:00 PM) and ~~Wilbur Avenue/Bridgehead Road (7:00 AM – 9:00 AM and 4:00 PM – 6:00 PM)~~ during peak periods of construction. ***The intersection of Wilbur Avenue/Bridgehead Road shall be either avoided or a flagman provided during peak periods of***

construction between 7:00 AM – 9:00 AM and 4:00 PM – 6:00 PM ensuring no deterioration of the existing LOS performance standard at these intersections through provisions for monitoring intersection operations to reduce further degradation of the LOS performance standard.

VISUAL RESOURCES

Page 4.12-34 through 38, Conditions of Certification VIS-1, VIS-2 and VIS-3

The following are suggested changes to Conditions of Certification to ensure the submittals are reviewed on a timely basis.

VIS-1 The project owner shall treat the surfaces of all project structures and buildings visible to the public such that: a) their colors minimize visual intrusion and contrast by blending with the landscape; b) their colors and finishes do not create excessive glare; and c) their colors and finishes are consistent with local policies and ordinances. Surface color treatment shall include painting of HRSGs, turbine inlet filters, and other paintable features in a color scheme which will blend into the horizon of the river, hills and sky. The project owner shall submit for CPM review and approval, a specific surface treatment plan that will satisfy these requirements. The treatment plan shall include:

- a. A description of the overall rationale for the proposed surface treatment, including the selection of the proposed color(s) and finishes.
- b. A list of each major project structure, building, tank, pipe, and wall; and fencing, specifying the color(s) and finish proposed for each. Colors must be identified by vendor, name, and number; or according to a universal designation system.
- c. One set of 11" x 17" color photo simulations at life size scale, of the treatment proposed for use on project structures, including structures treated during manufacture, from a representative point of view (Key Observation Point 1- location shown on Visual Resources Figure 2 of the Staff Assessment).
- d. A specific schedule for completion of the treatment.
- e. A procedure to ensure proper treatment maintenance for the life of the project. ~~The project owner shall not specify to the vendors the treatment of any buildings or structures treated during manufacture, or perform the final treatment on any buildings or structures treated in the field, until the project owner receives notification of approval of the treatment plan by the CPM. Subsequent modifications to the treatment plan are prohibited without CPM approval.~~

Verification: At least 90 days prior to specifying to the vendor the colors and finishes of the first structures or buildings that are surface treated during manufacture, the project owner shall submit the proposed treatment plan to the CPM for review and approval and simultaneously to the City of Oakley or responsible jurisdiction for review and comment. ***The CPM and City of Oakley shall review the proposed treatment plan within thirty (30) days of submittal.*** If the CPM determines that the plan requires revision, the project owner shall provide to the CPM a plan with the specified revision(s) for review and approval by the CPM before any treatment is applied. Any

modifications to the treatment plan must be submitted to the CPM for review and approval. Prior to the start of commercial operation, the project owner shall notify the CPM that surface treatment of all listed structures and buildings has been completed and are ready for inspection and shall submit one set of electronic color photographs from the same key observation points identified in (d) above. The project owner shall provide a status report regarding surface treatment maintenance in the Annual Compliance Report. The report shall specify a): the condition of the surfaces of all structures and buildings at the end of the reporting year; b) maintenance activities that occurred during the reporting year; and c) the schedule of maintenance activities for the next year.

Landscape Screening

VIS-2 The project owner shall provide landscaping that reduces the visibility of the power plant structures in accordance with local policies. Trees and other vegetation consisting of informal groupings of native shrubs shall be placed around the facility boundaries, in conformance with the Conceptual Landscape Plan, Figure 9a and 9b. The objective shall be to create landscape screening of sufficient density and height to screen the power plant structures to the greatest feasible extent within the shortest feasible time; and to provide timely replacement for aging or diseased tree specimens on site in order to avoid future loss of existing visual screening. The project owner shall submit to the CPM for review and approval and simultaneously to the City of Oakley and the local water purveyor for review and comment a Landscape Documentation Package whose proper implementation will satisfy these requirements. The plan shall include:

- a. A detailed Landscape Design Plan, at a reasonable scale (1"=40' maximum). The plan shall demonstrate how the requirements stated above shall be met. The plan shall provide a detailed installation schedule demonstrating installation of as much of the landscaping as early in the construction process as is feasible in coordination with project construction. The Landscape Design Plan shall include a Planting Plan with Plant List (prepared by a qualified professional arborist or landscape architect familiar with local growing conditions) of proposed species, specifying installation sizes, growth rates, expected time to maturity, expected size at five years and at maturity, spacing, number, availability, and a discussion of the suitability of the plants for the site conditions and mitigation objectives, with the objective of providing the widest possible range of species from which to choose; specifications for groundcover, top-dressing of planting areas and weed abatement measures.
Existing trees and species shall be noted on the Landscape Plan. The Landscape Design Plan shall specify all materials to be used for interior roads, walks, parking areas and hardscape materials (i.e. gravel) to be placed in areas that are not paved or planted.
- b. An Irrigation Plan in compliance with the City of Oakley's Water Efficient Landscape Ordinance, Ordinance No. 03-10, Title 4, Chapter 31. The plan shall include the following: complete Irrigation Design Plan, specifying system components and locations, and shall include the Water Efficient Landscape Worksheet.
- c. Maintenance procedures, and a plan for routine annual or semi-annual debris removal for the life of the project.

- d. A procedure for monitoring and replacement of unsuccessful plantings for the life of the project. The plan shall not be implemented until the project owner receives final approval from the CPM.

Verification: The landscaping plan shall be submitted to the CPM for review and approval and simultaneously to the City of Oakley for review and comment at least 90 days prior to installation. ***The CPM and City of Oakley shall review the proposed landscaping plan within thirty (30) days of submittal.*** If the CPM determines that the plan requires revision, the project owner shall provide to the CPM and simultaneously to the City of Oakley a revised plan for review and approval by the CPM. Planting must occur during the first optimal planting season following site mobilization. The project owner shall simultaneously notify the CPM and the City of Oakley within seven days after completing installation of the landscape plan, that the site is ready for inspection. A report to CPM, equivalent to the City of Oakley's Certificate of Completion Package in Title 4, Chapter 31, shall be submitted in conjunction with the inspection. The project owner shall report landscape maintenance activities, including replacement of dead or dying vegetation, for the previous year of operation in each Annual Compliance Report.

VIS-3 Operational Phase:

To the extent feasible, consistent with safety and security considerations, the project owner shall design and install all permanent exterior lighting such that: a) lamps and reflectors are not visible from beyond the project site, including any off-site security buffer areas; b) lighting does not cause excessive reflected glare; c) direct lighting does not illuminate the nighttime sky; d) illumination of the project and its immediate vicinity is minimized, and e) the plan complies with local policies and ordinances. The project owner shall submit to the CPM for review and approval and simultaneously to City of Oakley for review and comment, a lighting mitigation plan that includes the following:

- a. Location and direction of light fixtures shall take the lighting mitigation requirements into account.
- b. Lighting design shall consider setbacks of project features from the site boundary to aid in satisfying the lighting mitigation requirement.
- c. Lighting shall incorporate fixture hoods/shielding, with light directed downward or toward the area to be illuminated.
- d. Light fixtures that are visible from beyond the project boundary shall have cutoff angles that are sufficient to prevent lamps and reflectors from being visible beyond the project boundary, except where necessary for security.
- e. All lighting shall be of minimum necessary brightness consistent with operational safety and security.
- f. Lights in high illumination areas not occupied on a continuous basis (such as maintenance platforms) shall have (in addition to hoods) switches, timer switches, or motion detectors so that the lights operate only when the area is occupied.

Construction Phase:

The project owner shall ensure that lighting for construction of the power plant is used in a manner that minimizes potential night lighting impacts, as follows:

- a. ***To the extent feasible given safety and security concerns and operational needs, all*** All lighting shall be of minimum necessary brightness consistent with worker safety and security.

- b. All fixed position lighting shall be shielded/hooded, and directed downward and toward the area to be illuminated to prevent direct illumination of the night sky and direct light trespass (direct light extending outside the boundaries of the power plant site or the site of construction of ancillary facilities, including any security related boundaries).
- c. No nighttime lighting or construction activities shall occur in the transmission corridor adjacent to residential properties or in public spaces, such as Almondridge Park in the City of Antioch.
- d. Wherever feasible and safe and not needed for security, lighting shall be kept off when not in use.

Verification: Within seven days after the first use of construction lighting, the project owner shall notify the CPM that the lighting is ready for inspection. If the CPM requires modifications to the lighting, within 15 days of receiving that notification the project owner shall implement the necessary modifications and notify the CPM that the modifications have been completed.

At least 90 days prior to ordering any permanent exterior lighting, the project owner shall contact the CPM to discuss the documentation required in the lighting mitigation plan. At least 60 days prior to ordering any permanent exterior lighting, the project owner shall submit to the CPM for review and approval and simultaneously to the City of Oakley for review and comment a lighting mitigation plan. ***The CPM and City of Oakley shall review the proposed lighting mitigation plan within thirty (30) days of submittal.*** If the CPM determines that the plan requires revision, the project owner shall provide to the CPM a revised plan for review and approval by the CPM. The project owner shall not order any exterior lighting until receiving CPM approval of the lighting mitigation plan. Prior to commercial operation, the project owner shall notify the CPM that the lighting has been completed and is ready for inspection. If after inspection the CPM notifies the project owner that modifications to the lighting are needed, within 30 days of receiving that notification the project owner shall implement the modifications and notify the CPM that the modifications have been completed and are ready for inspection. Within 48 hours of receiving a lighting complaint, the project owner shall provide the CPM with a complaint resolution form report as specified in the Compliance General Conditions including a proposal to resolve the complaint, and a schedule for implementation. The project owner shall notify the CPM within 48 hours after completing implementation of the proposal. A copy of the complaint resolution form report shall be submitted to the CPM within 30 days.

WASTE MANAGEMENT

Page 4.13-15, Condition of Certification WASTE-1

The Phase 1 Environmental Site Assessment identified four parcels where drums, above ground storage tanks and containers were observed, as well as four parcels where there was evidence of waste disposal (trash dumping). PG&E's land rights along this line include fee property and easements. Of the eight parcels where waste was found, PG&E owns four of these parcels in fee. PG&E fee parcel 2 included a propane tank and illegally dumped trash, and fee parcels 3, 4 and 9 were noted to have illegally dumped trash.

PG&E can comply with this condition on its fee property, and will remove these wastes. None of the wastes identified should require soil sampling.

On the remaining four sites, PG&E holds an easement providing rights to construct, operate and maintain an electric transmission line. These rights do not include the right to remove wastes or conduct hazardous waste sampling and analysis. PG&E is unable to comply with this condition on these parcels. Therefore CCGS suggest the following modifications to this condition.

WASTE-1 The project owner shall dispose of existing waste along the transmission line route ***and within parcels where PG&E has the legal right to remove waste*** (including fuel tanks, aboveground tanks, empty drums, and other equipment and materials) ~~and sample and analyze soils in areas where fuel tanks were removed, prior to initiation of construction of the~~ ***transmission line for the Oakley Generating Station (OGS).*** ~~to ensure proper identification and classification of any contaminated soils as hazardous or nonhazardous. In no event shall project construction commence in areas requiring characterization until the CPM has determined that all necessary testing and characterization has been accomplished.~~

Verification: At least 60 days prior to the start of site mobilization ***to construct the transmission line***, the project owner shall provide to the CPM a list of the types and amount of existing waste ***to be*** disposed of from the Oakley Generating Station (OGS) transmission route, ~~and the results of the required soil sampling and analysis, for review and approval.~~

Page 4.13-17, Condition of Certification WASTE-7

This suggested change to Condition WASTE-7 is consistent with previous Decisions and would allow for the construction contractor to obtain the hazardous waste generator identification number for construction.

WASTE-7 The project owner ***or construction contractor*** shall obtain a hazardous waste generator identification number from the United States Environmental Protection Agency (USEPA) prior to generating any hazardous waste during project construction. ***The project owner shall obtain a hazardous waste generator identification number prior to generating any hazardous waste during*** ~~and~~ operations.

WORKER SAFETY AND FIRE PROTECTION

Page 4.14-3, Setting, Second Paragraph, Last Sentence

Minor typo on the reference. It should be Section 5.10.16.2 not 5.10.1.6.2.

Page 4.14-3, Setting, Third Paragraph, Last Sentence

Minor typo on the reference. It should be Section 5.10.16.2 not 5.10.1.6.2.

Page 4.14-12, Operation, First Paragraph, Second Sentence

The following modification is warranted to reflect the fact that Wilbur Avenue stops at Bridgehead Road. The secondary access would be through the DuPont property to the northern boundary of the project site.

The primary access point to the site would be via an entrance from Bridgehead Avenue, which provides access to the OGS site from the western boundary. A secondary access point for fire and emergency services would be provided via an access road from Wilbur Avenue that is located approximately 900 feet north ~~and 900 feet east of the main~~ entrance and which provides access to the OGS site ***through the DuPont property*** from the north-eastern boundary.

Page 4.14-13, Condition of Certification WORKER SAFETY-1

CCGS requests the following modification to the Verification of this condition to ensure a reasonable review time for the East Contra Costa Fire Protection District.

Verification: At least 30 days prior to the start of construction, the project owner shall submit to the CPM for review and approval a copy of the Project Construction Safety and Health Program. The project owner shall provide a copy of ~~a letter~~ to the CPM ***of any comments received*** from the East Contra Costa Fire Protection District ~~stating the fire department's comments on the~~ Construction Fire Prevention Plan and Emergency Action Plan.

Page 4.14-14 - Condition of Certification WORKER SAFETY-2

CCGS requests the following modification to the Verification of this condition to ensure a reasonable review time for the East Contra Costa Fire Protection District.

Verification: At least 30 days prior to the start of first-fire or commissioning, the project owner shall submit to the CPM for approval a copy of the Project Operations and Maintenance Safety and Health Program. The project owner shall provide a copy of ~~a letter~~ to the CPM ***of any comments received*** from the East Contra Costa Fire Protection District ~~stating the fire department's comments on the~~ Construction Fire Prevention Plan and Emergency Action Plan.

FACILITY DESIGN

Page 5.1-19, Condition of Certification ELEC-1

The following modification is necessary to accurately reflect the Commission Decision in Marsh Landing.

ELEC-1 Prior to the start of any increment of electrical construction for all electrical equipment and systems ~~110~~ **480** Volts or higher (see a representative list, below) the project owner shall submit, for CBO design review and approval, the proposed final design, specifications, and calculations. Upon approval, the above listed plans, together with design changes and design change notices, shall remain on the site or at another accessible location for the operating life of the project. The project owner shall request that the CBO inspect the installation to ensure compliance with the requirements of applicable LORS. All transmission facilities (lines, switchyards, switching stations, and substations) are handled in conditions of certification in the **Transmission System Engineering** section of this document.

...

B. Final plant calculations must establish:

...

8. ~~110 volt system design calculations and submittals showing feeder sizing, transformer and panel load confirmation, fixture schedules and layout plans.~~

POWER PLANT RELIABILITY

Page 5.4-5, Flooding, First Paragraph, First Sentence

The project site is largely flat, with elevations ranging from approximately ~~420 feet~~ **10 to 30 feet** above sea level ~~to sea level~~.

TRANSMISSION SYSTEM ENGINEERING

The following modifications to the Conditions of Certification verification timelines are requested to tie compliance with the construction of transmission facilities rather than construction of the entire facility.

Page 5.5-11, Condition of Certification TSE-1, Verification

Verification: Prior to the start of construction ***of the transmission facilities***, the project owner shall submit the schedule, a Master Drawing List, and a Master Specifications List to the CBO and to the CPM. The schedule shall contain a description and list of proposed submittal packages for design, calculations, and specifications for major structures and equipment (see a list of major equipment in **Table 1: Major Equipment List** below). Additions and deletions shall be made to the table only with CPM and CBO approval. The project owner shall provide schedule updates in the Monthly Compliance Report.

Page 5.5-12 1nd 13, Condition of Certification TSE-2

TSE-1 Before the start of construction ***of the transmission facilities***, the project owner shall assign to the project an electrical engineer and at least one of each of the following:

Verification: Prior to start of rough grading ***of the transmission facilities***, the project owner shall ...

CONCLUSION

CCGS looks forward to working cooperatively with Staff to address these comment on the PSA at the upcoming February 2, 2011 Workshop.

Dated: January 28, 2011

/original signed/

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 1/25/2011)**

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DECLARATION OF SERVICE

I, Marie Mills, declare that on January 28, 2011, I served and filed copies of the attached **CCGS, LLC'S INITIAL COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT**, dated January 28, 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:

[\[http://www.energy.ca.gov/sitingcases/contracosta/index.html\]](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

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