

DOCKET

09-AFC-4

DATE MAR 17 2011

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March 17, 2011

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

Subject: **JOINT STIPULATION – AIR QUALITY, PUBLIC HEALTH AND
ENVIRONMENTAL JUSTICE AND WORKER SAFETY
OAKLEY GENERATING STATION
DOCKET NO. (09-AFC-4)**

Enclosed for filing with the California Energy Commission is the original of, **JOINT
STIPULATION – AIR QUALITY, PUBLIC HEALTH AND ENVIRONMENTAL JUSTICE
AND WORKER SAFETY**, for the Oakley Generating Station (09-AFC-4).

Sincerely,



Marie Mills

Scott A. Galati
GALATI BLEK LLP
455 Capitol Mall
Suite 350
Sacramento, CA 95814
(916) 441-6575

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

**JOINT STIPULATION – AIR
QUALITY, PUBLIC HEALTH AND
ENVIRONMENTAL JUSTICE AND
WORKER SAFETY**

INTRODUCTION

Contra Costa Generating Station LLC (CCGS LLC), a wholly owned subsidiary of Radback Energy LLC, Intervener Sarvey, and California Energy Commission (CEC) Staff have entered into the following joint stipulation relating to the topics of Air Quality, Public Health and Environmental Justice and for Worker Safety for the Oakley Generating Station (OGS) AFC Proceeding.

SUMMARY OF AGREEMENT

In an effort to minimize disputes and the amount of time required to adjudicate them, on Friday, March 11, 2011 CCGS LLC and Intervener Sarvey have agreed that if CCGS LLC agreed to waive the right to utilize Emission Reduction Credit certificates (ERCs) and shall contribute at least \$2.5 million dollars to satisfy its obligation under Condition of Certification **AQ-SC8**, Intervener Sarvey would drop any objection to the OGS and the FSA as outlined in his Opening Testimony filed on March 9, 2011 for Air Quality and Environmental Justice/Public Health. Intervener Sarvey retains the right to cross-examine the Bay Area Air Quality Management District (BAAQMD) regarding the contents of the Final Determination of Compliance (FDOC) only. Staff was notified on March 12, 2011 that a potential agreement would be forthcoming and have agreed to the following modifications to Condition of Certification **AQ-SC8**.

On Friday, March 11, 2011 CCGS LLC and Intervener Sarvey agreed to include a condition of certification prohibiting natural gas blows similar to the condition of certification proposed by Staff in the Mariposa Power Project Proceedings. Staff has included such a condition of certification (**HAZ-9**) in the Final Staff Assessment (FSA), to which CCGS LLC has already agreed. Intervener Sarvey agrees that incorporation of **HAZ-9** addresses his concerns and with the incorporation of this condition of certification, Intervener Sarvey withdraws his Worker Safety Opening Testimony filed on March 9, 2011.

AIR QUALITY, PUBLIC HEALTH AND ENVIRONMENTAL JUSTICE

AQ-SC8 The project owner shall mitigate 63.88 tons per year (tpy) of PM10/PM2.5 and 12.55 tpy of SOx emissions by ~~using either or a combination of the following 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.~~

The project owner ~~may~~ **shall** enter into an agreement with the Bay Area Clean Air Foundation for the project owner to contribute \$32,750 per tpy (**which includes a Bay Area Clean Air Foundation administration fee of 20 percent**) of project PM10/PM2.5 and SOx emissions to be mitigated, which includes a Bay Area Clean Air Foundation administration fee of 20 percent. The funds contributed by the project owner shall fund emission reduction projects based on the proximity of the emissions reduction project to the project site and the relative health benefit to the local community surrounding the project site by including the following project-specific conditions:

1. Diesel emission reduction projects funded by the Bay Area Clean Air Foundation with the funds contributed by the project owner shall be weighted for evaluation, qualification, and selection, in accordance with the California Air Resources Board's Carl Moyer Program Guidelines. Other emission reduction projects with the cost-effectiveness of \$32,750 per tpy may be selected by the Bay Area Clean Air Foundation.
2. Funding shall initially be made available to qualified projects located preferentially within the boundaries City of Oakley, City of Antioch, City of Brentwood, and City of Pittsburg. After twelve (12) months from the

date on which the administration funding has been provided to the Bay Area Clean Air Foundation, the program shall expand to include qualified projects located in Contra Costa County and Alameda County, with priority given to those projects located within areas designated by the BAAQMD as "priority communities" in the Community Air Risk Evaluation (CARE) program.

3. At all times, identified qualifying emission reduction projects located within the City of Oakley will be given the highest priority.

~~To implement item (b), the project owner shall provide initial funding for emission reduction projects and administrative fees to the Bay Area Clean Air Foundation in the amount of \$500,000 within 90 days after the issuance of the Authority to Construct (ATC). The project owner shall provide additional funding to the Bay Area Clean Air Foundation on a monthly basis as necessary to fund the qualifying emission reduction projects selected for that month. The project owner shall make a final demonstration of the quantity and schedule of all emission reductions sponsored by the funding at least 30 days prior to first turbine fire. 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 confirmation that the appropriate initial funding has been provided within 90 days after the issuance of the ATC. ***Additionally, the project owner shall submit to the CPM confirmation that the appropriate funding has been provided to the Bay Area Clean Air Foundation at least 30 days prior to turbine first fire.*** The project owner shall provide quarterly summaries of the emission reduction project selection information to the CPM for review until such time that all funds have been committed by the Bay Area Clean Air Foundation to qualifying projects. ~~The project owner shall submit to the CPM confirmation that the appropriate funding has been provided to the Bay Area Clean Air Foundation, and/or ERC's have been surrendered at least 30 days prior to turbine first fire.~~

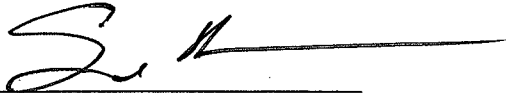
STIPULATION

The undersigned hereby agree to the inclusion of Conditions of Certification **AQ-SC8** as outlined herein as a full settlement of all disputes pertaining to Air Quality, Public Health, Environmental Justice except for Intervener Sarvey's issues with the BAAQMD relating solely to the FDOC for the OGS. Further the undersigned agree that the inclusion of Condition of Certification **HAZ-9** contained in the FSA addresses Intervener Sarvey's

concerns relating to Worker Safety. This Stipulation does not affect any and all claims relating to other topic areas in OGS Proceeding.

Dated: March 15, 2011

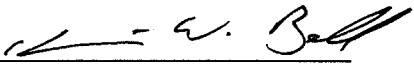
Agreed

A handwritten signature in black ink, appearing to read 'S. Galati', written over a horizontal line.

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

A handwritten signature in black ink, appearing to read 'R. Sarvey', written over a horizontal line.

Robert Sarvey
Intervener in OGS Proceedings

A handwritten signature in black ink, appearing to read 'K. W. Bell', written over a horizontal line.

Kevin W. Bell
Senior Staff Counsel, California Energy Commission



**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 3/3/2011)**

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DECLARATION OF SERVICE

I, Marie Mills, declare that on March 17, 2011, I served and filed copies of the attached **JOINT STIPULATION – AIR QUALITY, PUBLIC HEALTH AND ENVIRONMENTAL JUSTICE AND WORKER SAFETY**, dated March 15, 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