

DOCKETED

Docket Number:	00-AFC-01C
Project Title:	Contra Costa Power Plant Project Compliance
TN #:	224461
Document Title:	Settlement Agreement Between California Energy Commission and Pacific Gas and Electric Company
Description:	N/A
Filer:	Liza Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	8/10/2018 11:29:51 AM
Docketed Date:	8/10/2018

SETTLEMENT AGREEMENT
CALIFORNIA ENERGY COMMISSION AND PACIFIC GAS AND ELECTRIC COMPANY

The California Energy Commission (Energy Commission or Commission) and Pacific Gas and Electric Company (PG&E) as owner of the Gateway Generating Station (GGS), enter into this Settlement Agreement (Agreement).

I. INTRODUCTION

1. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal powerplant with generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.” (Pub. Resources Code §§ 25110, 25120.)
2. The Contra Costa Unit 8 Power Project Commission Decision (Final Decision) was issued on May 30, 2001, certifying the power project which is now known as the GGS. The Final Decision was amended several times. The Final Decision, as amended, governs the construction, operation, and decommissioning of the GGS.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with conditions specified in the Commission’s Final Decision.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (LORS).
5. Pursuant to Public Resources Code section 25534, subdivision (a), the Energy Commission may, after one or more hearings, amend the conditions of any facility for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision, and a violation of any regulation or order issued by the Commission.
6. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed \$75,000 per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed \$50,000.
7. Energy Commission Staff investigated complaints received by PG&E between May 28, 2016 and June 22, 2016 at the GGS. The investigation included calls with GGS and Bay Area Air Quality Management District (District) personnel and review of all relevant documents including data provided by the GGS in response to the Energy Commission data requests.

SETTLEMENT AGREEMENT
CALIFORNIA ENERGY COMMISSION AND PACIFIC GAS AND ELECTRIC COMPANY

II. SUMMARY OF PERTINENT FINAL DECISION PROVISIONS

General Conditions Including Compliance Monitoring and Closure Plan – Reporting of Complaints, Notices, and Citations states that “the project owner shall report and provide copies of all complaint forms, notices of violation, notices of fines, official warnings, and citations, within 10 days of receipt, to the CPM.” (Final Decision, p. 180.)

III. INVESTIGATION FINDINGS

1. Major maintenance of the GGS occurred between March 27, 2016 and May 27, 2016. Maintenance included inspections and repairs on the major combustion turbines, the Heat Recovery Steam Generators (HRSGs), and the steam turbines. Maintenance also included valve work.
2. During this maintenance period, the HRSGs were open to ambient conditions.
3. Prior to its return to full operations on May 27, 2016, the GGS operated intermittently between May 24 and May 26, 2016.
4. PG&E received four complaints between May 28 and June 22, 2016 alleging that emissions associated with the operations at the GGS facility caused damage to boats and other personal property located in the city of Antioch, approximately 0.25 miles east of GGS.
5. On August 29, 2016, PG&E notified Energy Commission Staff by telephone of the complaints. On September 2, 2016, PG&E provided the Energy Commission a written report of the complaints.
6. Energy Commission Staff allege that the extended time between the receipt of the complaints by PG&E and the reporting of the complaints by PG&E to the Energy Commission precluded Energy Commission Staff from determining the root cause of the reported damage to personal property.
7. PG&E hired the Rimkus Consulting Group to prepare a report that concluded that the reddish-brown material deposited on the boats was “suggestive that the major constituent contributing to the stain is iron.”
8. Energy Commission Staff cannot substantiate that GGS was or was not the source of the emissions.
9. Energy Commission Staff alleges that the GGS was out of compliance with the reporting requirements of the Final Decision as specifically identified in Section II above.
10. Energy Commission Staff alleges that it is necessary to require two additional Air Quality Conditions of Certification, AQ-SC12 and AQ-SC13, to monitor emissions at start up after certain maintenance operations at the GGS and to ensure the GGS operates in compliance with all LORS. PG&E does not agree that the additional Air Quality Conditions of

SETTLEMENT AGREEMENT
CALIFORNIA ENERGY COMMISSION AND PACIFIC GAS AND ELECTRIC COMPANY

Certification are necessary, but in order to settle this outstanding claim, agrees to their inclusion in this Agreement. The agreed upon Air Quality Conditions of Certification, AQ-SC12 and AQ-SC13 appear in Exhibit A.

11. Energy Commission Staff and PG&E also agree to amend "Reporting of Complaints, Notices, and Citations" in the last paragraph on page 180 of the Commission Decision according to Exhibit B.

IV. TERMS

In order to resolve the above-described alleged violations and terminate and settle this matter and, in consideration of Energy Commission Staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise filing a legal action against PG&E for the above-described alleged violation, the Energy Commission and PG&E agree as follows:

1. The requirements set forth in the attached Conditions of Certification AQ-SC12 and AQ-SC13, are intended to be, and are, amendments augmenting the terms of the Final Decision. Any failure by PG&E to comply with these requirements will constitute a significant failure to comply with the Final Decision terms or conditions of approval of the application for certification.
2. PG&E shall execute this Agreement and provide a copy no later than July 12, 2018 to the attention of:

Shawn Pittard
Deputy Director, Siting Transmission and Environmental Protection Division
California Energy Commission, MS-16
1516 9th Street
Sacramento, CA 95814

3. PG&E shall submit to the Energy Commission a payment in the amount of fifty thousand dollars (\$50,000) to settle these matters. The payment is due within 14 days after PG&E receives written notification by the CPM of the execution of this Agreement by the Executive Director. Payment shall be made by electronic transfer to the Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.
4. If the Energy Commission does not approve this Agreement, it shall become null and void. PG&E further agrees that if this matter comes before the Energy Commission in an administrative adjudication, members of the Energy Commission and the Executive Director shall not be disqualified from participation because of prior consideration of this Agreement.
5. This Agreement shall apply to and be binding upon PG&E and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.


SETTLEMENT AGREEMENT
CALIFORNIA ENERGY COMMISSION AND PACIFIC GAS AND ELECTRIC COMPANY

6. This Agreement shall constitute the full and final settlement of the matters identified in Section III herein, subject to PG&E's payment of the amount specified in paragraph 3 above.
7. This Agreement does not preclude an action by the Energy Commission under Public Resources Code section 25534 or by other legal action with respect to the matters in this Agreement if, after the Agreement is approved by the Energy Commission and executed by its Executive Director, the Energy Commission becomes aware of any material false statements by PG&E or its agents, or any successors thereto, made during the negotiation of, or compliance with, this Agreement, or if PG&E fails to complete all of the requirements set forth in this Agreement.
8. This Agreement does not constitute an admission by PG&E that it agrees with the Energy Commission Staff's allegations outlined herein, and further does not constitute an admission by PG&E that it violated the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the GGS.
9. This Agreement constitutes the entire agreement and understanding between the Energy Commission and PG&E, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and PG&E.
10. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
11. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
12. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
13. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
14. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
15. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

SETTLEMENT AGREEMENT
CALIFORNIA ENERGY COMMISSION AND PACIFIC GAS AND ELECTRIC COMPANY

16. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
17. If any public statement is made by either Party about this Agreement or the underlying facts or process leading up to the settlement, to the extent feasible the Party will provide advance notice of the intended public statement to the other Party.
18. The undersigned represent that they have the authority to execute this Agreement.
19. The Parties agree that fax or pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

**California Energy Commission
Company**

By: 
Name: Drew Bohan
Title: Executive Director
Date: Aug 3 2018

Pacific Gas and Electric


By: 
Name: David T. Kraska
Title: Chief Counsel, Environmental
Date: July 10, 2018

EXHIBIT A

Conditions of Certification AQ-SC12 and AQ-SC13

AQ-SC12 Except for temporary sandblasting operations and the fire pump engine, the project owner shall not discharge into the atmosphere from any single source of emissions whatsoever any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

- a) As dark or darker in shade as that designated No.1 on the Ringelmann Chart, as published by the United States Bureau of Mines; or
- b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subparagraph (a) of this condition.

Verification: The project owner shall make the site available for inspection by representatives of the Bay Area Air Quality Management District (BAAQMD), California Air Resources Board (ARB), United States Environmental Protection Agency (EPA) and California Energy Commission (Energy Commission) Compliance Project Manager (CPM).

AQ-SC13 The project owner shall perform a visible emissions evaluation (VEE) using EPA Method 9 during any restart of the turbine following any maintenance activities requiring the Heat Recovery Steam Generator (HRSG) to be opened. For the purpose of this condition, restart shall include anytime the turbine is operated after being taken offline for maintenance activities and prior to the actual return to commercial service. The individual performing the evaluation shall be trained and certified in Method 9 evaluations.

The project owner shall notify the BAAQMD and the Energy Commission CPM at least 7 days prior to any VEE performed for a restart after scheduled maintenance activities and as soon as practicable for a restart after unscheduled maintenance activities.

Verification: At least 7 days prior to the VEE for a restart after scheduled maintenance activities and as soon as practicable for a restart after unscheduled maintenance activities, the project owner shall notify the BAAQMD and Energy Commission CPM of the anticipated restart(s) and shall provide documentation of certification of the individual performing the VEE. The project owner shall make the site available to representatives of the BAAQMD, ARB, EPA and Energy Commission CPM for viewing the restart(s). The VEE results shall be submitted to the Energy Commission CPM within 7 days of any restart.

EXHIBIT B

Amend "Reporting of Complaints, Notices, and Citations" in the last paragraph on page 180 of the Final Decision by adding the language **underlined and in bold**, and deleting language in ~~strikeout~~ as follows :

In addition to the monthly and annual compliance reporting requirements described above, the project owner shall report and provide copies **to the CPM** of all complaint forms, **including noise and lighting complaints and any other claims or complaints from members of the public**, notices of violation, notices of fines, official warnings, and citations, **that concern or may concern a violation of any condition of certification or violation of any applicable law, ordinances, regulations or standard over which the Commission has jurisdiction** within 10 days of receipt, ~~to the CPM~~. Complaints shall be logged and numbered. Noise complaints shall be recorded on the form provided in the **NOISE** Conditions of Certification. All other complaints shall be recorded on the complaint form on the following page.