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May 10, 1999

<b>DOCKET</b> <b>98-AFC-1</b>	
<b>DATE</b>	<b>MAY 10 1999</b>
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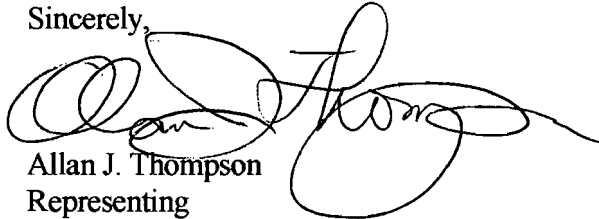
CALIFORNIA ENERGY COMMISSION  
Docket Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: Docket No. 98-AFC-1

Dear Sir/Madame:

Attached herewith for filing with the California Energy Commission are an original and 12 (twelve) copies of Applicant's Opening Brief for the above-captioned project.

Sincerely,



Allan J. Thompson  
Representing  
Pittsburg District Energy Facility, LLC

AJT:dmg  
Attachments  
Cc: Service List

STATE OF CALIFORNIA

State Energy Resources Conservation  
And Development Commission

In the Matter of: )  
)  
Application for Certification )  
For the Pittsburg District )  
Energy Facility (PDEF) )  
\_\_\_\_\_ )

Docket No. 98-AFC-1

APPLICANT'S OPENING BRIEF

Hearings have been held and the record has been closed in all areas of this proceeding, with the exception of air quality, the portions of public health that are affected by air quality, and cumulative water impacts. These hearings were held on April 28 and 29 and May 3 and 4, 1999. Exhibit 30 contains Applicant's prepared testimony and resumes and exhibit 32 contains Applicant's rebuttal testimony. This brief is submitted without the benefit of transcripts and contains Applicant's best recollection of statements made by the parties in hearings. The issues presented by the parties, and submitted to the Committee, are as follows:

1. Project Description.

Applicant presented the testimony of five witnesses in this area. A summary of this testimony is as follows:

(a) Mr. Sam Wehn presented testimony on the project location, schedule, ownership, operations and the objectives on Enron and the City of Pittsburg in developing this project (Ex. 1 – sections 1.3.1, 1.4, 1.5, 2.0, 3.1, 3.2, and 3.8). Mr. Wehn also testified to property owner lists for the project and the linear facilities (Ex. 1, Appendix P and Ex. 9)

(b) Mr. Joe Patch presented testimony on the description of the project and its ancillary facilities (Ex. 1 – sections 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.4, 3.0, 3.3, 3.4, and 3.6) Mr. Patch also testified on the project construction (Ex. 1 – section 3.7) and gave an overview of the project in live testimony on May 4, 1999.

(c) Mr. Robert Ray summarized the analysis of the environmental impacts of project construction and operation (Ex. 1 – sections 1.6 and 5.1)

(d) Mr. Jeff Kolin, City Manager of the City of Pittsburg, and David Parquet of Enron co-sponsored Exhibit 10, the alliance between the City of Pittsburg and Enron that gives the City 60% of the net revenues from the project. The City has stated on numerous occasions that the revenues from the project will be used to pay for City infrastructure.

Applicant and Staff appear to offer consistent descriptions of the project and its linear components.

2. Integrated Assessment of Need.

Mr. Wehn presented Applicant's testimony on the need for the project, and accepted Staff's testimony (Ex 1 – section 1.2 and statement of counsel, April 28, 1999).

3. Alternatives.

Mr. Wehn testified regarding the alternatives to the project and project components that would meet the basic goals and objectives of the project proponents. These alternatives included alternate locations for the plant and ancillary facilities and alternate air emission control processes. (Ex. 1 – sections 6.1, 6.3, 6.4, 6.5 and 6.6)

Mr. Patch testified about alternate generation technologies available to the Applicant (Ex. 1 – section 6.2).

Applicant and Staff agree that there are no alternatives to the project, its components, or its linear facilities that are superior to the proposed facilities.

4. Power Plant Reliability.

Mr. Patch testified regarding the project's reliability (Ex. 1 – section 3.9). Applicant and Staff agreed that the reliability of the project is very high.

5. Power Plant Efficiency.

Mr. Patch testified regarding the efficiency of the proposed power plant. Mr. Patch and Staff agreed that the selected equipment and project configuration are very efficient and that Applicant will meet the state and federal Qualified Facility requirements. (Ex. 1 – Appendix M)  
Applicant accepted Staff's proposed Condition of Certification EFF-1.

6. Paleontologic Resources.

Applicant witness Brian Hatoff offered testimony on the paleontologic resources of the area of the project and its linear routes. Mr. Hatoff agreed with Staff Conditions of Certification and agreed that with the implementation of these conditions, the project would not have significant impacts upon paleontologic resources (Ex 1 – section 5.8 and

Appendix L and Ex. 8). Staff agreed to add a verification that was missing from the testimony.

7. Cultural Resources

Applicant witness Brian Hatoff offered testimony on the cultural resources of the area of the project and its linear routes. Mr. Hatoff agreed with Staff Conditions of Certification and agreed that with the implementation of these conditions (now in Ex. 29, starting at page 100), the project would not have significant impacts upon cultural resources (Ex. 1 – section 5.7 and Appendix K and Ex. 8)

8. Compliance Monitoring and Closure

Mr. Patch testified regarding the project closure and monitoring requirements (Ex. 1 – section 3.10) and accepted Staff Conditions of Certification (Staff Assessment, page 451)

9. Biological Resources

Applicant witness Kellogg testified to the biological resources and impacts expected from project construction and operation (Ex. 1 – section 5.6 and Ex. 2 – 2-Bio-1). Applicant agrees with Staff conclusions, including errata in Ex. 29, page 117, and Staff's Conditions of Certification. Staff agreed to delete the LORS reference to a CDFG/COE permit as the project no longer contemplates crossing Dowest Slough.

10. Noise

Applicant witness Rob Greene testified to the anticipated noise impacts from project construction and operation (Ex 1 – section 5.12, Ex 2 – 2-Noise and Ex.4). Applicant accepted Staff recommendations regarding night noise levels in the City of Pittsburg and modified the proposed facility to significantly reduce noise levels from the plant. Applicant accepts Staff proposed noise Conditions of Certification and appreciates the changes to the conditions offered at the hearings. With the exception of the clarification that the first sentence of NOISE-4 which should end with “110 dBA L50 measured at a distance of 100 feet” Applicant accepts the changes to the Conditions of Certification. Applicant additionally agrees with Staff analysis of the noise impacts resulting from construction and operation of the truck bypass road (Ex. 29, page 63). With the construction of the sound wall, there will be no significant noise impacts from the truck bypass.

11. Visual Resources

Mr. Larry Headley presented Applicant's testimony regarding the visual impacts of the project and the linear components. Mr. Headley concludes that, with mitigation measures proposed by both Applicant and Staff (See Staff Ex. 28, pages 231-235 and Ex.

29, pages 73-75), visual impacts will not be significant. Mr. Wehn, on behalf of the project, accepts these conditions of certification.

Mr. Wehn testified regarding the visual impacts from the proposed sound wall and how Applicant is working with the citizens of the City of Pittsburg to create acceptable visual mitigation measures that will have review by the citizens' group (the Advisory Committee). Applicant has committed to the creation of parks along 8<sup>th</sup> street (jointly with the Delta Project), along the proposed truck bypass road and at the start of the truck bypass road at the Pittsburg-Antioch Highway. With regard to maintaining these parks and plantings that will soften the sound wall, City of Pittsburg witnesses Randy Jerome and Glen Valenzuela testified that the City intends to care for these City facilities (Testimony, May 3, 1999). Applicant accepts the responsibility of working with residents of the City of Pittsburg to arrive at a sound wall and park plan that is acceptable.

Applicant accepts Conditions of Certification that deal with replacing damaged or disturbed landscaping, including extension of the conditions to construction to areas within the City of Antioch. (See Ex. 28, VIS-7)

Applicant witness Patch offered numerous exhibits, which portray the visual impacts of various project components. Many of the photosimulations presented by Mr. Patch show the proposed transmission towers and lines with and without mitigation. Other photosimulations show the location of various project components. (Ex 2 - 2-Vis-2 through 9 and 1a through 9a; Ex. 11, 13, 18 and 26)

## 12. Soils and Water Resources.

Applicant witness Robert Ray testified regarding the soils underlying the project site and project linear facilities. Mr. Ray sponsored section 5.4 of Exhibit 1, the agriculture and soils section of the Applicant's AFC. Mr. Patch's testimony dealt with revegetation and erosion control plans for the project (Ex. 2 - Soils and Water 1 and 2 and Ex. 5) and agreed with Staff that the project, with proposed conditions of certification (Ex. 28, page 350-351), will not cause significant environmental impacts.

Applicant is committed to the use of tertiary treated effluent from the Delta Diablo Water Treatment Facility for its primary source of water. Mr. Max Ramos (Ex. 35 -resume) offered testimony regarding this source of water. (Ex. 1 - section 5.5) The record contains information on this source of water (Exs. 7 and 27 sponsored by Mr. Patch) and Applicant agrees with Staff witness O'Hagen (See testimony of April 29, 1999) that this source of water is appropriate for the project. Applicant agrees with all conditions of certification, including the water quality condition contained in exhibit 29, page 123. We further believe that the City of Antioch agreed with this position at the May 3, 1999 hearings. Finally, Mr. Wehn testified to the operational profile of the facility and the Applicant's application to the Delta Diablo Facility. (Ex. 2 - 2 Soils and Water 3 and 4)

The City of Antioch raised the issue of the cumulative impacts of the combined operation of the PDEF and the Calpine Delta project. Applicant presented Mr. Roger James (resume – exhibit 36) to review documents produced by the Delta Diablo Water Treatment Facility and the Calpine Delta project. Mr. James testified, on April 26, 1999, that there will be no significant adverse impacts from the combined operation of these two facilities.

13. Socioeconomics.

Applicant witness Shabnam Barati presented testimony and exhibits (Ex 1 – section 5.10 and exhibit 2 – Socio 1 through 4). Ms. Barati concluded that there would be no significant adverse impacts from project operation and construction, reviewed the Staff testimony and recommended that Applicant accept the Staff Conditions of Certification.

CURE offered testimony (Exhibit 34) that supported Applicant's testimony.

14. Worker Safety and Fire Protection.

Applicant witness Denise Clendening offered testimony and sponsored material (Exhibit 1 – section 5.17). Ms. Clendening reviewed Staff analysis and agreed with the Staff's Conditions of Certification.

15. Transmission System Engineering.

Applicant witness Patch testified and sponsored exhibits which describe Applicant's transmission lines and points of interconnection (Exhibits 1 – section 3.5 and Appendix O; Exhibit 2 – TLSN-2; and exhibits 11 and 22). Mr. Patch also submitted evidence regarding the interconnection and related studies performed by Pacific Gas & Electric Company (Exhibit 6) and the acceptability of those studies to the Independent System Operator (Exhibit 24). Applicant accepts Staff proposed Conditions of Certification (Ex 28, pages 432-433).

The Independent System Operator offered testimony which, essentially, recommended that the project go forward. The ISO is confident that a Final Interconnection Study by PG&E will not result in downstream physical additions to the transmission grid (even if any such downstream additions are required, the CPUC would review the environmental impacts of such additions). The ISO sponsored an exhibit (Ex. 33) which confirms this recommendation.

16. Transmission Line Safety and Nuisance.

Applicant witness Patch offered testimony and exhibits which describe the safety and nuisance aspects of transmission line operation (Exhibit 1 – section 4.2 and exhibit 2 – 2-TLSN-1). Mr. Patch was questioned regarding Applicant's EMF studies (See testimony of May 3, 1999). Applicant accepts Staff Conditions of Certification (Ex. 28, pages 91-93).

17. Waste Management.

Applicant witness Joe Morgan offered testimony and exhibits (Exhibit 1 – section 5.14 and exhibit 2 – waste 1 through 3) which discussed the generation and handling of wastes resulting from plant construction and operation. Further, exhibit 40 in this proceeding is the submittal of USS Posco to the California Department of Health Services which requests less stringent handling requirements for the soil underlying the plant. Mr. Ringer of the Staff agreed that if approved, the waste management plan (See Staff Condition of Certification WASTE-3 on exhibit 28, page 120) should reflect these new requirements and that the capping plan can be deleted. With this exception, Applicant accepts all of Staff Conditions of Certification.

18. Hazardous Materials Management.

Applicant witness Morgan offered testimony and exhibits (Exhibit 1 – section 5.15) on the project's use and management of hazardous wastes. Mr. Patch testified regarding water treatment chemicals that would be used (Exhibit 16). Applicant reviewed Staff proposed Conditions of Certification (exhibit 28, pages 100-101) and accepts them for this project.

19. Cumulative Impacts.

Applicant witness Robert Ray offered testimony regarding the cumulative impacts of the project (Exhibit 1 – section 5.18). This testimony does not include air cumulative testimony, or the cumulative water testimony of Mr. James. Mr. Ray has concluded that no significant adverse cumulative impacts are associated with the PDEF project.

20. Public Health.

Applicant witness John Koehler offered testimony on the public health impacts resulting from project construction and operation. Mr. Koehler offered exhibits 1 – section 5.16 and exhibits 12 and 21. Applicant has reviewed Staff proposed Conditions of Certification and accepts them for this project. Staff also addresses the public health effects of the truck bypass road (Exhibit 29, pages 5-6) and determined that the impacts were not significant.

21. Traffic and Transportation.

Applicant witness Robert Ray offered testimony and exhibit 1 – section 5.11 in describing Applicant's impacts upon the area's traffic and transportation resources. Applicant reviewed Staff Conditions of Certification (Exhibit 28, pages 164-167 and exhibit 29, pages 57-60) and found them to be reasonable, including the extension of the conditions to the City of Antioch. We should also mention here the Applicant's willingness to work with the citizens group to mitigate the truck bypass route.

22. Land Use.

Applicant witness Shabnam Barati testified regarding the land uses and legal restrictions upon land use in the area of the proposed project and linear facilities. Applicant accepts the proposed Conditions of Certification proposed by Staff. The single remaining area that is outstanding is the City of Pittsburgh's process for assuring the Commission that all local laws, ordinance, regulations and standards will be met. This process involves review by the City of Pittsburgh. Resolution is expected prior to consideration of a Final Commission decision.

In response to a question by Applicant, Staff witness Ringer agreed to change the verification of LAND-1 from "At least 30 days prior to the start of construction the..." to "At least 30 days prior to the start of construction of *the powerplant* the...". This allows construction of the truck bypass road to proceed upon receipt of a Final Decision, without having to obtain City of Pittsburgh LORS verification 30 days prior to that date.

23. Facility Design and Geology.

Applicant witness Fenton offered testimony and exhibit 1 – section 5.3 in the area of site geology. Mr. Patch offered a description of the project and its linear facilities when he testified in the area of facility design. Additionally, Mr. Patch offered numerous exhibits (Exhibit 1 – section 4.1 , 7.0 and Appendices A, B, C, D, E, F, G, G and N) which detail the design and design standards for plant construction. Mr. patch testified that while he is concerned that the verification to certain Conditions of Certification do not contain time periods for the CBO to respond to project owner submittals (See, for example, the verification to Gen-5), Applicant will accept the Staff proposed conditions of Certification. Staff agreed (testimony on May 4, 1999) that the applicable Uniform Building Code is the one in effect at the time of submittal of the first design drawings by Applicant.

In response to a request from the Committee, Mr. Robert Ray sponsored exhibit 39, which is a map showing the plant site and linear routes as Applicant wishes them to be licensed.

Applicant hopes that its discussion of the issues in this document is helpful to the Committee and looks forward to the completion of the record.

Dated: May 10, 1999

  
Allan J. Thompson

Representing  
Pittsburg District Energy Facility, LLC



STATE OF CALIFORNIA

State Energy Resources Conservation  
And Development Commission

In the Matter of:	)	
	)	
Application for Certification	)	Docket No. 98-AFC-1
For the PITTSBURG DISTRICT	)	
ENERGY FACILITY	)	
_____	)	

PROOF OF SERVICE

I, Diane M. Gilcrest, declare that May 10, 1999 I deposited copies of the **Applicant's Opening Brief** in the United States mail in Concord, CA with first class postage thereon fully prepaid and addressed to the following:

**DOCKET UNIT**

CALIFORNIA ENERGY COMMISSION DOCKET UNIT, MS-4  
Attn: Docket No.: 98-AFC-1  
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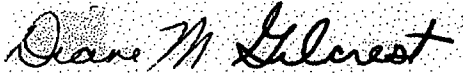
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I declare that under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, reading "Diane M. Gilcrest". The signature is written in black ink on a white background.

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Diane M. Gilcrest