

DOCKET**00-AFC-1C**DATE July 31 2009RECD. July 31 2009**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of the)	Docket No. 00-AFC-1C
Complaint Against:)	
)	
GATEWAY GENERATING STATION)	STAFF PREHEARING
)	CONFERENCE STATEMENT
_____)	

INTRODUCTION

The consolidated complaints and other documents indicate that there are two issues raised by petitioners in this proceeding. The first issue is the existence of a valid USEPA-issued Prevention of Significant Deterioration permit for the Gateway facility. As staff has previously explained in its filings, that issue is outside the purview of the Energy Commission, and is being addressed currently by USEPA in compliance discussions with Pacific Gas & Electric.

The second issue concerns whether, or to what extent, the Gateway facility was constructed in a manner that does not conform with the state license issued by the Energy Commission. Staff is aware of one project feature (a diesel fire water pump) that does not conform with the Energy Commission license, and of a second feature (a fuel pre-heater) that may not. These two features are currently being processed in an amendment proceeding at this agency. Regarding the fuel pre-heater, a smaller unit (a dew point pre-heater) has been installed that has lower emissions and that is being operated consistent with license conditions; for this reason staff believes that the smaller heater is not out of conformity with the Energy Commission's license, but intends to process the change in the condition to allow the smaller dew point heater to run longer each day. (See, PG&E's Petition to Amend Air Quality Conditions in the Gateway Generating Station Final Decision, May 7, 2009.)

Regarding the diesel fire pump, the license called for an electric fire pump, but such a fire pump could not be approved by the fire safety officials required to sign off on this equipment. Such fire safety review by fire safety officials was required by separate conditions in the Energy Commission license. (See WORKER SAFETY-2.) The project has thus relied on a temporary diesel fire pump until an amendment is processed at this agency providing for a permanent one. PG&E has kept both staff and the Bay Area Air Quality Management District informed of this matter, and staff anticipates that the amendment that will address this nonconformity will soon be approved.

Staff is unaware of any other issue of conformity with the Energy Commission license.

POINT OF ORDER AND PROCEDURE

Staff agrees that the hearing can be useful to understanding the relevant underlying facts. However, the evidentiary hearing format proposed by the hearing order will likely impede the Committee's ability to "get to the bottom" of these matters. The Order identifies no issues of fact that are to be determined through evidentiary presentations. Most if not all of the relevant facts are a matter of public record and not, to staff's knowledge, subject to dispute. Staff strongly recommends that the Committee conduct the hearing as an informal inquiry that will allow each party an opportunity to discuss the underlying facts and issues. This would allow the parties to exchange views and information and get direct responses, and allow the Committee to ask questions and directly engage the parties in discussion. If, as a result of such a process, it becomes apparent that there are issues of fact that need to be addressed through testimony, the Committee could either swear witnesses to address factual issues in a more formal hearing, or schedule a later date for such. Staff is unaware of any issues of fact that are germane to this proceeding and, for that reason, proposes no testimony for filing. If the Committee believes a formal hearing is necessary, staff will sponsor the filings it has previously made related to the filed complaints and PG&E's petition for amendment.

Dated: July 31, 2009

RICHARD C. RATLIFF
Staff Counsel IV



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**IN THE MATTER OF THE COMPLAINT AGAINST
GATEWAY GENERATING STATION**

**Docket No. 00-AFC-1C
PROOF OF SERVICE
(Revised 7/28/09)**

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DECLARATION OF SERVICE

I, Janet Preis, declare that on July 31, 2009, I served and filed copies of the attached Staff Prehearing Conference Statement. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list. The document has 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 or by depositing in the United States mail at Sacramento with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above 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. 07-AFC-8
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct.

_____/s/_____
Janet Preis