

Robert Sarvey  
501 W. Grantline Rd.  
Tracy, Ca. 95376

<b>DOCKET</b>	
<b>00-AFC-1C</b>	
DATE	<u>8/4/2009</u>
RECD.	<u>8/13/2009</u>

**STATE OF CALIFORNIA**  
Energy Resources Conservation and Development Commission

In the matter of	)	Docket No. 00-AFC-01
	)	
	)	Testimony of
GATEWAY GENERATING STATION	)	Robert Sarvey
	)	Gateway's Compliance

**INTRODUCTION**

The Gateway Project fails to comply with the Final Commission Decision of May 30, 2001. The applicant has constructed and operated a 300 hp diesel fire pump without prior approval from the Energy Commission.<sup>1</sup> The project owner has constructed a facility that is substantially different than the projects approved ATC and the Commissions Decision. The project owner also constructed the facility without a valid PSD permit. The project owner has modified several conditions in the final decision without properly amending the commission Decision. I have reviewed ACORN's Complaint and submit this testimony and declaration in support of the complaint. Attached as Exhibit 21 are my public comments on the 2008 Draft ATC and PSD permit for the Gateway Generating Station.

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<sup>1</sup>The project owner must petition the Energy Commission, pursuant to Title 20, California Code of Regulations, section 1769, to 1) delete or change a condition of certification; 2) modify the project design or operational requirements; and 3) transfer ownership or operational control of the facility. Commission Decision Exhibit 2 Page 186

**PG&E has violated the Commissions Decision and its post certification requirements by constructing and operating a 300hp diesel fire pump and other equipment without an approved amendment.**

The Commission Decision for the Gateway Generating Station is violated because the project as constructed does not meet the CEC Project Description. No amendment has been approved for the post certification modifications of a 300 hp diesel fire pump which replaced two electric fire pumps and a jockey pump. PG&E has constructed and operated the fire pump without approval of the CEC or any public review of the requested modification. PG&E's unauthorized equipment addition is significant since the fire pump will be a source of additional toxic air contaminants and criteria air pollutant emissions. Many times maximum NO<sub>2</sub> concentrations from a power project are highly influenced by diesel fire pumps and the projects modeled NO<sub>2</sub> concentrations combined with background already exceed the new one hour state standard for NO<sub>2</sub>.<sup>2</sup> The projects health risk assessment must also be analyzed and approved by CEC staff through the amendment process. The original health risk assessment reviewed by the CEC Staff did not contain a diesel fire pump. PG&E was aware when they constructed and operated the fire pump that they were required to file an amendment for the pump at the CEC because they had previously filed an amendment which included the pump on January 15, 2008<sup>3</sup>. Subsequently PG&E withdrew the amendment on February 13, 2009 after constructing and operating the fire pump. PG&E circumvented the Commissions authority by withdrawing the amendment and still operating the equipment, a violation of the Commissions Decision for the Gateway Project.<sup>4</sup>

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<sup>2</sup> Exhibit 1 page 18

<sup>3</sup> Exhibit 7 page 2

<sup>4</sup> The project owner must petition the Energy Commission, pursuant to Title 20, California Code of Regulations, section 1769, to 1) delete or change a condition of certification; 2) modify the project design or operational requirements; and 3) transfer ownership or operational control of the facility. Commission Decision Exhibit 2 Page 186

**The project owner has constructed a facility that is substantially different than the projects approved ATC.**

The applicant's ATC was issued in 2001 and authorized the construction of 2 combustion gas turbines, 2 heat recovery steam generators, a 12MM gas fired preheater, and a 10 cell Wet Cooling Tower.<sup>5</sup> What the applicant constructed was substantially different from the approved ATC. The equipment that was constructed was 2 combustion gas turbines, 2 heat recovery steam generators, a dry cooling system, a 6MM gas fired preheater, and a 300 HP diesel fire pump engine. The ATC has been extended 3 times without ever changing the permitted equipment in the project description.

The applicant did submit an amended ATC and PSD application in December of 2007 including the correct project description. In June of 2008 the District issued the draft Engineering Evaluation for Proposed Amended Authority to Construct and Draft PSD Permit for the Gateway Project. I evaluated the application and provided comments on the amended ATC and PSD permit.<sup>6</sup> Besides the new equipment that the applicant asked permission to construct in the new ATC, the application properly lowered the facilities emission limits to comply with current BACT. The application included a health risk assessment for the diesel fire pump and an air quality impact analysis for the new permitted equipment. This amended ATC actually described and analyzed the facility the way it was constructed. It would have constituted a legal ATC and PSD permit that complied with the original Commission Decision had it gone through the public and agency review process. Instead PG&E withdrew the amended ATC and PSD permit before it was approved. To date I have received no notice from the BAAQMD that the amended ATC has been withdrawn even though I commented on the application.

On February 24, 2009 the BAAQMD issued the project a notice of violation related to the diesel fire pump. The August BAAQMD Board of Directors meeting

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<sup>5</sup> Exhibit 1 page 1, 2

<sup>6</sup> Exhibit 21

Agenda lists two NOV's for the Gateway Facility one for no ATC and one for excess emissions. I have not been able to obtain the information on the NOV's since the agenda was just issued.<sup>7</sup> There may be other violations of the Commission Decision related to these NOV's.

**The Project does not have a valid PSD permit.**

According to the permitting agency the BAAQMD the Gateway Project did not have a valid PSD permit before it began construction.<sup>8</sup> The project does not comply with the Commission Decision's Air Quality LORS which are listed on page 29 of the Commission Decision. By withdrawing its Amended PSD permit application PG&E has willfully constructed and operated a project that does not match its PSD permit. PG&E has purposely evaded lowering the projects emission limits to current BACT. PG&E had applied to the BAAQMD to amend the PSD permit in December of 2007 along with its proposed ATC and would have had a valid PSD and ATC permit that complied with the Commission Decision but withdrew its application in January of 2009 after commencement of commercial operation.

**PG&E has violated Conditions of Certification AQ-30, AQ-32, AQ-33 and AQ-47**

PG&E has also has violated Conditions of Certification AQ-30, AQ-32, and AQ-33 because they did not complete the required source tests within the time periods specified in the Commission Decision.<sup>9</sup> Condition AQ-47 has not been

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<sup>7</sup> Exhibit 24 page 49

<sup>8</sup> Exhibit 15 page 4

<sup>9</sup> A petition is required for **amendments** and for **insignificant project changes**. For verification changes, a letter from the project owner is sufficient. In all cases, the petition or letter requesting a change should be submitted to the Commission's Docket in accordance with Title 20, California Code of Regulations, section 1209. Commission Decision page 186

modified through an approved amendment to change the equipments operating limitations.

## **Conclusion**

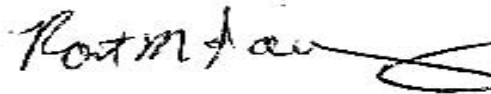
PG&E has willfully circumvented the 2001 Commission Decision and its requirements for post certification amendments. PG&E has applied for the modifications and constructed and operated the project as described in the proposed amendments and then withdrawn the amendments before Commission review and approval. PG&E is operating a facility that is substantially different than its ATC and PSD permits in violation of the Commission LORS compliance requirements. PG&E had applied to amend the ATC and PSD permits, constructed and operated the facility in accordance with the requested modifications, and subsequently withdrew the amended ATC and PSD permits.

**DECLARATION OF Robert Sarvey, MBA, BS**

**I Robert Sarvey declare as follows**

- 1) I prepared the testimony of Robert Sarvey on the Gateway Project's non compliance with Commissions Decision.**
- 2) It is my professional opinion that the prepared testimony is valid and accurate with respect to the issues addressed therein.**
- 3) I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.**
- 4) A copy of my professional qualifications is attached.**

**I declare under penalty of perjury, under the laws of the State of California, that the forgoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on August 4 , 2009 in Tracy, California.**



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**Signed 8/4/09**

## Resume of Robert Sarvey

### Academic Background

**BA Business Administration California State University Hayward 1975**  
**MBA California State University Hayward 1985**

### Experience

#### **San Joaquin Valley Air Pollution Control District Citizens Advisory Board**

**Industry Representative:** Analyzed proposed air quality regulations and made recommendations to the Governing Board for approval.

**GWF Peaker Plant 01-AFC-16:** Participated as an Intervenor in the project and helped negotiate and implement a 1.3 million dollar community benefits program. Successfully negotiated for the use of local emission reduction credits with GWF to offset local air quality impacts.

**East Altamont Energy Center 01-AFC-14:** Participated as an Intervenor and helped develop the conditions of certification for hazardous materials transportation, air quality, and worker safety and fire protection. Provided testimony for emergency response and air quality issues.

**Tesla Power Project 01- AFC-04:** Participated as an Intervenor and provided air quality testimony on local land use and air quality impacts. Participated in the development of the air quality mitigation for the project.

**Modesto Irrigation District 03-SPEE-01:** Participated as Intervenor and helped negotiate a \$300,000 air quality mitigation agreement between MID and the City of Ripon.

**Los Esteros :** 03-AFC-2 Participated as an Intervenor and also participated in air quality permitting with the BAAQMD. Responsible for lowering the projects permit limit for PM-10 emissions by 20%.

**SFERP 4-AFC-01:** Participated as an Intervenor and also participated in the FDOC evaluation. My comments to the BAAQM D resulted in the projects PM - 10 emission rate to be reduced from 3.0 pounds per hour to 2.5 pounds per hour by the District. Provided testimony on the air quality impacts of the project.

**Long Beach Project:** Provided the air quality analysis which was the basis for a settlement agreement reducing the projects NOx emissions from 3.5ppm to 2.5ppm.

**ATC Explosive Testing at Site 300:** Filed challenge to Authority to Construct for a permit to increase explosive testing at Site 300 a DOE facility above Tracy. The permit was to allow the DOE to increase outdoor explosions at the site from 100 pounds per charge to 300 pounds per charge and also grant an increased annual limit on explosions from 1,000 pounds of explosive to 8,000 pounds of explosives per year. Succeeded in getting the ATC revoked.

**CPUC Proceeding C. 07-03-006:** Intervened in proceeding and negotiated a settlement with PG&E to voluntarily revoke Resolution SU-58 which was the first pipeline safety waiver of GO 112-E granted in the State of California.

**East shore Energy Center:** 06-AFC-06 Intervened and provided air quality testimony and evidence of cancellation of Eastshore's power purchase agreement with PG&E.

**Colusa Generating Station:** 06-AFC-9 Participated as air quality consultant for Emerald Farms. Filed challenge to the PSD Permit.

**CPUC Proceeding 08-07-018:** Tesla Generating Station CPCN participated in proceeding which was dismissed due to motion by IEP. Reviewed all filings, filed protest, signed confidentiality agreement and reviewed all confidential testimony.

**GWF Tracy Combined Cycle 08-AFC-07:** Participated in negotiation of the Air Quality Mitigation Agreement with the San Joaquin Valley Air Pollution Control District and GWF.



Robert Sarvey  
501 W. Gantline Rd.  
Tracy, Ca. 95376

In the matter of:	)	Docket No. 00-AFC-01
	)	
Gateway Generating Station	)	Response to Staff's
	)	Analysis of the Proposed
	)	Air Quality Amendment

Introduction

On May 11, 2009 PG&E filed an amendment to its conditions of Certification for the Gateway Project. On July 31, 2009 Staff published its analysis of that amendment. The current amendment request would modify several Air Quality Conditions, update the equipment description, and renumber some conditions. The amendment would also add a 300 kW diesel fire pump and a new dewpoint heater. As staff states on page 1 of their analysis, "Staff notes that the project has already been modified (i.e. the equipment has already been installed prior to processing and/or approving the proposed changes) and the current amendment request addresses the difference between the decision and what is "as built." Staff evaluated any potential non-compliance issues related to the Energy Commission Decision and any effect on public health and safety."

LAWS ORDINANCES REGULATIONS AND STANDARDS (LORS) COMPLIANCE

Staff's opening statement in its analysis is that the "the project's proposed amendment is subject to all the LORS described in the final staff assessment." Staff's conclusions state, "The project would most likely comply with applicable District Rules and Regulations, including New Source Review requirements. The **final district permit for the project** and the diesel fire pump is not yet available." Staff is unaware of a couple of important facts. The District will not issued an amended PDOC because the applicant withdrew the request for an

amended ATC and PSD permit on February 13, 2009 after it had constructed the facility, commissioned the facility, and operated the facility.<sup>1</sup> The facility has recently received an NOV related to excess emissions and lack of an ATC for the diesel fire pump.<sup>2</sup>

In addition the projects PSD permit is no longer valid. The BAAQMD in consultation with USEPA has determined that the PSD permit is no longer valid. The project ceased construction for over 18 months and failed to renew the PSD permit.<sup>3</sup> The project owner had applied for a new ATC/PSD permit in December of 2007 but withdrew it after it completed construction and operated the project. The project owner does not have any valid pre- construction permits for the project. This project does not comply with the LORS listed in the FSA and reiterated in the final Commission Decision on page 29 and the amendment cannot be certified by the Commission without LORS compliance.<sup>4</sup> Further non compliance issues are included in the attached testimony of Robert Sarvey on Gateways non compliance. (Attachment 2)

## PUBLIC HEALTH AND SAFETY

### Air Quality Impacts

Staffs analysis fails to examine the air quality impacts of the new project components. Staff has not modeled or reviewed modeling for the air quality impacts from the operation of the 300 Kw diesel fire pump. Many times maximum NO<sub>2</sub> concentrations from a power project are highly influenced by diesel fire pumps. The projects modeled NO<sub>2</sub> concentrations combined with background already exceed the new one hour state standard for NO<sub>2</sub> without the

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<sup>1</sup> [http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-06-01-Withdrawal\\_of\\_Petition\\_to\\_Amend\\_Air\\_Quality\\_Conditions\\_TN-50406.pdf](http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-06-01-Withdrawal_of_Petition_to_Amend_Air_Quality_Conditions_TN-50406.pdf) page 3

<sup>2</sup> <http://www.baaqmd.gov/~media/Files/Board%20of%20Directors/2009/Board%20of%20Directors%20080509%20Agenda%20Pkt.ashx> page 49

<sup>3</sup> [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Filings%20By%20Appeal%20Number/0E7FD6B0DCAC7CBD852575EC00450927/\\$File/BAAQMD%20Brief%20...37.pdf](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/0E7FD6B0DCAC7CBD852575EC00450927/$File/BAAQMD%20Brief%20...37.pdf) pages 1-4

<sup>4</sup> SECTION 1769 (a) (3) (B)

diesel fire pump.<sup>5</sup> For Staff to conclude that the project has no adverse air quality impacts the diesel fire pump must be evaluated by staff with the plants other equipment. A new project next to the Gateway Project the Marsh Landing Project 08-AFC-3 could also heavily influence the NO<sub>2</sub> concentrations near the point of maximum impact.

### Health Risk Assessment

The applicant has performed a new health risk assessment for the incremental risk from the new fire pump which has already been installed and operated for over 21 hours. That health risk assessment concluded that the health risk from the diesel fire pump was .82 in one million. Staff opines that this is below Staff's criteria for significance of 10 in one million. Staff further states that even if that risk is combined with the .86 in one million risk that was calculated for the project in 2001 the resulting risk of 1.68 in one million is still below Staff's significance criteria. First of all health risks are not additive. Secondly the projects original health risk assessment was performed in October of 2000 almost nine years ago utilizing the air pollutant dispersion model ISCST3. Now the new AERMOD and ISC-PRIME models have been proposed by U.S. Environmental Protection Agency (U.S. EPA) as the preferred regulatory models for most applications over the widely used ISCST3 model. Also REL's have been reevaluated and modified since 2000. Combining an HRA performed in 2000 with another HRA performed in 2009 for a portion of the project would be an example of a piecemeal analysis which is prohibited by Pub. Resources Code, § 21061. The project will need a complete health risk analysis on the emissions from all project components with the new REL factors and modeling guidelines to determine there is no risk to the public. The project is located on Wilbur Avenue in Antioch. There are numerous power plants and industrial facilities close to the project. A cumulative health risk from all these projects should also be evaluated.

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<sup>5</sup> [http://web.archive.org/web/20060926122531/www.baaqmd.gov/pmt/public\\_notices/1999\\_2001/1000/A0018\\_nsr\\_1000\\_fdoc\\_020201.pdf](http://web.archive.org/web/20060926122531/www.baaqmd.gov/pmt/public_notices/1999_2001/1000/A0018_nsr_1000_fdoc_020201.pdf) FDOC page 18

AQ-29, AQ-30, AQ-32 have been modified.

PG&E and the BAAQMD have executed an enforcement agreement which allows PG&E 90 days before a source test rather than 60 days as required by conditions AQ-29, AQ-30, AQ-32. (Attachment 1) The conditions of certification should be modified to reflect this enforcement agreement.

### Summary

The project lacks a PSD permit and the project is currently involved in an enforcement proceeding with EPA Region IV over the lack of a PSD permit. Approval of the amendment should be postponed until those issues are resolved. The EPA process will probably add new conditions on the project which will require another amendment. More evaluation of the air quality impacts and the health risks related to the new equipment needs to be conducted by staff. The project area also has a new facility the Marsh Landing Power Project which should be included in the air quality analysis and the health risk assessment.

ATTACHMENT 1

**Pacific Gas & Electric Co.-BAAQMD  
Compliance Agreement**

This Compliance Agreement ("Agreement") is entered into this 25 day of November, 2008, between Pacific Gas & Electric Co. ("PG&E") and the Bay Area Air Quality Management District ("BAAQMD" or "District"), hereinafter collectively referred to as the "Parties."

**RECITALS**

WHEREAS, the District is the regional agency with primary responsibility for the control of air pollution from stationary sources in the San Francisco Bay Area Air Basin;

WHEREAS, PG&E owns and operates an electric power generating facility known as the Gateway Generating Station within the San Francisco Bay Area Air Basin, located at 3225 Wilbur Avenue in Antioch, CA, which is subject to District permitting jurisdiction;

WHEREAS, PG&E has been issued an Authority to Construct by the District authorizing the construction and initial operation of two combustion gas turbines at the facility (along with heat recovery steam generators and other related equipment), subject to various conditions designed to ensure compliance with applicable air pollution control regulations;

WHEREAS, conditions Nos. 29, 30 and 32 of the Authority to Construct require PG&E to conduct a source test of its equipment within 60 days of initial startup of the facility;

WHEREAS, PG&E has altered its original commissioning plan for the facility so that it can install pollution control equipment known as an oxidation catalyst at an earlier stage of commissioning than was originally anticipated;

WHEREAS, the early installation of the oxidation catalyst will result in additional emissions reductions above what was contemplated in the original commissioning plan;

WHEREAS, the additional time needed for the early installation of the oxidation catalyst under the revised commissioning plan means that it will not be possible for PG&E to complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct within 60 days as required by those Conditions;

WHEREAS, under the revised commissioning plan PG&E will require up to 90 days from startup to complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct;

WHEREAS, PG&E's revised commissioning plan does not call for actual turbine operation on more than 60 individual days before the anticipated completion of the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct;

WHEREAS, it appears to the District (i) that PG&E has acted reasonably in adjusting its commissioning plan and reasonably needs extra time to complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct in order to install the oxidation catalyst; (ii) that there will be no potential for environmental harm from taking extra time to

complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct because the maximum of number of days of actual turbine operation prior to completion of the testing will not increase; and (iii) that under the circumstances any drawbacks of extending the deadline for completing the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct will be outweighed by the benefits of PG&E's early installation of the oxidation catalyst under the revised commissioning plan;

WHEREAS, it appears to the District that under the circumstances PG&E may be eligible for immunity from enforcement action pursuant to the variance provisions of the Health & Safety Code, if PG&E were to avail itself of them; and

WHEREAS, the District is vested with:

- (i) enforcement authority for the air pollution control program in accordance with California Health & Safety Code Sections 40001, 40701, 40752, 42400-42421, and 42451-42454; and
- (ii) discretion over the application of this enforcement authority given the facts and circumstances of each enforcement matter,

and has determined that, in view of the circumstances recited above, it will not take civil or criminal penalty action against PG&E for failing to complete its initial source test within 60 days as required by Conditions Nos. 29, 30 and 32 of the Authority to Construct, as long as PG&E strictly adheres to the conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, based on the foregoing recitals, and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PG&E shall complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct within 90 days of startup.
2. PG&E shall not operate either combustion turbine on more than 60 individual calendar days before completion of the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct. For purposes of this Agreement, operation of a turbine during any part of a calendar day shall constitute operation on that day.
3. PG&E shall maintain written records of all times of turbine operation until completion of the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct. PG&E shall make such records available to the District for inspection upon request at any time, and shall submit copies of the final records to the District upon completion of the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct.
4. The District agrees that it shall not issue a Notice of Violation, seek civil or criminal penalties, or otherwise take enforcement action against PG&E for failure to complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct within 60 days of startup, as long as PG&E complies with all provisions of this Agreement. The

District reserves the right, in its discretion, to take any and all enforcement action against PG&E should PG&E fail to complete the source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct within 90 days of startup as required by this Agreement, or if PG&E operates the turbines on more than 60 separate calendar days prior to completion of source testing required by Conditions Nos. 29, 30 and 32 of the Authority to Construct. The District also reserves the right, in its discretion, to take any and all enforcement action for violation of any other permit or regulatory requirement not addressed by this Agreement.

5. Nothing in this Agreement excuses PG&E from compliance with any requirements under its Authority to Construct or District regulations except as expressly provided in this Agreement.

6. This Agreement is binding upon PG&E and the District only with respect to the matters specifically addressed and does not otherwise bind PG&E and/or the District.

7. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective predecessors, successors, subsidiaries, partners, limited partners, agents, principals, and assigns.

8. If any provision of this Agreement or the application of this Agreement to either PG&E or the District is held by any judicial authority to be invalid, the application of such provision to the other Party and the remainder of this Agreement shall remain in force and shall not be affected thereby, unless such holding materially changes the terms of this Agreement.

9. Each of the undersigned represents and warrants that he or she has read and understands and has full and complete lawful authority to grant, bargain, convey, and undertake the rights and duties contained in this Agreement, and that he or she has full and complete lawful authority to bind any respective principals, successors, subsidiaries, partners, limited partners, agents and assigns to this Agreement. Each of the undersigned understands and agrees that this representation and warranty is a material term of this Agreement, without which it would not have been executed.

10. PG&E and the District each hereby affirms and acknowledges that it has read this Agreement, that it knows and understands the terms of this Agreement, and that it has signed this Agreement voluntarily. The Parties have had the opportunity to consult with their respective attorneys and any other consultant each deemed appropriate prior to executing this Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. The mutual obligations and undertakings of PG&E on the one hand, and the District on the other hand, expressly set forth in this Agreement are the sole and only consideration of this Agreement and supersede and replace all prior negotiations and proposed agreements between PG&E and the District, written or oral, on the specific matters addressed in this Agreement. PG&E and the District each acknowledges that no other party, nor the agents nor attorneys of any other party, has made any promise, representation or warranty whatsoever (express or implied), not contained herein, to induce the execution of this Agreement. This Agreement constitutes the full, complete and final statement of PG&E and the District on the matters addressed by this Agreement.



13. This Agreement may be executed in one or more counterparts, each of which shall have the same force and effect as an original, but all of which together shall constitute one and the same instrument.

14. PG&E and the District have jointly prepared this Agreement. This Agreement shall be deemed to have been jointly drafted by the Parties for the purpose of applying any rule of construction to the effect that ambiguities are to be construed against the party drafting the agreement.

15. This Agreement may be amended and supplemented only by a written instrument signed by both PG&E and the District or their successors-in-interest. However, such execution may be in counterparts and, when so executed, shall be deemed to constitute one and the same document.

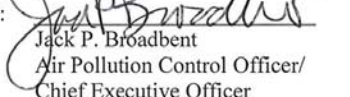
16. Any material breach of this Agreement by either Party shall make the Agreement subject to termination upon notice by the non-breaching Party.

17. The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

IN WITNESS WHEREOF, the Parties acknowledge, agree to and accept this Agreement.

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

PACIFIC GAS & ELECTRIC CO.

By:   
Jack P. Broadbent  
Air Pollution Control Officer/  
Chief Executive Officer


By:   
Jon Maring  
Sr. Director, Fossil Plant Construction

Date: 12/4/08

Date: 11/25/08

Approved as to form:

Approved as to form:

  
Brian C. Bunger, Esq.  
District Counsel

  
David Kraska  
Director and Counsel

Date: \_\_\_\_\_

Date: 11/25/08