

# DOCKET

00-AFC-1C

DATE \_\_\_\_\_

RECD. 9/24/2009

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## STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the matter of	)	Docket No. 00-AFC-01
	)	
	)	Request for Reconsideration
GATEWAY GENERATING STATION	)	of the Commissions
	)	August 26, 2009 Approval
	)	Of the Gateway Amendment

### INTROCUPTION

On May 8, 2009, the Pacific Gas and Electric Company (PG&E) filed a petition with the California Energy Commission requesting to modify the Gateway Generating Station. On July 30, 2009 Staff provided its analysis on the proposed amendment in a document entitled, "Gateway Generation Station (00-AFC-1C) Staff analysis of proposed Air Quality Amendment." In that document Staff requested that comments on its analysis on the proposed amendment be submitted by August 13, 2009. On August 13, 2009 I timely filed comments for staff's analysis entitled "Gateway Generating Station Response to Staff's Analysis of the Proposed Air Quality Amendment." My email and comments are attached to this document as Attachment A. To date I have received no response form Staff addressing my comments. On August 26, 2009 at the Energy Commission Business Meeting a hearing was held to consider approval of the May 8, 2009 Gateway Amendment. I was traveling but was able to call in for a few moments but I missed most of the discussion of the amendment analysis. Later after reviewing the transcript I discovered that Staff had not considered or responded to my concerns about the amendments air quality, public health, and LORS compliance issues that I had raised in my comments.

## REQUEST FOR RECONSIDERATION

Pursuant to Section 1720 (a) Robert Sarvey hereby petitions for Reconsideration of the Energy Commissions August 26, 2009 decision to grant an amendment for the Gateway Generating Station. The matter was considered at the August 26, 2009 Business meeting. As stated above I had submitted timely filed comments on Staff's Amendment Analysis which were not considered or included in the decision. At the August 26 meeting Staff Compliance Manager Ron Yasny stated that comments had been received but were considered part of the current Gateway Compliance proceeding not the amendment analysis.

19 COMMISSIONER LEVIN: Did the comments specify  
20 which docket number, or if that was open to interpretation,  
21 and the filers actually intended them to be filed in this  
22 proceeding? I just want to make sure that the public  
23 comments are received and recorded where the filer  
24 intended. If it was not clear -- if they specified the  
25 other docket number, that is a different story.

1 MR. YASNY: It is the proper docket number, but  
2 anything that is docketed refers to the project docket  
3 number, but while this amendment was going on, the  
4 complainants were filing comments and briefings, and so  
5 that is -- the way I interpreted that was that the comments  
6 were towards the complaint. And so any comments that were  
7 made are already docketed and part of public record.

Therefore staff did not consider my comments on the amendment analysis which were specifically titled, Gateway Generating Station Response to Staff's Analysis of the Proposed Air Quality Amendment."<sup>1</sup> Staff instead wrongly interpreted that my comments were directed towards the ongoing Gateway Complaint Proceeding. Therefore I am requesting that Staff respond to my comments and that those comments and responses be reconsidered by the full Commission before approval of this amendment is granted. The comments are

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<sup>1</sup> Attachment A

attached and are relevant to the air quality analysis, the health risk assessment and the LORS compliance for this amendment.

Attachment A: Robert Sarvey's August 13, 2009 comments on Staffs amendment Analysis

**Subject** Gateway Comments on Staffs amendment analysis

**Date:**

8/13/2009

**To:** [ryasny@energy.state.ca.us](mailto:ryasny@energy.state.ca.us)

**CC:** [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us), [dbehles](#)

Attached are Robert Sarveys comments on Staff's analysis for the Gateway amendment 00-AFC-01c which was posted on July 30, 2009

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>2</sup> The facility has recently received an NOV related to excess emissions and lack of an ATC for the diesel fire pump.<sup>3</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>4</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>5</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

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<sup>2</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>3</sup> <http://www.baaqmd.gov/~media/Files/Board%20of%20Directors/2009/Board%20of%20Directors%20080509%20Agenda%20Pkt.ashx> page 49

<sup>4</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>5</sup> SECTION 1769 (a) (3) (B)

background already exceed the new one hour state standard for NO<sub>2</sub> without the diesel fire pump.<sup>6</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.

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<sup>6</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

There are numerous power plants and industrial facilities close to the project. A cumulative health risk from all these projects should also be evaluated.

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. Bungler, Esq.  
District Counsel

  
David Kraska  
Director and Counsel

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

Date: 11/25/08

