GOLDEN GATE UNIVERSITY **School of Law**

Environmental Law and Justice Clinic

June 5, 2009

SUBMITTED BY E-MAIL AND FIRST CLASS MAIL

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Mr. Ron Yasny
California Energy Commission
1516 Ninth Street, MS 4
Sacramento, CA 95814

Reference: PG&E Gateway Generating Station (00-AFC-01C)

Subject: Complaint of Non-Compliance with Certification

Dear Mr. Yasny:

Attached please find a complaint of non-compliance against PG&E's Gateway Generating Station and the declaration of John Adams. The enclosure includes the original complaint and 11 copies of both the complaint and declaration. The original declaration will be sent in another envelope directly to your attention.

I have contacted the Commission's docket office and been informed that a complaint of non-compliance does not need to be served on any parties. If that is not correct, please let me know.

If you have any questions regarding this complaint, please do not hesitate to call me.

Sincerely,

Deborah Behles

Enclosures

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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No. **00-AFC-1C**
	)	
	)	
	)	COMPLAINT
GATEWAY GENERATING STATION	)	
	)	

June 5, 2009
Date

Signature

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COMPLAINT

Golden Gate University's Environmental Law and Justice Clinic respectfully submits this Complaint on behalf of the Contra Costa branch of the Association of Community Organizations for Reform Now (ACORN) for PG&E's non-compliance with this Commission's certification requirements at its Gateway Generating Unit 8 facility.

INTRODUCTION

1. PG&E is currently emitting from the Gateway Generating facility hundreds of tons of harmful air pollution without a valid CEC certification. PG&E does not have a valid certification because the facility that PG&E has constructed and is currently operating is different from that described in the 2001 certification issued for the

facility. As a result, PG&E is operating a facility that fails to comply with air quality laws that require state of the art pollution controls and uses a diesel engine instead of a non-polluting electrical engine. Moreover, by operating without a valid certification, PG&E has circumvented the Commission's public participation requirements. If the public process had occurred, ACORN, and other interested citizens, would have had the opportunity to raise the issues that this Complaint addresses, including requests for a public accounting of better pollution controls at the facility. PG&E should not be allowed to violate the Commission's requirements at the expense of the public breathing the facility's harmful pollution. The Commission should revoke PG&E's certification.

2. The Gateway Generating Unit 8, which is located on Wilbur Avenue in Antioch, California, is owned by the Pacific Gas and Electric Company. The contact information for the plant manager of the facility is:

Steve Royall, Plant Manager
Pacific Gas & Electric Company
Gateway Generating Station
3225 Wilbur Avenue
Antioch, CA 94509
(925) 522-7801[1]

STATEMENT OF FACTS

A. Mirant's Unit 8 Project Design

3. On January 31, 2000, Mirant Delta, LLC (previously known as Southern Energy Delta, LLC) filed an Application for Certification with the Commission for

[1] In addition, a list of property owners was included as Attachment D to PG&E's May 7, 2009 filing. *See* May 7, 2009 Letter from PG&E to Commission, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

Contra Costa Unit 8 (later renamed Gateway Generating Station).[2]

4. In that 2000 application, Mirant proposed constructing a 530 MW natural-gas fired station on Wilbur Avenue in Antioch, California, known as Contra Costa Unit 8.[3]

5. In early 2000, Mirant also submitted an application to the Bay Area Air Quality Management District (BAAQMD or air district) for an air permit known as a Prevention of Significant Deterioration permit and an authority to construct.[4]

6. On February 2, 2001, the air district issued a final determination of compliance for Mirant's design based on the air district's evaluation of the air permit application.[5]

7. On May 30, 2001, this Commission certified and approved, with conditions, the facility described in the 2000 application by Mirant, Contra Costa Unit 8.[6]

8. Following the certification, on July 24, 2001, the air district issued an air permit and an authority to construct for Mirant's Contra Costa Unit 8.[7]

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[2] *See* Contra Costa Unit 8 Power Project, Commission Decision, 00-AFC-1 (May 2001), *available at* http://www.energy.ca.gov/sitingcases/contracosta/documents/2001-05-30_CONTRACOSTA.PDF.

[3] *See id.*

[4] *See* Contra Costa Unit 8 Preliminary Determination of Compliance, *available at* http://www.baaqmd.gov/pmt/public_notices/1999_2001/1000/index.htm.

[5] *See* Contra Costa Unit 8 Final Determination of Compliance, *available at* http://www.baaqmd.gov/pmt/public_notices/1999_2001/1000/index.htm.

[6] *See* Contra Costa Unit 8 Power Project, Commission Decision, 00-AFC-1 (May 30, 2001), *available at* http://www.energy.ca.gov/sitingcases/contracosta/documents/2001-05-30_CONTRACOSTA.PDF.

[7] *See* July 24, 2001 Letter from BAAQMD to Mirant Delta, LLC, *attached hereto* as Ex. 1.

9. Mirant's Unit 8 project as described and approved in the May 30, 2001 certification decision, included: two General Electric Frame 7FA, combustion gas turbines, each equipped with dry-low-NOx combustors and abated by a Selective Catalytic Reduction system and a CO Catalyst System; two heat recovery steam generators abated by a Selective Catalytic Reduction system and a CO catalyst system; a gas-fired fuel preheater; and a 10-cell wet cooling tower.[8]

10. In late 2001, Mirant began constructing Unit 8.[9]

11. In February 2002, the construction was suspended.[10]

B. PG&E's Purchase and Redesign of Unit 8

12. In late 2006, PG&E acquired the Unit 8 project, which it renamed Gateway Generating Facility, through an asset transfer. On January 19, 2007, the Commission transferred the certification for the facility to PG&E.[11]

13. After evaluating the plans for Unit 8, PG&E changed its design. Based on its new plans, in late 2007, PG&E notified the air district that its construction plans had changed and applied for a new air permit and authority to construct based on the

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[8] *See* Contra Costa Unit 8 Power Project, Commission Decision, 00-AFC-1 (May 30, 2001), *available at* http://www.energy.ca.gov/sitingcases/contracosta/documents/2001-05-30_CONTRACOSTA.PDF.

[9] *See* Petition to CEC to Amend Air Quality Conditions in the Gateway Generating Station Project Final Decision (Jan. 15, 2008), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[10] *See* Petition to CEC to Amend Air Quality Conditions in the Gateway Generating Station Project Final Decision (Jan. 15, 2008), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[11] *See* CEC Order Clarifying That PG&E Is Sole Owner Of Contra Costa Power Plant Unit 8 (Jan. 19, 2007), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

design modifications.[12]

14. PG&E stated in the new application to the air district that PG&E had made "*several* changes to the physical design of the facility and to *several* of the operating assumptions."[13]

15. PG&E told the air district that, although construction of some of the permitted units had begun under Mirant's previous permit, PG&E was not planning to begin "[c]onstruction of the proposed modifications to permit units, the dewpoint heater and fire pump engine" until after the issuance of a revised permit.[14]

16. In January 2008, PG&E petitioned this Commission to change the 2001 certification to reflect its design changes to the facility.[15]

17. In the 2008 certification amendment request, PG&E stated that, based on its design changes to the project, "*several* significant project design features associated with the 2001 [air] District and CEC permit approvals would require modifications."[16]

18. In particular, the proposed amendment to the certification and the air permit consisted of changing several of the certification's air quality conditions and terms

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[12] *See* Attachment A to PG&E's January 15, 2008 submission to the Commission, Application to the Bay Area Air Quality Management District for Modifications to the Authority to Construct for the Gateway Generating Station Antioch, CA (December 2007), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/2008-01-15_PETITION_TO_AMEND_AIR_QUALITY_CONDITIONS.PDF.

[13] *Id.* at i (emphasis added).

[14] *Id.* at 1.

[15] *See* Petition to Amend Air Quality Conditions in the Gateway Generating Station Project Final Decision (Jan. 15, 2008), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

in the air permit. The changes included: replacing the permitted preheater with a dewpoint heater with increased allowable daily hours of operation; increasing the allowable emission rates for the gas turbines during startup; reducing the permitted hourly emission rates for NOx, CO, and PM10, based on current best available control technology (BACT) and on operating experience; and adding a 300-hp diesel fire pump at the facility instead of the previously planned electrical pump.[17]

19. On January 28, 2008, the Commission posted a notice of receipt of PG&E's petition to amend the certification.[18]

20. According to this notice, the Commission was "analyzing the request and will publish an analysis in the next several weeks. A public hearing for the purpose of approving or denying the amendment proposal will subsequently be held at a regularly scheduled Energy Commission business meeting."[19]

21. On June 4, 2008, the air district issued a draft air permit that reflected the construction changes. The draft permit proposed to impose lower emission limits due to better pollution controls available at that time, compared to July 2001, when the air district had evaluated the previous owner Mirant's designs.[20]

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[16] *See* Petition to Amend Air Quality Conditions in the Gateway Generating Station Project Final Decision at 4 (Jan. 15, 2008), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html

[17] *Id.*

[18] CEC Notice of Receipt of Air Amendments (Jan. 28, 2008), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[19] *Id.*

[20] *See* Engineering Evaluation for Proposed Amended Authority to Construct and Draft PSD Permit (June 2008), *available at* http://www.baaqmd.gov/pmt/public_notices/2008/17182/index.htm.

22. The air district accepted comments on this proposal, including a comment from the Commission, which requested that the district lower some of the allowable pollution limits in the draft permit.[21]

23. To date, BAAQMD has not issued a final air permit or a revised authority to construct. Nor has the Commission issued a revised certification. Moreover, the Commission has not noticed or held a public hearing on the proposed modification.

C. PG&E's Construction and Operation of Unit 8

24. Despite the pending proceedings before BAAQMD and the Commission, and without the final revisions to either the Commission certification or to the air district permit, PG&E finished construction of the facility and started operating sometime in late 2008.

25. The facility that PG&E constructed and began operating appears to be substantially similar to the facility it proposed to construct in its December 2007 application to the air district for a revised permit and its January 2008 certification amendment request to the Commission.[22] Specifically, the facility includes all of the equipment that was described in its prior amendment applications, including the new preheater and 300-hp diesel engine.[23]

26. In February 2009, after it had been operating for a few months, PG&E withdrew the amendment requests from this Commission and the air district, claiming

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[21] *See* July 14, 2008 Letter from CEC to J. Broadbent, BAAQMD, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[22] *See* May 7, 2009 Letter from PG&E to the Commission, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[23] *See id.*

that they were no longer necessary.[24]

27. Then, in April 2009, PG&E requested modification of its 2001 air permit to conform to the facility it had constructed and is currently operating.[25]

28. Eventually, on May 7, 2009, PG&E similarly requested modification of its 2001 certification to conform to the facility it had constructed and is currently operating.[26]

29. In this filing, PG&E admitted that "there remain several inconsistencies between the facility as originally permitted and the GGS as constructed."[27]

30. PG&E's May 7, 2009 filing requested a modification of the certification to include the equipment changes specified in the December 2007 application for a revised permit to the air district and the January 2008 certification amendment request to the Commission.[28]

31. In the May 7, 2009 filing, among other things, PG&E is attempting to: (a) change conditions for the commission period (*see* AQ-6) after claiming it has already completed the commissioning period; (b) remove the requirement that its turbines comply with a steam injection power augmentation mode (*see* AQ-20); and (c) remove the

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[24] *See* February 13, 2009 Letters from PG&E to BAAQMD and the Commission, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/2009-06-01_Withdrawal_of_Petiton_to_Amend_Air_Quality_Conditions_TN-50406.pdf.

[25] *See* Attachment B to May 7, 2009 Letter from PG&E to CEC, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[26] *See* May 7, 2009 Letter from PG&E to CEC, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[27] *Id.* at 1.

[28] *Compare* May 7, 2009 Letter from PG&E to CEC *with* CEC Jan. 28, 2008 Notice of Receipt of Air Amendments.

requirement that it show compliance through the steam injection rate (*see* AQ-26).

32. In its May 7, 2009 filing, however, PG&E does not discuss whether its equipment meets current BACT requirements as its January 2008 certification amendment request discussed.[29] In particular, the earlier January 2008 submission stated that it was revising the hourly rates for three pollutants based on "current BACT", while the May 7, 2009 filing does not lower any of these hourly rates from the rates specified in the 2001 certification.[30]

VIOLATIONS - PG&E'S NON-COMPLIANCE

COUNT 1. PG&E Is Violating the Law by Not Having a Valid Certification Before Constructing and Operating the Facility.

33. Paragraphs 1-31 are hereby incorporated by reference into the remainder of the Complaint.

34. The centerpiece of the Warren-Alquist Act is the requirement that "no construction of any facility . . . shall be commenced without first obtaining certification for any such site and related facility by the commission."[31]

35. If the design of a project changes before construction, utilities must obtain approval of the modifications to the certification prior to construction.[32] These requirements exist to ensure that substantive modifications to certifications are evaluated as part of the certification process.

36. PG&E violated the law by failing to obtain approval of its proposed

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[29] *Compare* May 7, 2009 Letter from PG&E to CEC *with* CEC Jan. 28, 2008 Notice of Receipt of Air Amendments.

[30] *See id.*

[31] Cal. Pub. Res. Code § 25500.

modifications before commencing operation of the facility.[33]

37. Indeed, PG&E itself recognized the need to obtain an amendment to its certification when it submitted an application to the Commission in January 2008 to modify its design.[34]

38. PG&E's May 7, 2009 filing, which specifies changes to the certification conditions, further evidences PG&E's recognition that an amended certification is necessary for the design changes.[35] As PG&E admits in the filing, PG&E has added new equipment and changed the operating conditions from the facility that was originally certified.[36] Specifically, PG&E has added a new preheater that operates for more hours than the planned preheater, a new cooling system and a new 300-hp diesel engine instead of the non-polluting electric engine that was certified.

39. PG&E is also attempting to: (a) change conditions for the commission period (*see* AQ-6) after claiming it has already completed the commissioning period; (b) remove the requirement that its turbines comply with a steam injection power augmentation mode (*see* AQ-20); and (c) remove the requirement that it show compliance through the steam injection rate (*see* AQ-26).

40. PG&E should have received approval from the Commission for these modifications *before* beginning construction of these modifications and commencing

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[32] *See* Cal. Code Regs. tit. 20, § 1769.

[33] *See* Cal. Pub. Res. Code § 25500; Cal. Code Regs. tit. 20, § 1769.

[34] *See supra* at 5-7 (describing the January 2008 petition for an amendment).

[35] *See* May 7, 2009 letter to Energy Commission from PG&E, *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/index.html.

[36] *Id.*

operation.

41. Thus, PG&E's construction and operation of a facility different from that originally certified violates the law.

42. Further, even if PG&E had constructed its facility in compliance with the 2001 certification, which it did not, the certification is invalid because the equipment currently at the facility is not what was covered in the 2001 certification. Pursuant to the Commission's regulations, the withdrawal of an application requires the applicant to file a new one.[37] PG&E did not file a new application before constructing and operating the facility. In addition, based on the information publicly available, it appears that PG&E did not revise the construction milestones for the Project to reflect its construction schedule, and the construction deadlines were not extended for PG&E modified facility.[38]

COUNT 2. PG&E Violated the Law by Not Complying with the Applicable Air Quality Standards Before Constructing and Operating the Facility, as Required by the Certification.

(A.) PG&E Did Not Have a Final Determination of Compliance for the Facility It Constructed and Is Operating.

43. The Warren-Alquist Act requires the air district to perform a compliance review prior to certification to ensure that a proposed facility will satisfy all applicable federal, regional, and local laws.[39] Specifically, the regulations provide that "the local air

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[37] *See* Cal. Code Regs., tit. 20 § 1709.8.

[38] *See* Cal. Code Regs., tit. 20, § 1720.3 (describing requirements for the extension of construction deadline).

[39] The Warren-Alquist Act requires the local air pollution control officer to conduct, for the CEC's certification process, "a determination of compliance review of the application in order to determine whether the proposed facility meets the requirements of the applicable new source review rule and other applicable district regulations." Cal. Code Regs. tit. 20, § 1744.5(b). "If the proposed facility complies, the determination shall specify the conditions, including BACT and other mitigation measures that are necessary for compliance." *Id.*

pollution officer shall conduct, for the Commission's certification process, a determination of compliance review of the application in order to determine whether the proposed facility meets the requirements of the applicable new source review rule and all other applicable district regulations. If the proposed facility complies, the determination shall specify the conditions including BACT and other mitigation measures, that are necessary for compliance."[40]

44. The applicable regulations further provide that "[a]ny amendment to the applicant's proposal related to compliance with air quality laws shall be transmitted to the APCD [air pollution control district] and ARB [Air Resources Board] for consideration in the determination of compliance."[41]

45. Because PG&E withdrew its December 2007 air permit application before the District completed the compliance review, the air district has not issued a determination of compliance. Thus, without a determination of compliance, the 2001 certification is invalid.

46. At this time, the Commission cannot complete the certification process without a final determination of compliance that accurately determines compliance.[42]

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[40] *See* Cal. Code Regs. tit. 20, § 1744.5(b).

[41] *Id.*

[42] *See* Cal. Code Regs. tit. 20, § 1744.5(b); *see also* "Public Participation in the Siting Process: Practice and Procedure Guide," CEC 700-2006-002 at 49, *available at* http://www.energy.ca.gov/sitingcases/index.html ("Delays in obtaining the Determination of Compliance can negatively impact the siting process schedule because the air quality compliance information is needed at the [siting] committee's formal hearings") (emphasis added).

(B.) PG&E Does Not Have an Authority To Construct and Therefore Is Violating the Commission's Certification Requirements.

47. Pursuant to the Commission's regulations, PG&E was required to "submit in its application all of the information required for an authority to construct under the applicable district rules."[43] Further, to have a valid certification, PG&E was required to meet applicable state, local and regional requirements.[44]

48. Under the applicable air district regulations, PG&E was required to "first secure written authorization" from the air district "in the form of an authority to construct" before building the facility.[45] If an authority to construct is issued, it is only valid for construction "substantially in conformance with the authority to construct."[46]

49. PG&E did not have an authority to construct for the plant that it constructed; nor did it submit the required information before constructing its facility.

50. Indeed, PG&E *withdrew* the information that it had submitted in its December 2007 air permit amendment application and its January 2008 CEC amendment application because it decided to construct its facility without waiting to get CEC and the air district's approval.[47] In this application, PG&E requested that "*several* changes to the

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[43] Cal. Code Regs. tit. 20, § 1744.5(a). The only possible exception to this requirement is if the Commission makes a determination of public convenience and necessity. The Commission did not make such a determination for this facility.

[44] *See* Cal. Pub. Res. Code § 25525.

[45] BAAQMD Reg. 2-1-301.

[46] BAAQMD Reg. 2-1-305.

[47] *See* Attachment A to PG&E's January 15, 2008 submission to the Commission, Application to the Bay Area Air Quality Management District for Modifications to the Authority to Construct for the Gateway Generating Station Antioch, CA (December 2007), *available at* http://www.energy.ca.gov/sitingcases/contracosta/compliance/2008-01-15_PETITION_TO_AMEND_AIR_QUALITY_CONDITIONS.PDF.

physical design of the facility and to *several* of the operating assumptions" be made to the original permit and certification.[48] Along with including new equipment, PG&E's application requested the required reduction of "permitted hourly mass emission and concentration limits for NOx, CO and PM10 based on current BACT and operating experience."[49]

51. In fact, PG&E's new May 2009 application is less protective of the environment than its January 2008 application even though both applications involve the same equipment: (1) *Hourly NOx and CO Emission Rates* - PG&E admitted that the limits it proposed in its May 7, 2009 submission for NOx and CO were not BACT. PG&E thus recommended, in its January 2008 submission, reducing the pollution limits from 2.5 ppmvd @ 15% O2 to 2.0 ppmvd @ 10% O2 for NOx emissions, and from 6.0 ppmC to 4.0 ppmC for CO emissions; (2) *Limit Duct Firing Rate* - In its January 2008 submission, PG&E proposed lowering the PM10 limit during duct firing from 13 lb/hr to 12 lb/hr; (3) *Reduce Annual Sulfur Content Limit* - In its January 2008 submission, PG&E proposed reducing its allowable annual sulfur content of natural gas fuel from 1 gr/100 scf to 0.75 gr/100 scf.[50]

52. PG&E's current application also includes the following new equipment that was not part of the original authority to construct: a 300-hp diesel engine (with no apparent sulfur limit) instead of a non-polluting electrical engine; a new preheater projected to operate more hours than the previous preheater; a new cooling system; and a

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[48] *See id.* at i (emphasis added).

[49] *See id.* at 2.

[50] *Compare* PG&E's December 2007 Application (attachment A to January 2008 modification request) *with* PG&E's May 7, 2009 Letter.

new oil/water separator.[51]

53. Thus, PG&E has constructed a facility substantially different than in the 2001 authority. Therefore, even if the 2001 authority to construct were still valid, PG&E's construction was not allowed under it.

(C.) PG&E Does Not Have a Valid Air Permit and Is Therefore in Violation of the 2001 Certification.

54. PG&E violated its certification when it operated its facility without a valid federal air permit. The certification requires PG&E to be in conformance with federal laws.[52]

55. The Prevention of Significant Deterioration (PSD) and New Source Review (NSR) provisions of the Clean Air Act and its implementing regulations require that a new analysis of BACT (best available control technology) be conducted every 18 months when construction is delayed. The policy reason behind this new analysis is based on the requirement that the emissions limitation reflect the most stringent controls available at the time the permit is issued.

56. Specifically, the federal NSR regulations require a demonstration of adequacy of previous BACT determinations where 18 months have elapsed without commencement of construction, as is the case here:

> For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the most reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

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[51] *Id.*

[52] *See* Cal. Pub. Res. Code § 25525.

40 C.F.R. § 51.166j(4). Other NSR/PSD regulatory requirements also demonstrate that BACT determinations over 18 months old are invalid without commencement of construction.[53]

57. Here, the PSD/NSR permit that was issued in 2001 is over seven years old. Consequently, PG&E's construction and violation is not in compliance with state and federal law requiring a NSR/PSD permit prior to commencing construction.[54]

58. Moreover, by its own admission, PG&E's operation does not comply with BACT requirements as required in its conditions of certification and by the air district's regulations.[55] In its January 2008 submission to the Commission, PG&E admitted that BACT requirements were more stringent now than they had been in 2001.

59. Further, as described above, PG&E has constructed a facility different from that which was originally permitted. Thus, the expired permit, even if it was valid, would not cover PG&E's operations.

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[53] *See* 40 C.F.R. § 52.21(b)(9) & (r)(2); *see also Sierra Club v. Franklin County Power of Illinois*, 546 F.3d 918, 931 (7th Cir. 2008) (affirming invalidation of a PSD permit that was over 18 months old); EPA Region IX Policy on PSD Permit Extensions at 1, *available at* http://epa.gov/region07/programs/artd/air/nsr/nsrmemos/extnsion.pdf ("A BACT analysis is required in all permit extension requests, as in an application for a new PSD permit"; "the import of this policy is to ensure that the proposed permit meets the current EPA requirements and that the public is kept apprised of the proposed action (*i.e.*, through the 30-day public comment period").

[54] *See* 40 C.F.R. § 52.21(r) (requiring a PSD permit before commencement of construction).

[55] *See* Contra Costa Unit 8 Power Project, Commission Decision, 00-AFC-1 (May 30, 2001), *available at* http://www.energy.ca.gov/sitingcases/contracosta/documents/2001-05-30_CONTRACOSTA.PDF; *see also* 42 U.S.C. § 7479(3) (BACT means "an emission limitation based on the maximum degree of reduction"), BAAQMD Regulation 2-2 (SIP-approved), *available at* http://yosemite.epa.gov/R9/r9sips.nsf/AgencyProvision/411642DA93F3D7A4882569900057D386/$file/BA+rg2-2sip.PDF?OpenElement.

COUNT 3. PG&E Violated the Certification Conditions by Not Obtaining the Required Emission Offsets.

60. PG&E has not demonstrated that the complete emission offsets for the facility have been identified and obtained before commencing operations, as required by its certification and the Commission's regulations. PG&E cannot demonstrate compliance with the offset requirements because no final emission requirements have been set forth in a final air permit or in a revised certification.

61. The Commission's regulations provide:

> The commission may not find that the proposed facility conforms with the applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies, prior to licensing of the project by the commission, that complete emission offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility.[56]

62. The certification for the project that Mirant designed reiterates this requirement.[57]

63. The Bay Area is a nonattainment area for 8-hour ozone, which means that offsets are required for increases in NOx and Volatile Organic Compounds (VOCs).[58] (NOx and VOCs are ozone precursors.) The facility emits both NOx and VOCs.

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[56] Cal. Pub. Res. Code § 25523(d)(2).

[57] *See* Contra Costa Unit 8 Power Project, Commission Decision, 00-AFC-1 (May 30, 2001), *available at* http://www.energy.ca.gov/sitingcases/contracosta/documents/2001-05-30_CONTRACOSTA.PDF.

[58] 40 C.F.R. § 81.305.

64. The Bay Area is also in non-attainment for particulate matter.[59] Offsets are also required for particulate matter emissions. The facility emits particulate matter.

65. Since nonattainment NSR is required for the Bay Area, any offsets must meet federal requirements for contemporaneousness and on-site generation.[60]

66. PG&E has not demonstrated that it has obtained contemporaneous valid offsets for PM10, NOx and VOC emission levels, since these levels have not yet been determined for PG&E's modified facility.

COUNT 4: ***PG&E Violated the Commission's Requirements for the Opportunity of Public Participation Before the Construction and Operation of Facilities.***

67. The Commission has already performed an initial analysis of some of the equipment changes when PG&E submitted its amendment request in January 2008. After this initial evaluation, the Commission informed the public that there would be a public hearing on the air amendments prior to the modification of the certification.

68. A public hearing on PG&E's design changes was never held.

69. PG&E's decision to circumvent the Commission's hearing process denied the public its rightful opportunity to participate in a decision affecting its health and welfare.

RELIEF REQUESTED

70. Under the Warren-Alquist Act, the Commission, may revoke the certification for a facility if there is "[a]ny significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision" or if there is "[a] violation of this division or any regulation or order issued by

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[59] *See* http://www.baaqmd.gov/pln/pm/.

the commission."[61]

71. Further, pursuant to Section 25218.5 of the Warren-Alquist Act, "[t]he provisions specifying any power or duty of the commission shall be liberally construed; in order to carry out the objectives of this division." In this capacity, the Commission can specify operating conditions that are necessary for the facility to continue operating.[62]

72. The Petitioner hereby requests that the Commission use its authority under the Act to revoke PG&E's certification because of its non-compliance with the Act and the other applicable requirements.

73. Further, the Petitioner requests that the Commission condition the facility's future certification on it suspending operations until it receives the required certification from this Commission.

Date: June 5, 2009

Respectfully submitted,

Deborah N. Behles

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[60] BAAQMD Reg. 2-2-605.

[61] Cal. Pub. Res. Code § 25534(a)(2) & (3).

[62] Cal. Pub. Res. Code § 25216.5.

EXHIBIT 1

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
Roberta Cooper
Scott Haggerty
(Vice Chairperson)
Nate Miley
Shelia Young

CONTRA COSTA COUNTY
Mark DeSaulnier
Mark Ross
Gayle Uilkema

MARIN COUNTY
Harold C. Brown, Jr.

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
Chris Daly
Tony Hall
Leland Yee

SAN MATEO COUNTY
Jerry Hill
Marland Townsend
(Secretary)

SANTA CLARA COUNTY
Randy Attaway
(Chairperson)
Liz Kniss
Julia Miller
Dena Mossar

SOLANO COUNTY
William Carroll

SONOMA COUNTY
Tim Smith
Pamela Torliatt

Ellen Garvey
EXECUTIVE OFFICER/
AIR POLLUTION
CONTROL OFFICER

July 24, 2001

Mirant Delta, LLC
P O Box 1687
Antioch, CA 94509

Attention: **Joseph Bittner**

Application Number: **1000**
Plant Number: **18**
Equipment Location:
1456 Wilbur Avenue
Antioch, CA 94509

Dear Applicant:

This is your Authority to Construct the following:

S-41 **Combustion Gas Turbine #1, General Electric Frame 7FA, 1872 MM Btu per hour, equipped with dry low-NO_x Combustors, abated by A-11 Selective Catalytic Reduction System and A-12 CO Catalyst System.**

S-42 **Heat Recovery Steam Generator #1, 395 MM Btu per hour, abated by A-11 Selective Catalytic Reduction System and A-12 CO Catalyst System.**

S-43 **Combustion Gas Turbine #2, General Electric Frame 7FA, 1872 MM Btu per hour, equipped with dry low-NO_x Combustors, abated by A-13 Selective Catalytic Reduction System and A-14 CO Catalyst System.**

S-44 **Heat Recovery Steam Generator #2, 395 MM Btu per hour, abated by A-13 Selective Catalytic Reduction System and A-14 CO Catalyst System.**

S-45 **Gas-Fired Fuel Preheater, 12 MM Btu per hour.**

S-46 **10-Cell Wet Cooling Tower, 125,000 gallons per minute**

The equipment described above is subject to condition no. 18138.

Notification

Please contact your assigned Permit Engineer, listed in the correspondence section of this letter, by phone, by fax, or in writing at least three days before the initial operation of the equipment so that we may observe the equipment in operation and verify conformance with the Authority to Construct. Operation includes any start-up of the source for testing or other purposes. Operation of equipment without notification to the District may result in enforcement action. **Do not send start-up notifications to the Air Pollution Control Officer.**

Start-up Period

After receipt of the start-up letter required above, this Authority to Construct authorizes operation during the start-up period from the date of initial operation noted in your start-up letter until the Permit to Operate is issued, up to a maximum of 90 days. All conditions (specific or implied) of the Authority to Construct are in effect during the start-up period.

Application: 1000
July 24, 2001

Fees
District Regulation 3 requires a fee for each new Permit to Operate. You will be invoiced upon receipt of your start-up letter. No permits will be issued until all outstanding fees are paid.

Implied Conditions
In the absence of specific permit conditions to the contrary, the throughputs, fuel and material consumption, capacities, and hours of operation described in your permit application will be considered maximum allowable limits. A new permit will be required before any increase in these parameters, or change in raw material handled, may be made.

Expiration
In accordance with Regulation 2-1-407, this Authority to Construct expires two years from the date of issuance unless substantial use of the authority has begun.

Confidentiality
Unless you have already designated specifically identified materials in your permit application as confidential, under the California Public Records Act, all data in your permit application, the permit itself and all permit conditions will be considered a matter of public record and may be disclosed to a third party. Please contact you permit reviewer immediately if you wish to amend your permit application submittals or to designate certain permit conditions as confidential. Unless we hear from you within ten (10) calendar days of this letter, except for materials which have been previously designated as confidential, you shall be deemed to have waived any claim of confidentiality with respect to all materials in the District's files relating to this permit application.

Right of Entry
The Air Pollution Control Officer of the Bay Area Air Quality Management District, the Chairman of the California Air Resources Board, the Regional Administrator of the Environmental Protection Agency, and/or their designees, upon presentation of credentials, shall be granted the right of entry to any premises on which an air pollution source is located for the purposes of:

A. The inspection of the source
B. The sampling of materials used at the source
C. The conduction of an emissions source test
D. The inspection of any records required by District rule or permit condition.

Correspondence
Please include you application number with any correspondence with the District. The District's regulations may be viewed online at www.baaqmd.gov/regs/rulereg.htm. If you have any questions on this matter, please call **Dick Wocasek, Air Quality Engineer II at (415) 749-4984. Startup information may be faxed to the Permit Division at 415-749-5030.**

Very truly yours,

Ellen Garvey
Executive Officer/
Air Pollution Control Officer

by
Permit Services Division

FRW: ilh

John Adams
2401 Stanwell Drive
Unit 320
Concord, 94520
(925) 689-1001

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No. 00-AFC-1C
	)	
	)	
	)	JOHN ADAMS' DECLARATION
GATEWAY GENERATING STATION	)	
	)	

I, John Adams, declare:

1. I am an employee of the Contra Costa branch of the Association of Community Organizations for Reform Now

2. I have read the Complaint of Non-Compliance for the Gateway Generating Station.

3. I verify that the Statement of Facts contained within the Complaint are true and accurate to the best of my knowledge....

I declare under the penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this Declaration was executed in Concord, California on June 5, 2009.

6/5/2009
Date

Signature