

COMMITTEE CONFERENCE, PMPD, EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
for the Humboldt Bay Repowering ) 06-AFC-7  
Project by Pacific Gas and )  
Electric Company )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 16, 2008

1:05 p.m.

Reported by:  
Peter Petty  
Contract No. 170-07-001

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

HEARING OFFICER AND ADVISORS

Gary Fay, Hearing Officer

Kristy Chew, Advisor

STAFF AND CONSULTANTS PRESENT

John Kessler, Project Manager

Lisa DeCarlo, Staff Counsel

PUBLIC ADVISER

Nick Bartsch

APPLICANT

Scott Galati, Attorney  
Galati & Blek, LLP

Greg Lamberg  
Radback Energy  
on behalf of Pacific Gas and Electric Company

Susan Strachan  
Strachan Consulting

## I N D E X

|                                  | Page  |
|----------------------------------|-------|
| Proceedings                      | 1     |
| Opening Remarks                  | 1     |
| Presiding Member Byron           | 1     |
| Introductions                    | 1,2   |
| Hearing Officer Fay              | 1     |
| Background                       | 3     |
| Evidentiary Hearing              | 4     |
| Exhibit 77                       | 4/9   |
| Applicant witness Susan Strachan | 5     |
| Direct Examination by Mr. Galati | 6     |
| Exhibit 78                       | 7/9   |
| CEC Staff Exhibit 212            | 10/10 |
| PMPD Comments                    | 12    |
| Applicant/CEC Staff Discussion   | 12    |
| Closing Remarks                  | 19    |
| Adjournment                      | 20    |
| Reporter's Certificate           | 21    |

## 1 P R O C E E D I N G S

2 1:05 p.m.

3 PRESIDING MEMBER BYRON: Good afternoon,  
4 everyone, and welcome to the application for  
5 certification PMPD hearing on the Humboldt Bay  
6 Repowering project by Pacific Gas and Electric  
7 Company.

8 I'm Jeff Byron, the Presiding Member on  
9 this siting case. With me is my Advisor, Kristy  
10 Chew. Unfortunately, Commissioner Douglas once  
11 again has decided she's not available to join us.  
12 And I think we understand perhaps there are  
13 reasons for that.

14 I would like to thank everyone for being  
15 here in Sacramento today. It made things a lot  
16 easier for me and a few other folks. Appreciate  
17 that.

18 I don't think we have anyone else on the  
19 phone, so all those present are the participants  
20 in the meeting.

21 I'm going to turn it over to our Hearing  
22 Officer, Gary Fay.

23 HEARING OFFICER FAY: Thank you,  
24 Commissioner Byron. Today's hearing will be  
25 carried out by the Committee to receive comments

1 on the Presiding Member's Proposed Decision, and  
2 to reopen the evidentiary record in this case for  
3 the limited purpose of receiving evidence relevant  
4 to PG&E's proposed change to the project's  
5 stormwater handling system.

6 The first matter of business we will get  
7 into is the reopening of the record in response to  
8 PG&E's motion, and then we'll go to the comments  
9 on the PMPD.

10 And I'd like just to have the parties  
11 introduce themselves. So we'll start with PG&E,  
12 Mr. Galati.

13 MR. GALATI: Scott Galati representing  
14 PG&E.

15 MR. LAMBERG: Greg Lamberg representing  
16 PG&E.

17 MS. DeCARLO: Lisa DeCarlo, Energy  
18 Commission Staff Counsel. Also with me today is  
19 John Kessler. He stepped out for a minute to make  
20 copies of the ROC that we'll be submitting today.  
21 And we also have various staff members in the  
22 audience in case the Committee has any questions  
23 on the biology section.

24 HEARING OFFICER FAY: Great. And is the  
25 Public Adviser's Office represented? Nick Bartsch

1 back there, I see. Great. Nick, do you know if  
2 anybody from the public is here today?

3 MR. BARTSCH: I haven't heard anything.

4 HEARING OFFICER FAY: No, okay. You  
5 haven't heard from anybody?

6 MR. BARTSCH: No.

7 HEARING OFFICER FAY: That was the  
8 impression I had, as well. Okay.

9 Then I'd just like to review some  
10 relevant dates just to set the tone. On August  
11 13th PG&E filed its motion to reopen the  
12 evidentiary record for the limited purpose of  
13 allowing testimony and analysis in the areas of  
14 project description, biological resources and soil  
15 and water resources pertaining to the project's  
16 stormwater handling system. On the same day PG&E  
17 submitted its evidence of new design for the  
18 bioretention area.

19 The Committee issued the PMPD on August  
20 18th of this year, beginning a 30-day review  
21 comment period which ends tomorrow, September  
22 17th. There was no opposition to PG&E's motion.  
23 And on August 20th the Committee issued an order  
24 granting the motion to reopen and giving public  
25 notice of today's conference as also an

1 evidentiary hearing for that limited purpose.

2 And staff filed its analysis of the PG&E  
3 submittal on September 9th.

4 So, we'd like to go ahead and invite the  
5 parties to offer their evidence. We'll mark it  
6 for identification. And then any questions from  
7 the Committee or the other parties will be  
8 allowed. And then we'll move on.

9 So, Mr. Galati.

10 MR. GALATI: Yes, Mr. Fay, we'd like to,  
11 at this time, mark for identification exhibit 77,  
12 bioretention area submittal dated August 13, 2008.  
13 This is a document with a couple of diagrams, all  
14 attached. This was docketed on August 13th and  
15 served on all parties.

16 It sets forth a minor change to the  
17 project that we learned of after evidentiary  
18 hearings. Basically in working with the Water  
19 Board on the water quality certification that's  
20 required under section 401 of the Clean Water Act,  
21 they asked us to make a minor design change. To  
22 use a small bioretention area, which is a low-  
23 impact technique used to handle stormwater.

24 So we made that change to the design and  
25 submitted that. And we would like that document,

1 August 13th, identified as exhibit 77.

2 HEARING OFFICER FAY: All right, that is  
3 identified as exhibit 77.

4 MR. GALATI: We have one further  
5 document which was docketed yesterday.

6 HEARING OFFICER FAY: Okay. Mr. Galati,  
7 who prepared that? Do you have a declaration with  
8 that?

9 MR. GALATI: You know what, I do not  
10 have a declaration, but I do have Susan Strachan  
11 with me. And we can get her to testify that it  
12 was prepared under her supervision.

13 HEARING OFFICER FAY: Why don't we do  
14 that.

15 MR. GALATI: Okay.  
16 Whereupon,

17 SUSAN STRACHAN  
18 was called as a witness herein, and after first  
19 having been duly sworn, was examined and testified  
20 as follows:

21 THE REPORTER: Please state and spell  
22 your name for the record.

23 MS. STRACHAN: Susan Strachan,  
24 S-u-s-a-n S-t-r-a-c-h-a-n.

25 //

## 1 DIRECT EXAMINATION

2 BY MR. GALATI:

3 Q Ms. Strachan, are you familiar with what  
4 we have just marked as exhibit 77, dated August  
5 13, 2008?

6 A Yes, I am.

7 Q And was that prepared at your  
8 supervision and direction?

9 A Yes, it was.

10 MR. GALATI: Great. No further  
11 questions.12 HEARING OFFICER FAY: Just want to dot  
13 all the i's. And you have something else, as  
14 well?15 MR. GALATI: Also, we docketed this  
16 yesterday. And it is a record of conversation.  
17 This is a record of conversation dated September  
18 9, 2008. It is a conversation between Brian  
19 Haughton, outside counsel to PG&E, and Ms. Kim  
20 Niemeyer, legal counsel for the North Coast  
21 Regional Water Quality Control Board.22 This is a record of conversation  
23 detailing that the 401 certification is under  
24 review by the North Coast Regional Water Quality  
25 Control Board, and that support for certain

1 activities taking place onsite without the water  
2 quality certification being finalized.

3 So we'd like that marked as exhibit 78.

4 And --

5 HEARING OFFICER FAY: That is marked as  
6 exhibit 78, and identified as such.

7 MR. GALATI: -- and if staff would not  
8 object, I'd understand. I do not have Mr.  
9 Haughton here. It's a legal communication. But i  
10 will tell you that Ms. Strachan was party to this  
11 conversation, and also developed this summary.

12 HEARING OFFICER FAY: Okay.

13 MR. GALATI: So I can have her provide  
14 that declaration, if that's okay.

15 HEARING OFFICER FAY: Well, Ms.  
16 Strachan, is it your impression that the  
17 sentiments conveyed in the report of conversation  
18 are consistent with PG&E's recommendation on the  
19 changes for the verification in the biological  
20 resources section, bio-8?

21 MS. STRACHAN: Yes, I believe they are.

22 HEARING OFFICER FAY: Okay. Thank you.

23 Does the staff have any questions  
24 regarding either exhibit 77 or 78?

25 MS. DeCARLO: No questions.

1                   HEARING OFFICER FAY: Okay. Does the  
2 Committee have any questions?

3                   PRESIDING MEMBER BYRON: Well, I did see  
4 this earlier today. And I was just curious, Ms.  
5 DeCarlo, does this set any precedent or anything  
6 for us in allowing some construction to take place  
7 prior to receiving all permits?

8                   MS. DeCARLO: We try to be accommodating  
9 on a project-by-project basis where we determine  
10 that certain activities won't result in a  
11 significant impact prior to the receipt of formal  
12 documents that we require.

13                   We did want to make sure that the Water  
14 Board was okay with this approach. And this RFC,  
15 we believe, reflects their agreement to the  
16 applicant's proposal to go forward with minor  
17 activities prior to receipt of the 401  
18 certification.

19                   We understand that there's a draft 401  
20 certification currently in circulation or about to  
21 be circulated. And so it's just kind of a pro  
22 forma noticing requirement that is delaying the  
23 final version of the 401 certification.

24                   So we believe that the pieces are in  
25 place to allow minor activities prior to receipt

1 of the final version.

2 PRESIDING MEMBER BYRON: Okay.

3 MR. KESSLER: Presiding Member Byron,  
4 the other distinction we drew in looking at this  
5 as really being preliminary is it is within a  
6 developed site. They are looking at limiting  
7 their activity before the 401 cert to just  
8 demolition of the existing structures.

9 And so we didn't look at this as really  
10 being groundbreaking or disturbing new ground. It  
11 was really just dealing with the level of activity  
12 that is really typical of what else is going on at  
13 the plant from time to time.

14 PRESIDING MEMBER BYRON: Thank you.

15 HEARING OFFICER FAY: Okay. Is there  
16 any objection to receiving those two exhibits into  
17 evidence?

18 MS. DeCARLO: No objection from staff.

19 HEARING OFFICER FAY: All right.  
20 Therefore we will enter exhibit 77 and 78 into the  
21 record. And thank you for sponsoring those, Ms.  
22 Strachan.

23 And now we'll move to the staff.

24 MS. DeCARLO: Thank you. On September  
25 9th, as you indicated, staff submitted Energy

1 Commission Staff's comments on the Presiding  
2 Member's Proposed Decision and supplemental  
3 testimony in response to PG&E's bioretention area  
4 submittal.

5 This included supplemental analyses in  
6 the biological resources and soil and water  
7 resources areas, as well as declarations from  
8 other technical areas indicating that the  
9 bioretention area submittal did not change their  
10 previous testimony.

11 In addition to that, today we submitted  
12 and docketed a declaration from Dr. Obed Odoemelam  
13 for the transmission line safety and nuisance  
14 technical area. That was the one remaining area  
15 we had not previously submitted a declaration for.  
16 So we would request that these two items together  
17 be marked as exhibit 212 and entered into the  
18 record.

19 HEARING OFFICER FAY: All right. As  
20 described by Ms. DeCarlo, those documents are all  
21 contained in exhibit 212. And we'll ask if the  
22 applicant has any questions on the staff analysis.

23 MR. GALATI: No. And no objection to  
24 their entering into the evidentiary record.

25 HEARING OFFICER FAY: All right. Does

1 the Committee have any questions? Okay.

2 I think what we have is this happy  
3 situation where given the last-minute  
4 circumstances, the staff was able to respond  
5 quickly. There's a thorough analysis and it  
6 concluded that while this is a change, it's not  
7 significant and does not affect any of the  
8 conditions that are already in the proposed  
9 decision or the analysis.

10 So we're able to move forward  
11 efficiently and keep the Water Board happy up  
12 there.

13 I congratulate the parties on coming  
14 together on this. It's very constructive.

15 PRESIDING MEMBER BYRON: And thank Mr.  
16 Kessler for his quick photocopy skills.

17 (Laughter.)

18 HEARING OFFICER FAY: I'd, just as a  
19 formality, like to ask if there's any public  
20 comment on any of these matters regarding the  
21 bioretention area. Okay, hearing none.

22 So, at this point we have received and  
23 entered into evidence the staff analysis, exhibit  
24 212; as well as the exhibits submitted by the  
25 applicant regarding the bioretention. And having

1 received that into evidence, the evidentiary  
2 record in this case is now closed.

3 At this point I would like to address  
4 the errata and comments on the PMPD. We received  
5 comments from the staff and the applicant on  
6 September 9th and 10th respectively.

7 These have been incorporated into a  
8 draft errata that I have provided both parties.  
9 And so if you do have comments to make, please  
10 refer to the draft errata with the Commission's  
11 logo on the top of it as our sort of working  
12 document.

13 And I'll give the applicant the  
14 opportunity to open the comments.

15 MR. GALATI: We have reviewed staff's  
16 comments and agree with them. And they had a  
17 couple of changes to our comments, so I don't know  
18 if you'd like us to go through them one by one,  
19 but we accept and agree with the change on  
20 facility design proposed by staff on page 50,  
21 footnote 4, regarding third-party consultants  
22 being part of the CEO authority.

23 The next change is --

24 HEARING OFFICER FAY: Oh, --

25 MR. GALATI: I'm sorry.

1 HEARING OFFICER FAY: -- I don't think  
2 you need to go through each one unless you have  
3 some comments that you want to add to the record.

4 If you find them agreeable, I think just  
5 noting that is adequate.

6 MR. GALATI: We find them agreeable  
7 except with the two changes that staff has now  
8 marked, I believe, as the last page to exhibit  
9 211. Are they marked as exhibit 211, the air  
10 quality and biology?

11 HEARING OFFICER FAY: We --

12 MS. DeCARLO: They're not marked.

13 MR. GALATI: Okay.

14 HEARING OFFICER FAY: We did not mark  
15 them. I think I'll just mark them for  
16 identification as 213 just --

17 MR. GALATI: They could easily be  
18 comments on the PMPD, so I'm not sure they need to  
19 be in the record. But if I could briefly, just on  
20 the record, state that we agree with those  
21 changes, and clarify what they are.

22 We --

23 HEARING OFFICER FAY: You're referring  
24 to the document that addresses air quality and  
25 biology?

1 MR. GALATI: That's correct.

2 We had asked, in our comments, and it is  
3 reflected in the draft errata number 3 under air  
4 quality on page 97, an acknowledgement that the  
5 document that the North Coast set forth was also  
6 operates as an authority to construct and a  
7 prevention for significant deterioration. And  
8 staff prefers the word serves instead of operates.  
9 And we agree with that change. So we would ask  
10 that change to be made.

11 HEARING OFFICER FAY: And did you have  
12 any comments on the other change?

13 MR. GALATI: Yes. With respect to  
14 biology we had proposed a verification trying to  
15 outline the types of activities that we wanted to  
16 participate in while the water quality final  
17 certification was pending.

18 And we outlined those, and as is my  
19 custom, made it more confusing than we would like.

20 So staff proposed to strike my language,  
21 which is in accordance with their continued  
22 practice and custom --

23 (Laughter.)

24 MR. GALATI: -- and add a simple word of  
25 start of construction replace site or related

1 facilities mobilization activities.

2 HEARING OFFICER FAY: And are you  
3 convinced -- is PG&E convinced that in the  
4 definition of start of construction all your  
5 concerns are addressed?

6 MR. GALATI: That's correct. What we  
7 wanted to be able to do was to start some  
8 demolition activities, and also starting to  
9 install stormwater best management practices to  
10 the extent we could without the water quality  
11 certification.

12 And the only issue on the best  
13 management practice is if those activities were to  
14 be inside a wetlands we have to wait for the 401  
15 certification and work with the Water Board on  
16 that.

17 So we tried to capture that, but that's  
18 what we intend to be able to do. And find it very  
19 helpful, this project, we need to get going on  
20 construction before the rains start. And before  
21 the rains start you want to have your stormwater  
22 prevention best management practices in place.

23 And so by staff using the word  
24 construction allows us to do some demolition  
25 activities and the stormwater best management

1 practices outside of the wetland areas. That's  
2 what we'd like to do.

3 HEARING OFFICER FAY: And Ms. Strachan,  
4 I believe, testified that exhibit 78 is consistent  
5 with this language that you are recommending, is  
6 that correct?

7 MR. GALATI: That's correct.

8 HEARING OFFICER FAY: All right. Any  
9 objection from the staff on this?

10 MS. DeCARLO: No objection.

11 HEARING OFFICER FAY: Okay. All right,  
12 very good. It simplifies it and makes it easier  
13 to use. So I think that's good for everybody.

14 Are there any other matters that the  
15 parties would like to address to the Committee?

16 MR. GALATI: I would like to take an  
17 opportunity to thank the Committee for producing a  
18 PMPD quickly. One of the main reasons that PG&E  
19 worked diligently to resolve all of its issues at  
20 evidentiary hearing was to enable the Presiding  
21 Member's Proposed Decision to be written in a  
22 quick and concise fashion. And it was, and we  
23 appreciate it.

24 We intend to start construction as soon  
25 as feasibly possible. We've been working with

1 staff on all of our pre-compliance filings. And  
2 we want to start construction as soon as we get  
3 our license. We may not get the authority to  
4 construct letter from the staff, but we're working  
5 diligently to resolve any outstanding issues on  
6 our submittals.

7 So, that could not be possible if the  
8 PMPD took eight, 10, 12 weeks to be written. So  
9 we thank the Committee.

10 HEARING OFFICER FAY: Good. Anything  
11 from the staff?

12 MS. DeCARLO: One point of clarification  
13 just on the biology issue is that while we have  
14 agreed to language allowing them to a certain  
15 degree of minor activity for the BMPs, they still,  
16 before even starting that, they still need to work  
17 out the final permit. And we're in the process of  
18 reviewing that, and we're working closely with the  
19 applicant.

20 But I just wanted to indicate that  
21 that's still one final hurdle that would have to  
22 be completed prior to the start of any activity  
23 onsite.

24 HEARING OFFICER FAY: But not prior to  
25 the Commission acting on the decision?

1 MS. DeCARLO: No, no, definitely not  
2 that.

3 HEARING OFFICER FAY: Okay, good. And  
4 you're satisfied that the conditions of  
5 certification contained in the proposed decision  
6 address those requirements?

7 MS. DeCARLO: Yes.

8 HEARING OFFICER FAY: Good. All right.  
9 Well, I was just going to ask again if there's any  
10 public comment before I turn it over to the  
11 Commissioner.

12 Hearing none.

13 PRESIDING MEMBER BYRON: Well, I don't  
14 know that we're done. If we are, that's great.  
15 But I wanted to respond to Mr. Galati.

16 I think we had a very successful meeting  
17 up in Humboldt. Clearly PG&E demonstrated their  
18 willingness to close out what were relatively  
19 minor issues. I probably shouldn't judge them  
20 that way. Were willing to close out all these  
21 issues, and that was very good.

22 So, we, of course, were very interested  
23 in trying to respond with the PMPD as quickly as  
24 we could. I think you had the good fortune of  
25 having the Chief Hearing Officer as your presiding

1 officer, setting a good example for all the other  
2 hearing officers.

3 MR. GALATI: Hopefully setting a bar by  
4 which all the other hearing officers will try to  
5 meet. (inaudible), Mr. Celli.

6 PRESIDING MEMBER BYRON: All right,  
7 thank you for letting me make that comment.

8 HEARING OFFICER FAY: Well, certainly  
9 thank you all for your constructive participation  
10 in this process. And you opened the hearing,  
11 would you care to close it?

12 PRESIDING MEMBER BYRON: Well, this has  
13 been very expeditious today. Thank you all very  
14 much. Staff, excellent job, Ms. DeCarlo. And our  
15 project manager, thank you very much for your  
16 diligence on this. It did go a great deal longer  
17 than we had certainly intended. And without going  
18 into the details as to why, I think the North  
19 Coast Air Quality District is much more informed  
20 about our process now than they were when we  
21 started.

22 Thank the applicant. Thank everybody  
23 for hanging in there with us. I think we have a  
24 good PMPD here. We'll put it before the full  
25 Commission on October --

1 HEARING OFFICER FAY: September 24th.

2 PRESIDING MEMBER BYRON: -- September  
3 24th. And we'll look forward to a positive  
4 outcome from that.

5 With that, we'll be adjourned, thank  
6 you.

7 (Whereupon, at 1:38 p.m., the hearing  
8 was adjourned.)

9 --o0o--

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of September, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□