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**COMMENTS OF ROBERT SARVEY ON APPLICATION NUMBER 15487  
ADDITIONAL STATEMENT OF BASIS DRAT GENERAL PREVENTION OF  
SIGNIFICANT DETERIORATION PERMIT**

**Introduction**

The proposed Russell City facility was initially licensed in 2002. The district issued an FDOC for the RCEC on March 18, 2002. On November 17, 2006 the project owner filed for an amendment to relocate the project so its permits had to be updated. The CEC and the Air District therefore reinitiated the permitting process to amend the initial permits to reflect the new location. The District prepared an Amended Determination of Compliance addressing the air quality issues raised (as well as a few minor changes in the operating conditions) by the permit amendment and submitted it to the Energy Commission for use in the licensing proceeding. The Energy Commission completed its CEQA-equivalent review of environmental impacts (including air quality issues) and ultimately approved the amendment on September 26, 2007.

On November 1, 2007, the Air District issued an amended Authority to Construct incorporating the Energy Commission's conditions of certification into a District-issued permit, and also issued the amended Federal PSD Permit for the project. The amended Authority to Construct and the amended Federal PSD Permit were issued jointly in the same document, in accordance with the Air District's administrative practice. At that time the original PSD and ATC were approximately five years old.

With respect to the Federal PSD Permit, one person Mr. Rob Simpson, resident of Hayward, at his own expense, appealed the permit to the Environmental Appeals Board raising issues concerning the RCEC air quality impacts including BACT and NO<sub>2</sub> impacts, socioeconomic impacts and the public notice and comment process. On July 29, 2008 the Environmental Appeals Board ruled:

Held: The Board remands the Permit so that the District can renotice the draft permit in accordance with the notice provisions of 40 C.F.R. § 124.10.

(1) Mr. Simpson may raise his notice claims for Board consideration despite Mr. Simpson's "failure" to meet the ordinary threshold for standing under 40 C.F.R. § 124.19(a), which limits standing to those who participate in a permit proceeding by filing comments on the draft permit or participating in a public hearing on a draft permit. Denying Board consideration of fundamental notice claims would deny parties the opportunity to vindicate before the Board potentially meritorious claims of notice violations and preclude the Board from remedying the harm to participation rights resulting from lack of notice. Such denial would be contrary to the CAA statutory directive

emphasizing the importance of public participation in PSD permitting and section 124.10's expansive provision of notice and participation rights to the public.

(2) Mr. Simpson has not demonstrated that his affiliation with the Hayward Area Planning Association ("HAPA") entitled him to particularized notice of the draft permit because HAPA, as a private organization, does not qualify as a "comprehensive regional land use planning agency" entitled to such notice during PSD permitting pursuant to section 124.10(c)(1)(vii) and, even if it were, that does not mean Mr. Simpson was entitled to such notice.

(3) While the Board generally will not consider notice allegations in a petition where the sole deficiency alleged is failure to give notice to a particular person other than the petitioner, it nevertheless regards it as appropriate to consider claims of failure of notice to other persons within the scope of allegations of fundamental defects in the integrity of the notice process as a whole that may be prejudicial to the notice rights of the petitioner and others.

(4) While a delegated state agency may redelegate notice and comment functions to another state agency to the extent the federal delegation so permits, in all cases it is incumbent upon the delegated state agency to ensure strict compliance with federal PSD requirements.

(5) Mr. Simpson has demonstrated that the District, in redelegating outreach to CEC, failed to ensure compliance with the notice and outreach obligations of the PSD regulations, thereby narrowing the scope of public notice to which Mr. Simpson and other members of the public were entitled. In particular, the District failed to ensure compliance with the specific obligation at section 124.10(c)(1)(ix) to inform the public of the opportunity to be placed on a "mailing list" for notification of permitting actions through "periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State Law Journals."

(6) The District's almost complete reliance upon CEC's certification related outreach procedures to satisfy the District's notice obligations regarding the draft permit resulted in a fundamentally flawed notice process. By "piggybacking" upon the CEC's outreach, the District failed to exercise sufficient supervision over the CEC to ensure that the latter adapted its outreach activities to meet specific section 124.10 mandates. The inadequacy of the notice lists used by the CEC, the handling of public comments by the CEC, and the conduct of a public workshop by CEC with likely District participation during the PSD comment period at which air quality issues were discussed but no record of public comments made all demonstrate that the CEC merely folded the PSD notice proceeding into its ongoing process without attempting to ensure that the part 124 requirements for public participation were met.

(7) Contrary to the District's statements, the District's notice omissions do not constitute "harmless error." Such omissions affected more persons than Mr. Simpson, and even as to Mr. Simpson, the District's assumption that, even with the proper notice, he would not have participated, is purely speculative.

(8) The District's notice deficiencies require remand of the Permit to the District to ensure that the District fully complies with the public notice and comment provisions at section 124.10. Because the District's renoticing of the draft permit will allow Mr. Simpson and

other members of the public the opportunity to submit comments on PSD-related issues during the comment period, the Board refrains at this time from opining on such issues raised by Mr. Simpson in his appeal.

(9) Several of the issues raised in Mr. Simpson's Petition concern matters of California or federal law that are not governed by PSD regulations and, as such, are beyond the Board's jurisdiction during the PSD review process. The Board will not consider these issues if raised following remand.<sup>1</sup>

The Air District re-noticed the proposed amended Federal PSD Permit on December 18, 2008 and issued the "**Statement of Basis for Draft Amended Federal Prevention of Significant Deterioration**" Permit in response to the Remand Order. This document was the second revision to a permit that was issued on March 18, 2002. The Air District received over 50 comment letters on the proposed permit. Letters were submitted by several governmental agencies including The Alameda County Health Department and the Port of Oakland. Several environmental organizations including Earthjustice, Sierra Club, CBE, and CARE, also commented. In response to these comment letters from various governmental agencies, environmental organizations and individuals the District on August 3, 2009 issued the current "Additional Statement of Basis Draft Federal "Prevention of Significant Deterioration" Permit." This current document represents one of the most bifurcated analyses in the history of air permitting. This piecemeal analysis is virtually incomprehensible to an ordinary member of the public.

The District states on page 3 of the current document that, This Additional Statement of Basis, the initial Statement of Basis published in December of 2008, the revised proposed permit conditions, the initial permit application and all subsequent data and information submitted by the applicant, and all other materials supporting the Air District's proposal to issue the Federal PSD Permit are available for public inspection at the Outreach and Incentives Division Office located on the 5th Floor of District Headquarters, 939 Ellis Street, San Francisco, CA, 94109. This project analysis includes the original FDOC issued in 2002, an amended FDOC/PSD in 2007, a revised PSD in 2008, and now a draft amended PSD permit in 2009. This analysis spans over seven years and four separate documents. In addition the projects "Index of Public Permitting Record Documents" contains over 300 separate documents available for review only by a trip to the District headquarters.<sup>2</sup>

As a member of the public it is almost impossible to effectively comment on this current draft PSD permit. Presumably one could make a trip to San Francisco and camp out in the District's public records room and spend countless hours reviewing the 300 plus documents. Another option would be to pay ten cents a page for the entire permitting record which would cost several thousand

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<sup>1</sup> EAB ruling PSD Appeal No. 08-01 pages 1,2

<sup>2</sup> [http://baaqmd.gov/~media/Files/Engineering/Public%20Notices/2009/15487/B3161\\_nsr\\_15487\\_index\\_080309.ashx](http://baaqmd.gov/~media/Files/Engineering/Public%20Notices/2009/15487/B3161_nsr_15487_index_080309.ashx)

dollars. The District should provide electronic access to the 300 document permitting record and provide an additional 30 day comment period.

### Soils and Vegetation Analysis

The soils and vegetation analysis fails to quantify the projects nitrogen deposition impacts from NO<sub>x</sub> and ammonia emissions. The analysis instead attempts to quantify the East Bay Regional Parks current nitrogen deposition impacts and fails to ever quantify the projects own impacts. This approach is flawed since the projects nitrogen deposition impacts will be felt throughout the BAAQMD. For example the nitrogen deposition impacts in hills above the Metcalf project have documented nitrogen deposition impacts.<sup>3</sup> Any nitrogen deposition impacts from the RCEC will impact an already burdened ecosystem.

### **Pm 2.5 PRE CONSTRUCTION MONITORING**

EPA's PSD regulations require an applicant to provide preconstruction monitoring data for purposes of use in the Source Impacts Analysis. However, a source is exempt from this requirement if its modeled impact in any area is less than pollutant-specific "significant monitoring concentrations" ("SMC"), which EPA has generally established as five times the lowest detectable concentration of a pollutant that could be measured by available instrumentation. While the maximum offsite impact modeled to occur from RCEC (4.86 ug/m<sup>3</sup>) is below two of EPA's proposed Significant Monitoring Concentrations ("SMCs"), it would exceed the lowest of the three proposed SMCs. Accordingly, RCEC has proposed existing monitoring data from nearby Fremont, CA to satisfy the preconstruction monitoring requirement.<sup>4</sup> The district should require site specific pre construction monitoring data because the project is located in an area which is predominately a minority community subject to Federal and State environmental justice concerns. In the two zip codes near the site 94544 and 94545 residents have a high mortality rate and on average they live five years less than the county- wide expectancy rate. Death rates from air pollution-associated diseases such as coronary heart disease, chronic lower respiratory disease, are substantially and statistically significantly higher than those for the County, representing an ongoing, excess burden of mortality. The rate of death from chronic lower respiratory diseases was 43 percent higher and the rate from coronary heart disease was 16 percent higher than the County average. Hospitalizations due to air pollution- associated diseases are substantially higher in the two zip codes close to the proposed site. From 2003 to 2005 the hospitalization rates for coronary heart disease, chronic obstructive pulmonary

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<sup>3</sup> [http://www.energy.ca.gov/sitingcases/metcalf/documents/2000-03-03\\_METCALF\\_BIOLOGY.PDF](http://www.energy.ca.gov/sitingcases/metcalf/documents/2000-03-03_METCALF_BIOLOGY.PDF)  
[http://www.energy.ca.gov/sitingcases/metcalf/documents/2000-10-10\\_METCALF\\_FSA.PDF](http://www.energy.ca.gov/sitingcases/metcalf/documents/2000-10-10_METCALF_FSA.PDF) page 485,486

<sup>4</sup> [http://www.baaqmd.gov/~media/Files/Engineering/Public%20Notices/2009/15487/sb\\_062309/B3161\\_nsr\\_15487\\_pm\\_062309.ashx](http://www.baaqmd.gov/~media/Files/Engineering/Public%20Notices/2009/15487/sb_062309/B3161_nsr_15487_pm_062309.ashx)  
PAGE 6

disease, congestive heart failure and asthma in the two zip codes nearest the proposed site, 94544 and 94545, was statistically significantly higher than Alameda County rates which means they do not occur by chance. Specifically, hospitalization rates due to coronary heart disease was 60 percent higher; chronic obstructive pulmonary disease, 20 percent higher; congestive heart failure, 35 percent higher; and asthma hospitalization rates 14 percent higher than the County rate. The fact that rates of these illnesses are significantly higher in the proposed project area than in the rest of the county suggests a level of vulnerability in this population that is higher than the rest of the county.

## GREENHOUSE GAS EMISSIONS

The district states that, “the emergency diesel fire pump engine will have the potential to emit greenhouse gases (CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O) because it will combust a hydrocarbon fuel, just as with the gas turbines and heat recovery boilers. There are no effective combustion controls to reduce the greenhouse gas emissions from hydrocarbon fuel combustion, and there are no currently available post-combustion controls, as the District explained in its greenhouse gas analysis for the gas turbines. The Air District therefore concludes that the only achievable technological approach to reducing greenhouse gases from the fire pump engine is to use the most efficient engine that meets the stringent National Fire Protection Association (“NFPA”) standards for reserve horsepower capacity, engine cranking systems, engine cooling systems, fuel types instrumentation and control and exhaust systems. As there is only one control technology to choose from, application of the 5 steps in the Top-Down BACT analysis results in the selection of that control technology.” The district is incorrect an electric fire pump is feasible and cost effective mitigation and represents BACT for green house gasses. In addition it lowers the facilities NO<sub>x</sub> and PM 2.5 concentrations and emissions of diesel particulate.

The projects greenhouse gas emissions can also be lowered significantly by utilizing a fast start capability that is becoming common in new power plant applications.

### Start up and Shutdown emissions

The BACT determination for start up and shut down emissions is based on old technology. Combined cycle turbines are currently being permitted which can achieve cold, warm, and hot starts taking no longer than 1-hour to demonstrate compliance with normal steady state emission limits.<sup>5</sup> These fast start machines are now being utilized in most new power plant applications such as the new proposed Contra Costa Generating Plant, the Willow Pass Generating Station and the Marsh Landing Project. It is startling that the BAAQMD is so unaware of

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<sup>5</sup> [http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/afc/Volume%201/CCGS\\_5.1\\_Air%20Quality.pdf](http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/afc/Volume%201/CCGS_5.1_Air%20Quality.pdf) page 5.17  
Contra Costa Generating Plant 09-AFC-4

significant developments in the power plant industry. Especially since these projects have applications lodged with the District. The Contra Costa Generating Station utilizing a GE Model 7FA with fast start capability is capable of achieving cold starts in one hour with only 96 pounds of NO<sub>2</sub> emissions as illustrated on page 5.1-9, table 5.16, of the AFC.<sup>6</sup>

Similarly the Marsh Landing Facility employing Siemens Flex Plant 10 (FP10) technology is capable of startup times of less than 12 minutes and worst case startup emissions of 38.7 pounds for NO<sub>2</sub> and 279.8 pounds per hour for CO emissions for a cold start.<sup>7</sup>

Also the Willow Pass Generating stations expected emissions associated with CTG Cold startup and shutdown event is 38.7 pounds of NO<sub>2</sub> and 279.8 pounds of CO. Based on vendor information, startup (i.e., the period from initial firing to compliance with emission limits) of the FP10 units is expected to occur within 12 minutes. During a shutdown event, the efficiency of the emission controls will continue to function at normal operating levels down to a load of 60 percent for the FP10 units; thus, shutdown periods and emissions are measured from the time this load is reached.<sup>8</sup>

The Russell city Project according to testimony by PG&E in the LTPP has “operational flexibility that will help PG&E to integrate intermittent renewable resources into PG&E’s resource portfolio.” The RCEC is expected to be a fast ramping flexible combined cycle Project.<sup>9</sup>

## **Secondary Particulate Impacts From Ammonia Slip**

On page 55 of the proposed permit the Air District states:

*The Air District also received some comments suggesting that the potential for ammonia slip from the facility’s NO<sub>x</sub> control equipment should be evaluated as a collateral environmental impact in terms of its potential for the ammonia slip to form secondary particulate matter. The Air District has considered that issue in detail as explained in the section on particulate matter emissions below. (See Section VI C.) As*

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<sup>6</sup> [http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/afc/Volume%201/CCGS\\_5.1\\_Air%20Quality.pdf](http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/afc/Volume%201/CCGS_5.1_Air%20Quality.pdf) page 5.1-9  
Contra Costa Generating Plant 09-AFC-4

<sup>7</sup> [http://www.energy.ca.gov/sitingcases/marshlanding/documents/applicant/afc/Volume%20I/7\\_1%20Air%20Quality.pdf](http://www.energy.ca.gov/sitingcases/marshlanding/documents/applicant/afc/Volume%20I/7_1%20Air%20Quality.pdf) pages 7.1-49 table 7.1-16, page 7.1-8 08-AFC-03

<sup>8</sup> [http://www.energy.ca.gov/sitingcases/willowpass/documents/applicant/afc/Volume\\_01/7.1%20Air%20Quality.pdf](http://www.energy.ca.gov/sitingcases/willowpass/documents/applicant/afc/Volume_01/7.1%20Air%20Quality.pdf) page 7.1-9 08-AFC-6

<sup>9</sup> APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR EXPEDITED APPROVAL OF AMENDED POWER PURCHASE AGREEMENT FOR THE RUSSELL CITY ENERGY COMPANY PROJECT page 11

*explained there, the Air District has concluded that ammonia slip emissions are not a significant contributor to secondary particulate matter formation and thus are not a significant collateral environmental impact that would rule out the selection of SCR as a control technology for NO<sub>2</sub> compared with EMx technology.<sup>80</sup> The Air District examines collateral environmental impacts such as this on a case-by-case basis and does not have a bright-line rule for when a collateral impact would be considered “significant” or not. But certainly, in a case such as this one where the available evidence suggests that ammonia slip in fact will not cause significant secondary PM, the potential for such impacts would not be significant enough to eliminate a particular control technology.*

*The Air District would like to take this opportunity to clarify its analysis in light of these comments. Although the comments are correct that the District’s study finding nitric-acid limited conditions looked only at the San Jose and Livermore areas, which are south and east of the proposed project location, respectively, there is no indication that the same atmospheric conditions do not exist in the Hayward area as well. They are part of the same general airshed as Hayward, and the Air District is not aware of any data or other information to suggest that conditions may be materially different. The Air District therefore continues to believe that the evidence before it supports the conclusion that the air in the region of the proposed facility is nitric-acid limited, and that additional ammonia emissions in the form of ammonia slip are not likely to have any significant contribution to secondary particulate matter formation. If members of the public have data or information that the location of the proposed facility is in fact not nitric-acid limited, the Air District asks that the public submit it during the additional comment period so the District can consider it.*

*Moreover, secondary PM formation is a complex process that is not well understood at the present time. As EPA recently noted in its rulemaking on secondary particulate matter precursors, “Ammonia emission inventories are presently very uncertain in most areas, complicating the task of assessing potential impacts of ammonia emission reductions. In addition, data necessary to understand the atmospheric composition and balance of ammonia and nitric acid in an area are not widely available, making it difficult to predict the results of potential ammonia emission reductions.” (73 Fed. Reg. 28321, 28330 (May 16, 2008).) Given this situation, the suggestion that ammonia slip from the facility may cause significant secondary Particulate Matter formation is speculative at most. EPA has made clear that it Federal PSD Permitting decisions should not be made based on potential impacts that are merely speculative in nature. (See *In re Three Mountain Power*, 10 E.A.D. at 57-58; see also *In re Sutter Power Plant*, fn. 13.) The Air District notes that the commenters’ assertions about the areas in which the District’s study could be made more comprehensive only highlight the uncertainties surrounding the issue of secondary Particulate Matter formation and the speculative nature of their claims that ammonia slip will cause additional Particulate Matter impacts.*

*For these reasons, the Air District concludes that the Federal PSD BACT requirement does not require an analysis of ammonia slip emissions, as would be required if ammonia slip was demonstrated to be a precursor to Particulate Matter formation and that it*

*would be emitted in significant amounts. If members of the public have additional information that may be relevant to these issues, the Air District invites the public to submit it during the additional comment period so the Air District can consider it further.*

I have discovered additional information that is relevant to the secondary particulate matter from ammonia slip. In attachment 1 of these comments there is evidence that BAAQMD expert staff has changed its position on the formation of secondary particulate matter from ammonia slip. A telephonic conference was held on August 8, 2008 between District Staff, PG&E and representatives of Sierra Research to discuss PSD permitting issues for the Gateway and Russell city Projects. The notes from the conference reveal that, **“Although previous District statements were that ammonia did not contribute to secondary particulate in the BAAQMD, some staff members were now reevaluating that position.”**<sup>10</sup> In light of BAAQMD expert staff’s new position a site specific analysis of secondary particulate from ammonia slip is warranted. In addition a Federal PSD BACT analysis for ammonia slip is necessary to determine the lowest achievable ammonia slip limit for this project.

### **BAAQMD PSD Delegation**

Further examination of attachment 1 the email from Brian Lusher BAAQMD Engineer to Alexander Crocket BAAQMD Attorney reveals an apparent conspiracy between BAAQMD, PG&E and Sierra Research to circumvent EAB/ PSD review of the Gateway Generating Project in Antioch. The Gateway Generating Station filed a petition for amendment of their FDOC and PSD permit on December 18, 2007. The new FDOC/PSD permit sought to reflect the project as constructed eliminating a wet cooling tower and replacing it with a dry cooling system and adding a new diesel fired generator and substituting a smaller gas pre heater. The application lowered the facilities emission limits to current Best Available Control Technology reducing NOx emissions from 2.5ppm to 2.0 ppm the current BACT limit.

District Staff Counsel “Sandy Crockett provided a summary of the EAB decision on the Russell City Energy Center PSD permit amendment and the timing implications of the EAB appeal for GGS. The District was taken to task by EAB for not complying with noticing requirements of 40 CFR 124 and is concerned that the notice provided for the GGS amendment might also be viewed by EAB as deficient. Sandy is concerned that the EAB plaintiff in the RCEC case would appeal the GGS permit to the EAB on the same grounds. He indicated that the RCEC plaintiff had been in contact with Bob Sarvey, who had submitted public comments on the GGS draft permit.<sup>11</sup> He noted that power plant project opponents such as Sarvey appear to have discovered that the EAB

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<sup>10</sup> Attachment 1 page 3

<sup>11</sup> [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Filings%20By%20Appeal%20Number/2641E6619FB4CC79852575AE006CE74E/\\$File/Exhibit%209...8.pdf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/2641E6619FB4CC79852575AE006CE74E/$File/Exhibit%209...8.pdf)

appeal process is an effective means of delaying projects since an EAB appeal stays the PSD permit for 6 months or more even if EAB ultimately rejects the appeal.”<sup>12</sup>

The “District believes (hat it may *be* preferable to re-notice the amendment using a District wide rather than a countywide notice list, resulting in a 30-day delay for issuance of the amended PSD permit but eliminating the RCEC plaintiffs ability to appeal this issue to the EAB.”

Sierra Researches “Gary Rubenstein indicated that we expect the permit to be appealed to the EAB by Sarvey anyway. He stated that since the time-critical element for PG&E was the commission-related permit conditions, and since an appeal would stay the permit whether it had any merit or not, it's not clear that any time would be saved by renoticing the draft permit.” BAAQMD Attorney, “Sandy suggested that it may be easier for the EAB to dismiss the appeal without the notice issue.”<sup>13</sup>

Sierra Researches Gary Rubenstein, “noted that under EPA policy, once a facility starts up, a non-major amendment no longer requires PSD review and public notice, so if amendment issuance were to be delayed until after startup the PSD issues could be moot. **However, the District would appear to be circumventing the regulatory process if it were to delay.**<sup>14</sup> If GGS were to withdraw the permit amendment until after commissioning it would be hard for District staff to support, and the Hearing Board to grant, a variance.”

The BAAQMD for its part delayed approval of the amended PSD permit for 25 months so the Gateway project could become operational and avoid EAB PSD review. The BAAQMD allowed PG&E to construct and operate a project which had no PSD permit and had an ATC for a wet cooled power plant with an electric fire pump. The project as built has a dry cooling system, a 300 hp diesel fire pump and a smaller dew point heater of which the BAAQMD was aware of at all times since December 18, 2007. The project has also avoided adopting current BACT standards for NOx and CO which allows the Gateway Generating Station to emit 20% more NOx emission and 100% more CO emissions than if the PSD permit had been timely reviewed and approved.

The EPA issued an FNOV to PG&E on August 8, 2009 for lack of a PSD permit and violation of the California State Implementation Plan a violation which was seemingly aided and abetted by the BAAQMD to avoid PSD review. Mr. Alexander Crocket sent this FNOV to the EAB appeals Board requesting a dismissal of a PSD permit review initiated by Mr. Rob Simpson filed on May 11, 2009.<sup>15</sup> No public participation is allowed in enforcement actions by the EPA therefore the public right to comment and adjudicate PSD permit was lost when the District failed to act on the amended PSD permit filed by PG&EA on December 18, 2008.

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<sup>12</sup> Attachment 1 page 1

<sup>13</sup> Attachment 1 page 1

<sup>14</sup> Attachment 1 page 2

<sup>15</sup> [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Filings%20By%20Appeal%20Number/1979700DF807B14D8525762600672862/\\$File/Notification%20...50.pdf](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/1979700DF807B14D8525762600672862/$File/Notification%20...50.pdf)

The BAAQMD was established to enforce air quality laws and to reduce emissions in the air basin to promote the public health and welfare. The BAAQMD has apparently colluded with PG&E and Sierra Research and has violated the Clean Air Act, the State Implementation Plan and the public's right to participate in air permitting decisions. Their intentional inaction on the permit has caused a potential worsening of air quality by not requiring BACT for the Gateway Generating Station. In light of these facts I respectfully request that the BAAQMD abandon its PSD permitting authority and relinquish its PSD authority to the EPA.

**Alexander Crockett**

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**From:** Brian Lusher  
**Sent:** Thursday, August 07, 2008 11:59 AM  
**To:** Alexander Crockett  
**Cc:** Brian Bateman; Bob Nishimura  
**Subject:** FW: Follow up GGS Air Permit  
**Attachments:** BAAQMD teleconference notes 080408.doc

FYI

-----Original Message-----

**From:** Allen, Thomas [mailto:HTA1@PGE.COM]  
**Sent:** Wednesday, August 06, 2008 10:51 AM  
**To:** Allen, Thomas; Royall, Steve; Nancy L. Matthews; Gary Rubenstein; sgalati@gb-LLP.com; Andrea@agrenier.com; Maring, Jon; Royall, Steve; Espiritu, Angel B; Brian Lusher; Phung, Hoc  
**Cc:** Farabee, David R.  
**Subject:** RE: Follow up GGS Air Permit

<<BAAQMD teleconference notes 080408.doc>>

All

Here are notes from our previous meeting that Nancy prepared. Let Nancy and me know if there are questions or comments

Tom Allen  
Project Manager  
Gateway Generating Station  
925-459-7201 cell 415-317-4463

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**From:** Allen, Thomas  
**Sent:** Thursday, March 03, 2005 12:17 PM  
**To:** Royall, Steve; 'Nancy L. Matthews'; 'Gary Rubenstein'; 'Scott Galati (sgalati@gb-LLP.com)'; 'Andrea@agrenier.com'; Maring, Jon; Royall, Steve; Espiritu, Angel B; 'blusher@baaqmd.gov'; Phung, Hoc  
**Cc:** Farabee, David R.  
**Subject:** Follow up GGS Air Permit  
**When:** Wednesday, August 06, 2008 11:00 AM-11:30 AM (GMT-08:00) Pacific Time (US & Canada).  
**Where:** GGS Conference Callin: 866-257-0480 \*4159735105\*



Gateway Generating Station Teleconference Notes  
August 4, 2008

Participants:

BAAQMD	Alexander (Sandy) Crockett (staff attorney) Brian Bateman (head of Permit Services) Bob Nishimura (senior permitting engineer) Brian Lusher (permit engineer)
PG&E	Tom Allen Steve Royall Hoc Phung Angel Espiritu Teresa DeBono
Latham & Watkins	David Farabee
Sierra Research	Gary Rubenstein Nancy Matthews

Meeting Notes:

1. Discussion of Environmental Appeals Board Decision in the Russell City Energy Center licensing proceeding.

Sandy Crockett provided a summary of the EAB decision on the Russell City Energy Center PSD permit amendment and the timing implications of an EAB appeal for GGS. District was taken to task by EAB for not complying with noticing requirements of 40 CFR 124 and is concerned that the notice provided for the GGS amendment might also be viewed by EAB as deficient. Sandy is concerned that the EAB plaintiff in the RCEC case would appeal the GGS permit to the EAB on the same grounds. He indicated that the RCEC plaintiff had been in contact with Bob Sarvey, who had submitted public comments on the GGS draft permit. He noted that power plant project opponents such as Sarvey appear to have discovered that the EAB appeal process is an effective means of delaying projects since an EAB appeal stays the PSD permit for 6 months or more even if EAB ultimately rejects the appeal.

2. Renoticing under Section Title 40 Part 124 requirements. Area lists of interested parties by Region.

District believes that it may be preferable to renotice the amendment using a District-wide rather than a countywide notice list, resulting in a 30-day delay for issuance of the amended PSD permit but eliminating the RCEC plaintiff's ability to appeal this issue to the EAB.

Gary Rubenstein indicated that we expect the permit to be appealed to the EAB by Sarvey anyway. He stated that since the time-critical element for PG&E was the commission-related permit conditions, and since an appeal would stay the permit whether it had any merit or not, it's not clear that any time would be saved by renoticing the draft

permit. Sandy suggested that it may be easier for the EAB to dismiss the appeal without the notice issue.

3. Public Meeting may be required under Title 40 Part 124.

District also noted that if amendment is renoticed, comments could request a public hearing. Gary and David Farabee recommended that if the permit is renoticed, PG&E should request a public hearing so the hearing notice period could run concurrently with the comment period, avoiding additional delays.

4. AC amendment considered a non-major modification of PSD permit.

There was a discussion of the need for amended CO emission limits during commissioning. Gary and Steve Royall explained that the limits in the current permit are not adequate; if amendment is delayed beyond project startup, GGS may need to request variance from Hearing Board. Gary and Tom Allen indicated that GGS is exploring ways of reducing CO emissions during commissioning to comply with current limits, such as installing oxidation catalyst before first fire. Gary noted that under EPA policy, once a facility starts up, a non-major amendment no longer requires PSD review and public notice, so if amendment issuance were to be delayed until after startup the PSD issues could be moot. However, District could appear to be circumventing the regulatory process if it were to delay. If GGS were to withdraw permit amendment until after commissioning it would be hard for District staff to support, and the Hearing Board to grant, a variance.

5. Basis of revised annual CO limit.

Brian Lusher said he had received information from Sierra on this topic; it appeared to address his questions and he will contact Sierra directly if he had additional questions.

6. Additional discussion on fast start/rapid start technology and the possible implementation of this technology for this project.

District staff believe they need to address startup BACT in response to comments. Brian Lusher noted that he had received some information from Sierra to address this. Gary noted that EPA had addressed this issue in the Colusa PSD permit; Brian will look at the information PG&E has already submitted, and may request additional information, to assist in preparing his response. There was a general discussion of the physical changes necessary to implement fast start technology – software changes alone are not adequate-- and why this is not feasible for GGS at this point in project development.

Brian would like to include a warm startup time limit in the GGS permit as one way to address the BACT issue. There was a general discussion regarding the need to maintain the 900 lb/hr CO limit—that the hourly limits could not be lowered. The District understands this issue.

#### 7. NH<sub>3</sub> Slip/Secondary PM

Brian Lusher indicated that the CEC staff was pressuring the BAAQMD staff on the proposal to raise the ammonia slip limit to 10 ppm. He had reviewed the District's studies on the contribution of ammonia to secondary particulate. Although previous District statements were that ammonia did not contribute to secondary particulate in the BAAQMD, some staff members were now reevaluating that position. He noted that many recent projects had accepted 5 ppm ammonia slip limits.

Gary pointed out that the 5 ppm slip limits for recent projects were proposed or accepted for other reasons, including BACT determinations (San Luis Obispo County APCD and SCAQMD), and these reasons are not relevant to GGS. He said that the District staff had been consistent in its position regarding the contribution of ammonia slip to secondary PM in the Bay Area, and that if the District staff changed the technical conclusions regarding atmospheric chemistry, GGS would accept that determination. However, the BAAQMD staff, not the CEC staff, were the experts on this air quality issue.

#### 8. Excursion Language Necessary? Justification for Excursion Language?

Brian Lusher asked for some justification for the requested excursion language in the draft permit. Gary indicated that Sierra was working on an analysis of acid rain monitoring data to address the question, and that a summary of the analysis would be provided to the District when it was completed later this week.

#### 9. CO<sub>2</sub> BACT

Brian Lusher said the District believes that CO<sub>2</sub> emissions need to be addressed in permit evaluations. Gary warned against including CO<sub>2</sub> emissions in a PSD permit evaluation because that could lead to making every project a major facility for CO<sub>2</sub>. Sandy Crockett agreed with this concern.

Brian also indicated that the District was considering whether the modeling results for other non-PSD pollutants needed to be included in the public notice and engineering evaluation. Gary expressed concern that this could make it appear as if the entire PSD permit was subject to public notice, and not just the requested amendment. The District staff indicated that this was their intent, as a fallback position. Gary indicated that while PG&E could figure out a way to deal with delays related to the pending permit amendment, if there was even a slight chance that the public notice for the amendment could be construed as a renofice of the entire PSD permit, and hence an appeal could stay the effectiveness of the initial PSD permit, PG&E would withdraw the amendment request.

The District staff agreed to continue to review these issues internally. A follow-up conference call was scheduled for 11 am Wednesday, August 6.

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