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BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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January 5, 2011

VIA EMAIL & U.S. MAIL

Mr. Gerardo Rios
U.S. E.P.A. – Region IX
75 Hawthorne Street
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Mr. Brian Bateman
Manager, Engineering Division
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: PSD and PM_{2.5} Nonattainment NSR Applicability to the
Oakley Generating Station

Dear Gerardo and Brian:

In connection with the California Energy Commission (“CEC”) licensing process for the proposed Oakley Generating Station (“Oakley”), the Bay Area Air Quality Management District (the “District”) prepared and circulated for public comment a “Preliminary Determination of Compliance (“PDOC”), dated October 2010. The PDOC is a thorough analysis that demonstrates the manner in which Oakley will meet all applicable air quality rules and regulations.

In the PDOC, the District identified two federal Clean Air Act permit programs that apply to “major” facilities. These are the Prevention of Significant Deterioration (“PSD”) program under 40 CFR § 52.21, and nonattainment New Source Review (“NSR”) for PM_{2.5} under Appendix S to 40 CFR Part 51. The District stated that it “has analyzed these requirements for the proposed Oakley Generating Station and has determined that neither of these permit requirements applies to this facility because it will not be a major source under either of these programs.” PDOC, p. 67.

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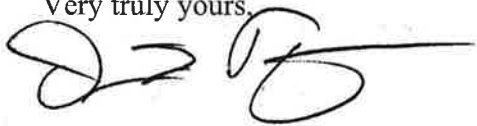
Two public comments on the PDOC disagreed with the District's conclusion, and suggested that the Oakley project should be considered a "major modification" of the Gateway Generating Station and of the Antioch Terminal (a natural gas facility), both of which are owned and operated by Pacific Gas and Electric Company ("PG&E"), and that PSD and PM_{2,5} nonattainment NSR requirements would therefore apply.

The District subsequently asked Contra Costa Generating Station LLC (owner of the Oakley facility) to prepare an analysis addressing whether Oakley is an independent facility for purposes of federal PSD and nonattainment NSR permitting. The enclosed analysis demonstrates that under applicable federal regulations, policy and guidance, the Oakley facility is not a major source, and also is not a modification (major or otherwise) of either the Gateway Generating Station or the Antioch Terminal, and that the District correctly concluded that the federal PSD and nonattainment NSR programs do not apply. The EPA documents that are referenced in the analysis are not enclosed with this letter, but we would be happy to provide you with copies at your request.

Oakley hereby requests your concurrence in this analysis, and agreement that the District has correctly concluded that PSD and nonattainment NSR permits are not required for the Oakley Generating Station. This issue is important to the District's completion of the Final Determination of Compliance, which in turn is needed by the CEC before it may issue the site certification for Oakley. In order to meet its construction schedule, Oakley is hoping to obtain the final CEC approval by May, 2011. Thus, time is of the essence.

Thank you for your assistance with this issue, and best regards. Please contact me at your earliest convenience if you have any questions.

Very truly yours,



David R. Farabee

Enclosure

cc: Ann Lyons, Esq.
Alexander Crockett, Esq.

Mr. Greg Lamberg

**Oakley Generating Station
PSD/NSR Applicability
January 2011**

Contra Costa Generating Station LLC (“CCGS”), a wholly owned subsidiary of Radback Energy, Inc., has applied for the various permits needed to construct and operate the proposed Oakley Generating Station (“Oakley” or “OGS”), including site certification from the California Energy Commission (“CEC”). The Oakley facility is currently in the Application for Certification (“AFC”) process before the CEC. As part of the AFC process, the Bay Area Air Quality Management District (“BAAQMD” or “District”) evaluated Oakley’s compliance with the District’s permit standards and other emission control requirements. The District prepared and circulated for public comment a “Preliminary Determination of Compliance,” dated October 2010 (the “PDOC”).

In the PDOC, the District stated that it “analyzed [the federal “Prevention of Significant Deterioration” (“PSD”) and PM_{2.5} “Non-Attainment New Source Review” (“Non-Attainment NSR”)] requirements for the proposed Oakley Generating Station and has determined that neither of these permit requirements applies to this facility because it will not be a major source under either program. The District is therefore not proposing to issue a PSD permit for this facility or to include Appendix S PM_{2.5} Non-Attainment NSR requirements in the permit.” PDOC, p. 67. Public comments on the PDOC disagreed with this conclusion, and suggested that the Oakley project should be considered a “major modification” of the Gateway Generating Station and of the Antioch Terminal (natural gas facility), both of which are owned and operated by Pacific Gas and Electric Company (“PG&E”), and that PSD and PM_{2.5} Non-Attainment NSR requirements would therefore apply. The following analysis shows that under applicable federal regulations, policy and guidance, the Oakley facility is not a major source, and also is not a modification (major or otherwise) of either the Gateway Generating Station or the Antioch Terminal, and that the District correctly concluded that the federal PSD and Non-Attainment NSR programs do not apply.

Background

Oakley Generating Station

OGS will be a natural gas-fired, combined-cycle facility with a nominal generating capacity of 624 megawatts, consisting of two General Electric Frame 7FA combustion turbine generators, one single-condensing GE D11 steam turbine generator, and ancillary equipment. The project will utilize General Electric's newest state-of-the-art gas turbine technology, and will utilize best available control technology to minimize emissions. See Bay Area Air Quality Management District, "Preliminary Determination of Compliance," Oakley Generating Station, October 2010 ("PDOC"), Section 5.

The OGS has been designed as a base-load facility, with the added capabilities of rapid startup, high turndown capability (i.e. ability to turn down to a low load), and high ramp rates. Because the combined-cycle configuration will be more efficient than many aging gas-fired steam generation facilities in northern California, the OGS facility is anticipated to be frequently dispatched and to operate up to approximately 8,463 hours per year (approximately 96.6 percent capacity with the balance in downtime for maintenance), with an expected facility capacity factor of 60 to 80 percent.

The OGS will be situated on a 21.95 acre parcel that previously was part of a 210 acre parcel owned by DuPont, located in the city of Oakley in eastern Contra Costa County, northeast of the junction of State Route 4 and State Route 160. This site is at the western city limits of Oakley and adjacent to the eastern city limits of Antioch. The project is bounded to the west by the PG&E Antioch Terminal, a large natural gas transmission hub, to the north by DuPont property that is either industrial or vacant industrial, to the east by DuPont's titanium dioxide landfill area, and to the south by the BNSF railroad. The site of the proposed power plant was not used by DuPont for industrial purposes and is currently a vineyard. The OGS will be located approximately 0.45 miles from PG&E's Gateway Generating Station, and slightly farther from GenOn Energy's existing Contra Costa Power Plant and proposed Marsh Landing Generating Station. A vicinity map is included as Attachment 1.

The project will be connected to the regional electrical grid via a new 2.4-mile, 230 kV single-circuit transmission line between a new switchyard at the project site and PG&E's Contra Costa Substation. The new transmission line will be located within an existing 80-foot-wide PG&E easement and will replace an existing 60 kV transmission line. The plant will require one or two pipelines to bring natural gas to the project site from off-site. PG&E proposed to supply the gas from its Line 303, a large high pressure transmission pipeline that connects to the utility's Antioch Terminal, which borders the project site. Gas would be delivered to the site via a new, 300-foot 6-to-10-inch-diameter pipeline. The project may also include a secondary source of gas supply via a new 410-foot gas line that would connect to PG&E's Line 400, which passes through the project site and also connects to the Antioch terminal. PG&E, as the natural gas supplier, will ultimately make the decision regarding which natural gas supply connection(s) will be constructed.

Annual PSD pollutant emissions limits for OGS (in tons per year ("TPY")) are NO₂ - 98.78, CO - 98.82, PM₁₀ - 63.88, and SO₂ - 12.55. See PDOC, Table 7. Although these annual emissions rates are based on certain assumptions about how the facility will operate, facility emissions will be subject to enforceable permit conditions that will ensure that emissions remain below the amounts listed above and do not exceed the 100 TPY PSD threshold during any 12-month period. The facility will be required to monitor its emissions. If it appears that the facility is nearing its annual limit for one or more PSD pollutants, it will be required by law to reduce or curtail operations to ensure that emissions do not exceed the permitted levels and so does not operate in a manner that would require a PSD permit.

Originally known as the Contra Costa Generating Station, the OGS was bid into PG&E's 2008 Long Term Request for Offers ("LTRFO"), a competitive solicitation for generation resources. The 2008 LTRFO was conducted in accordance with a procurement authority granted to PG&E by the California Public Utilities Commission ("CPUC") as a result of the CPUC's 2006 Long Term Procurement Process. Of the roughly 70 project proposals bid into the LTRFO, Oakley ranked among the highest in value to PG&E's customers. The competitive solicitation was overseen by a third party Independent Evaluator and the CPUC's Procurement Review Group, which includes the California

Department of Water Resources, the CPUC's Energy Division, Natural Resources Defense Council, Union of Concerned Scientists, Division of Ratepayer Advocates, Aglet Consumer Alliance, Coalition of California Utility Employees and The Utility Reform Network.

The OGS is scheduled to begin commercial operations in early to mid-2014. The facility initially will operate for approximately 18 to 24 months as a "merchant" generating facility, during which time the plant will be owned and operated by CCGS. The plant will subsequently be sold to PG&E under a Purchase and Sale Agreement ("PSA") approved by the California Public Utilities Commission on December 16, 2010, and which guarantees commercial availability of power by June 1, 2016. Under the terms of the PSA, PG&E cannot expend any ratepayer funds on the plant prior to January 1, 2016. As a result, the earliest potential date that the OGS might be transferred from CCGS to PG&E is January 1, 2016.

Nearby PG&E Facilities

As stated above, the Oakley Generating Station site will be contiguous with the site of PG&E's Antioch Terminal. Almost all of the equipment at the Antioch Terminal is exempt from BAAQMD permit requirements because it handles only PUC regulated natural gas (BAAQMD Rule 2-1-113.2.7). One small natural gas-fired emergency generator is located at the terminal and is subject to BAAQMD permitting. The only potential emissions from the Antioch Terminal are fugitive emissions of natural gas (which is primarily methane and not considered a volatile organic compound) and combustion emissions from the emergency generator. These emissions do not exceed the applicable 250 TPY major source threshold.¹ Consequently, the Antioch Terminal is not a PSD major source or a BAAQMD major source.

¹ The Antioch Terminal is not in one of the source categories subject to the 100 TPY major source threshold, so the applicable threshold is 250 TPY. See 40 C.F.R. § 52.21(b)(1)(i)(b).

The Gateway Generating Station (“Gateway”) is located approximately 0.45 miles northwest of the OGS site. Gateway is a nominal 530 megawatt, natural gas-fired, combined cycle, combustion turbine power plant, owned and operated by PG&E. Gateway’s emissions of NO_x and CO exceed 100 TPY, so that Gateway is a major source. Gateway’s connection to PG&E’s natural gas pipeline is separate from the connection(s) being considered for Oakley. Similarly, Gateway has its own transmission line to connect to PG&E’s Contra Costa Substation. The facilities’ water and wastewater connections are also separate. Gateway and Oakley will be operated independently, and both will be dispatched through the California Independent System Operator to supply electricity to the Bay Area and other parts of California.

Oakley is a New, Non-Major Stationary Source

Under the applicable EPA regulations, policy and guidance, Oakley is appropriately considered a new and independent non-major stationary source or facility, and is not a modification of any existing source. Therefore, Oakley is not subject to PSD or PM_{2.5} Non-Attainment NSR permit requirements.

Oakley is Not a Major Source

The federal PSD permit program applies to “major” stationary sources. For 28 source categories, including fossil fuel-fired steam electric plants of more than 250 MMBtu/hr heat input, a major stationary source is a new source that emits more than 100 tons per year of any PSD pollutant. See 40 C.F.R. § 52.21(b)(i)(a). Under EPA policy, combined cycle gas turbine electric power plants are considered fossil fuel-fired steam electric plants and are subject to the 100 TPY major source threshold. For the Bay Area, PSD pollutants include carbon monoxide, PM₁₀, PM_{2.5}, NO₂ and SO₂. Facilities that exceed the federal PSD major source threshold for any of these pollutants must apply for and obtain a PSD permit before commencing construction. As described in the PDOC (see pp. 67 - 69), the Oakley Generating Station will not be subject to PSD permitting requirements. Oakley will not be a PSD major source, because its annual emissions (summarized above) will be less than 100 tons per year of each regulated pollutant.

Oakley is Not a Major Modification

A “major modification” is “any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.” 40 C.F.R. § 52.21(b)(2)(i). This means that a project can be a major modification only if the project is a change to an existing major stationary source. As described above, the Antioch Terminal is not a major stationary source for any regulated NSR pollutant because its emissions are very low and the principal activities at the Antioch Terminal are exempt from air emission permit requirements. Since the Antioch Terminal is not a major stationary source, OGS cannot be a major modification of the Antioch Terminal even if they are considered to be parts of the same facility. Consequently, OGS is not subject to PSD or PM_{2.5} Non-Attainment NSR permitting on that basis.

Facility Definition

The Gateway Generating Station is an existing major stationary source, since its emissions of NO_x and CO each exceed 100 TPY. Thus, Oakley could be a major modification of Gateway if it was considered part of the same facility.²

EPA’s PSD regulations define a “facility,” in pertinent part, as:

“all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) . . .”³

² The analysis in this section generally also applies to the question of whether Oakley and the Antioch Terminal might be considered to be the same source. However, since the Terminal is not a major source, the issue of whether it is part of the same source as Oakley does not affect PSD applicability to Oakley and will not be expressly addressed in this analysis.

³ “Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (i.e., which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).” 40 C.F.R. § 52.21(b)(6).

40 C.F.R. § 52.21(b)(6); see also District Rules 2-2-215, 2-6-206. All three elements must be met before activities can be considered parts of the same facility.

Oakley and Gateway are in the same industrial grouping (SIC Major Group 49: Electric, Gas, and Sanitary Services)⁴. As described above, Oakley and Gateway are approximately 0.5 miles apart. They are separated by several roadways and a state highway, and are not connected by a pipeline⁵ or electric transmission line. Oakley is owned and will be operated by CCGS LLC, while Gateway is owned and operated by PG&E. Ownership of Oakley will not be transferred to PG&E until January 1, 2016 at the earliest, approximately five years from now. Thus, Oakley and Gateway clearly are not parts of the same “facility,” as they do not satisfy two out of three of the mandatory elements of the facility definition. Specifically: (1) they are not located on contiguous or adjacent properties; and (2) they are under completely separate ownership (and control).

Although Oakley and Gateway are not a single “facility” under a literal application of this term as defined in EPA’s PSD regulations, comments on the PDOC assert that since PG&E is expected to take ownership of Oakley at some point in the future, the two plants should be considered to be under the same ownership. Even taking this expected future common ownership into account, Oakley and Gateway still would not be a single facility because one of the three required elements – that the sources be contiguous or adjacent – still would not be met. Moreover, a more detailed analysis of “source-specific factors,” as described below, also supports the conclusion that Oakley and Gateway are and will be two separate facilities. See, e.g., “Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and

⁴ SIC Codes have been superseded by NAIS Codes, but since they both are power plants Gateway and Oakley are still in same grouping -- NAIS Code 22: Utilities.

⁵ PG&E’s Line 400 natural gas pipeline supplies natural gas to Gateway and may also supply natural gas to Oakley if PG&E elects to have a second gas supply connection for Oakley. If a connection to Line 400 is selected for Oakley, Gateway and Oakley will have separate connections to Line 400. These independent connections to a major and separately operated natural gas transmission line would not make Gateway and Oakley “connected by a pipeline” in the sense that concept is used in EPA’s PSD applicability determinations.

Title V Operating Permit Programs of the Clean Air Act,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, p. 10 (Aug. 2, 1996).

EPA has issued extensive guidance regarding whether adjacent facilities should be aggregated as one facility or treated as two separate facilities for PSD permitting. Applying the factors from the guidance, Oakley and Gateway are separate, independent facilities. Key guidance documents are summarized below.

Oakley as an Independent Facility is Consistent with Guidance Treating Nearby Activities as Separate “Facilities”

Three of EPA’s guidance documents finding that adjacent facilities could be permitted independently are summarized below. Each of the pairs of facilities discussed in these determinations were (1) located on adjacent properties; (2) owned by the same entity or entities; and, (3) had the same SIC code. However, in each case EPA determined that the facilities operated independently and lacked common control, and so should be treated as two separate facilities. Oakley and Gateway unambiguously fit within the guidance treating two adjacent facilities as separate facilities.

- In a key determination issued in 2001, EPA concluded that two adjacent and commonly owned power generating facilities could be permitted separately. With one powerplant (a minor source that was not subject to PSD) under construction, the owners asked EPA to determine whether a second facility constructed on the same property would be considered part of the first facility. If the plants were considered a single facility, the owners would be required to obtain a single PSD permit for the facility as a whole. If the facilities were permitted separately, PSD would not be triggered and each facility could obtain its own minor NSR permit.

EPA concluded that each facility could be permitted independently as a minor source. EPA was particularly persuaded by the fact that, regardless of whether the facilities obtained minor NSR or PSD permits, the permits would require BACT, so the facilities were not circumventing emission control requirements by obtaining minor source permits:

“In particular, the fact that both projects would likely be required to install the same pollution control technology regardless of permitting process (minor NSR vs PSD) significantly diminishes any potential environmental benefit that would otherwise be gained from permitting the projects together through PSD. Moreover, the fact that [the state’s] minor NSR and PSD programs both require the installation of BACT does not provide [the owner] an incentive to intentionally space out the projects so as to circumvent PSD.”

EPA also relied upon the facilities’ separate operation (“the two projects would not share the same transmission line, fuel supply contracts, power sales contracts, gas metering stations, or connections to water and wastewater systems”) and independent development and economic viability. See “PSD Applicability for Fredrickson Power L.P.,” letter from Doug Cole, Acting Manager Federal & Delegated Air Programs Unit, Region 10, to, Grant Cooper and Raymond McKay (Oct. 12, 2001).

The rationale relied upon by EPA in the Fredrickson Power determination applies equally to an evaluation of Oakley and Gateway. Regardless of the permitting approach, Oakley will install the same level of pollution control on the gas turbines because BACT is required by the District’s permitting rules for any individual piece of equipment that emits ten or more pounds per day.⁶ District Rule 2-2-301. Under District rules, Oakley must also provide emission offsets for most of its emissions. See PDOC, Section 6. This is a more stringent requirement than under PSD, which does not require that emissions be offset.

As with the Frederickson Power facilities, Gateway and Oakley will be operated separately and controlled independently, will not share any transmission lines, fuel

⁶ Since the District’s permitting rules were developed in large part to meet Clean Air Act State Implementation Plan requirements for ozone nonattainment areas, the District’s BACT definition uses language parallel to that of the federal definition of “Lowest Achievable Emission Rate” (“LAER”), which is equal to or more stringent than federal BACT. See District Rule 2-2-206; 40 C.F.R. § 51.165(a)(1)(xiii).

supply or power sales contracts, gas metering stations, or connections to water supply or wastewater systems, and each facility will be physically able to continue operating with no substantial change if the other facility shuts down. The facilities were developed separately,⁷ and have independent economic viability, as determined by the CPUC in approving PG&E's contract with CCGS. Therefore, they qualify as separate facilities and should be permitted separately.

- In 1999, EPA Region IV surveyed and compiled existing EPA guidance to determine whether the agency would consider adjacent and commonly owned bulk gasoline terminals a single facility, or separate and independent facilities. The owner, Williams Energy Ventures, asserted that the terminals operated independently, had separate fuel and utility pipelines, and were not interconnected. Each facility could continue operating with no substantial change if the other facility were to shut down. On that basis, EPA concluded that the facilities were two independent sources. See "Applicability of Title V Permitting requirements to Gasoline Bulk Terminals Owned by Williams Energy Ventures, Inc.," letter from EPA Region 4 to Mecklenburg County Dept. of Env. Protection (May 19, 1999) (surveying EPA guidance on aggregation from 1980 to 1998).

Similar to the Williams gasoline terminals, Oakley will have its own control room, an independent connection to the PG&E natural gas pipeline system for its fuel supply, its own water supply, and its own fire protection system. Oakley also will have its own independent connections to the electric transmission system, its own independent wastewater discharge connection, and its own independent contractual arrangements covering the sale of its power output. Just as EPA determined that the two gasoline terminals were independent facilities, EPA should determine that Oakley and Gateway are independent.

⁷ The Gateway facility was originally developed by Southern Energy Delta LLC (later Mirant Delta LLC) beginning in 1999, and was later transferred to PG&E. As described above, Oakley is being developed by Contra Costa Generating Station LLC in accordance with PG&E's 2008 LTRFO.

- In 2002, EPA evaluated whether a landfill and a co-located power generating facility were a single source. The landfill contracted to sell all of its gas to the power company and the power company was obligated to pay for all of the gas, even if it could not use it. However, EPA found it persuasive that they were separate sources because, in part, the companies would not share equipment (including pollution control equipment), compliance responsibilities, intermediates, products, byproducts, manufacturing equipment, payroll activities, employee benefits, health plans, or other administrative functions. Finally, neither facility was dependent on the other, in that one could shut down and the other could continue to operate at full capacity. Thus, EPA determined that the sources would not require a single PSD permit. See “Common Control for Maplewood Landfill, also known as Amelia Landfill, and Industrial Power Generating Corporation” letter from Judith M. Katz, Director Air Protection Division, Region III, to, Gary E. Graham, Virginia Department of Environmental Quality (May 1, 2002).

As with Maplewood Landfill and Industrial Power Generating, Oakley and Gateway will not share or overlap any resources pertinent to the generation and sale of electricity and thus are two separate sources.

Guidance Aggregating Adjacent Activities into a Single Facility

EPA has also made determinations that adjacent sources or activities should be aggregated into a single facility. Oakley and Gateway do not fit within the scope of EPA determinations where adjacent activities were aggregated.

- In 2009, EPA determined that a co-located landfill and gas-to-energy facility were a single facility. Among other factors, EPA found that the sources had intertwined financial interests in the daily operation of each facility, the landfill was the gas-to-energy plant’s only source of fuel, and each entity required permission to buy or sell fuel outside of their exclusive contractual relationship. See “Common Control Determination for Ocean County Landfill and the Manchester Renewable Power Corp./LES” letter from Ronald J. Borsellino, Acting Director Division of Environmental Planning and Protection (May 11, 2009). As discussed earlier,

Oakley and Gateway will have separate fuel supplies and separate financing arrangements, and neither project will depend on or require approval from the other to operate. They will be operated independently, and dispatched separately by the California Independent System Operator⁸ to meet California's electricity demand.

- In a 1981 finding, EPA concluded that two nearby General Motors plants should be permitted as a single facility. The facilities were located approximately a mile apart, with one plant making auto bodies that were then transported to the other plant for assembly. Because the facilities were "programmed together to produce one line of automobiles" and shared other resources, EPA considered the sources part of a single, interdependent facility. See "PSD Definition of a Source," memorandum from Edward E. Reich, Director, Division of Stationary Source Enforcement, to, Steve Rothblatt, Chief, Air Programs Branch, Region V (June 30, 1981). In contrast, Oakley and Gateway will not work in concert, supply inputs to each other, participate in the production process of the other, or involve themselves in the supply chain of the other any manner. Neither plant requires the other in order to generate and provide stable electrical power to the regional grid.

EPA has succinctly summarized its guidance on these points as follows: "If facilities can provide information showing that the new source has no ties to the existing source, or vice versa, then the new source is most likely a separate entity under its own control." See letter from William Spratlin, U.S. EPA, to, Peter Hamlin, Iowa Department of Natural Resources (Sept. 18, 1995). Oakley and Gateway have no common corporate ownership, and Oakley will have no ties to the existing Gateway facility. The anticipated transfer of Oakley to PG&E is approximately five years away, and so is not a significant

⁸ The California Independent System Operator ("CAISO") was established in accordance with California Assembly Bill 1890, enacted in 1996. According to its website, "The California Independent System Operator is a non-profit public benefit corporation charged with operating the majority of California's high-voltage wholesale power grid. Balancing the demand for electricity with an equal supply of megawatts, the ISO is the impartial link between power plants and the utilities that serve more than 30 million consumers. The ISO provides equal access to the grid for all qualified users and strategically plans for the transmission needs of this vital infrastructure." See <http://www.caiso.com/>.

factor for permitting Oakley. Finally, the degree of emission control required for the Oakley facility will be no less stringent if it is not subject to PSD permitting. This situation therefore fits directly within the guidance that authorizes separate permits for adjacent facilities. In addition, Oakley and Gateway do not fit within the guidance where facilities were aggregated for major source permitting. Oakley should therefore be considered an independent facility, and it is not a PSD modification of Gateway or any other existing facility. Oakley's emissions will be below the established major source thresholds for all criteria pollutants, so that the facility is not a major source. Hence, Oakley does not require a PSD permit.

Oakley is Not Subject to Appendix S Non-Attainment NSR Permitting for PM_{2.5}

The San Francisco Bay Area has been designated as nonattainment for the 24-hour PM_{2.5} standard. 74 Fed. Reg. 58688 (November 13, 2009). Under EPA policy, since the District does not have a SIP-approved permitting program for PM_{2.5}, 40 C.F.R. Part 51, Appendix S governs permitting for major sources of PM_{2.5} until a SIP-approved permit program is in place. Also see PDOC, section 7.2.

Under Appendix S, the major source analysis is essentially the same as under the PSD rules, except that each nonattainment pollutant is evaluated independently: If Gateway and Oakley are different stationary sources, the 100 TPY nonattainment area major stationary source threshold is applied separately to each nonattainment pollutant at each facility.

Consistent with the PSD analysis above, Oakley will not be a major source or modification under Appendix S because it is a different stationary source than Gateway and its PM_{2.5} emissions will be under 100 tpy. Hence, Oakley will not require a permit pursuant to Appendix S. See Appendix S (Appendix S requirements apply to a facility that would locate in an area designated "as nonattainment for a pollutant for which the source or modification would be major."); NSR Workshop Manual, pp. F.7, F.9 ("only if a modification results in a significant increase . . . of a *pollutant, for which the source is major and for which the area is designated nonattainment, do nonattainment requirements apply.*") (emphasis added); see also "New Source Review (NSR) Program

Transitional Guidance,” memorandum from John S. Seitz, Director Office of Air Quality Planning and Standards (Mar. 11, 1991) (“NSR nonattainment permit regulations apply to pollutants for which the area is designated nonattainment”) (emphasis added).

Hence, even if the facility’s emissions were major for NOx or VOCs as ozone precursors (which they are not expected to be), that would not trigger Appendix S applicability for PM_{2.5}.

Conclusion

Oakley should be permitted as a new facility, separate from Gateway. A common sense review of the facts demonstrates that Oakley is not dependent upon, an extension of, or a modification of Gateway. Oakley will not be a “major source” as defined by 40 C.F.R. § 52.21(b)(1)(i)(a), and therefore is not subject to PSD permit requirements. In addition, Oakley will not be a “major source” for PM_{2.5}, and therefore will not need a federal nonattainment permit pursuant to Appendix S.

ATTACHMENT 1



Oakley Generating Station
Figure 1 - Project Vicinity