

1                                   **BEFORE THE ENVIRONMENTAL APPEALS BOARD**  
2                                   **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
3                                   **WASHINGTON, D.C.**

4                   \_\_\_\_\_ )  
5           In the Matter of:        )     PSD Appeal No. 09-02  
6           Gateway Generating Station    )  
7           \_\_\_\_\_ )

8                                   **PACIFIC GAS AND ELECTRIC COMPANY’S**  
9                                   **ERRATA TO THE BRIEF ON JURISDICTIONAL ISSUES AND MOTION**  
10                                   **FOR SUMMARY DISPOSITION (DISMISSAL)**  
11                                   **AND TO THE DECLARATION OF GARY S. RUBENSTEIN**

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13           Intervenor PG&E filed its Brief on Jurisdictional Issues and Motion for  
14           Summary Disposition (Dismissal) on July 2, 2009, which was accompanied by a  
15           declaration of Gary S. Rubenstein.

16           Footnote 3 on page 3 of the Brief states: “The EPA-BAAQMD PSD  
17           delegation agreement in effect at the time that BAAQMD issued the facility’s permit  
18           was the April 23, 1986 agreement, (R. Decl. at ¶ 3, Exh. A).” That footnote should  
19           instead state: “The EPA-BAAQMD PSD delegation agreement in effect at the time  
20           that BAAQMD issued the facility’s permit was the October 28, 1997 agreement, (R.  
21           Decl. at ¶ 3, Exh. A).” This correction in no way alters PG&E’s arguments.

22           Paragraph 3 of Mr. Rubenstein’s declaration should also be corrected to  
23           refer to the October 28, 1997 delegation agreement rather than the 1986  
24           agreement.


25           A corrected page of the brief and a corrected page of Mr. Rubenstein’s  
26           declarations are attached hereto.

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DATED July 23, 2009.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

By 

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**CERTIFICATE OF SERVICE**

I the undersigned, hereby certify that on the 23 day of July, 2009, service of a true and complete copy of **Pacific Gas & Electric Company's Erratum to the Declaration of Gary S. Rubenstein** was made upon the following parties:

Jack Broadbent  
Air Pollution Control Officer  
Bay Area Air Quality Management District  
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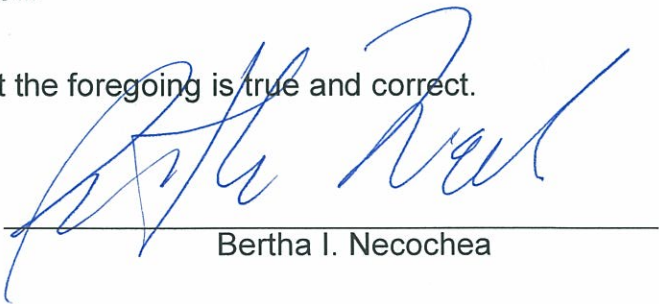
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PROPOSED INTERVENOR  
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by depositing the same in the U.S. Mail.

I declare under penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Bertha I. Necochea

1 For these reasons, as set forth more fully below, PG&E respectfully requests  
2 that the EAB determine that it has no jurisdiction over the instant Appeal, and that  
3 the Petition be summarily dismissed.

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5 **I. BACKGROUND**

6 Pursuant to the Clean Air Act and EPA regulations, BAAQMD implements  
7 the federal PSD permit program in the San Francisco Bay Area. See Clean Air Act  
8 (“CAA”) §§ 107(a), 110; 42 U.S.C. §§ 7407(a), 7410; 40 C.F.R. § 52.21(u). The  
9 District administers the PSD permit program through a contractual “delegation  
10 agreement” with EPA. See, e.g., “U.S. EPA-Bay Area AQMD Agreement for  
11 Delegation of Authority for Prevention of Significant Deterioration of Air Quality  
12 Program (40 CFR 52.21),” dated April 23, 1986, (R. Decl., Exh. A.). In delegating to  
13 the District the authority to administer the PSD permit program, EPA determined  
14 that District Regulation 2, Rule 2 “generally meets the requirements of 52.21;  
15 therefore, *District Authorities to Construct (ATCs or permits) will be deemed to*  
16 *meet Federal PSD permit requirements. . . .” Id.*, emphasis added. Pursuant to the  
17 terms of this delegation agreement, the District issues a single permit that functions  
18 as both a District ATC and a PSD permit. See also District Regulations 2-2-101, 2-  
19 2-304, R. Decl., Exh. B.)

20 Pursuant to District regulations, on July 24, 2001 the District issued an ATC  
21 for the facility (R. Decl., ¶ 9, Exh. C, pp. 1, 23-36).<sup>2</sup> Consistent with the PSD  
22 delegation agreement, the ATC included the PSD permit.<sup>3</sup> *Id.* Construction of the

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24 <sup>2</sup> The ATC was issued to Mirant Delta, LLC, which originally owned the facility, and at the time  
25 the ATC was issued referred to the facility as Contra Costa Unit 8. PG&E acquired the facility  
26 on November 30, 2006 and BAAQMD transferred the District permit (including the PSD permit)  
27 to PG&E on January 4, 2007. (R. Decl. at ¶¶ 1, 9.) In some documents, EPA refers to the  
28 facility as the “Delta Power Plant.” After acquiring the facility, PG&E renamed the facility the  
Gateway Generating Station. For consistency, the project will be referred to as “Gateway” or  
“the facility” in this Brief.

<sup>3</sup> The EPA-BAAQMD PSD delegation agreement in effect at the time that BAAQMD issued the  
facility’s permit was the October 28, 1997 agreement, (R. Decl. at ¶ 3, Exh. A). For various

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**CORRECTED**

(continued...)

1           3.       The Bay Area Air Quality Management District (“BAAQMD” or the  
2 “District”) administers the federal PSD permit program through a contractual  
3 “delegation agreement” with EPA. Attached hereto as Exhibit A is a true and correct  
4 copy of the “U.S. EPA-Bay Area AQMD Agreement for Delegation of Authority for  
5 Prevention of Significant Deterioration of Air Quality Program (40 CFR 52.21),” dated  
6 October 28, 1997, which was in effect when the District issued the Authority to  
7 Construct identified in paragraph 9 hereof, infra.

8           4.       For various reasons related to changes in state and federal law, in 2004  
9 EPA re-delegated limited authority to the District to administer the federal PSD permit  
10 program. Attached hereto as Exhibit D is a true and correct copy of the “U.S. EPA –  
11 Bay Area Air Quality Management District Agreement for Re-Delegation of Authority  
12 to Issue and Modify Prevention of Significant Deterioration Permits Subject to 40 CFR  
13 52.21,” dated June 21, 2004. The facility is referred to in that document as the “Delta  
14 Power Plant.”

15           5.       In 2008, EPA again delegated authority over the federal PSD permit  
16 program to the District, expanding the scope of the previous delegation. Attached  
17 hereto as Exhibit E is a true and correct copy of the “U.S. EPA – Bay Area Air Quality  
18 Management District Agreement for Delegation of Authority to Issue and Modify  
19 Prevention of Significant Deterioration Permits Subject to 40 CFR 52.21,” dated  
20 February 4, 2008.

21           6.       The U.S. EPA-Bay Area AQMD Agreement and the District’s own  
22 regulations contemplate that the District issues a single permit that functions as both  
23 a District Authority to Construct (“ATC”) and a PSD permit. Attached hereto as  
24 Exhibit B is a true and correct copy of the current version of relevant District  
25 regulations, contained in its Regulation 2, Rule 2. With respect to the matters at  
26 issue in this proceeding, the relevant District regulations are the same today as they  
27 were at the time BAAQMD issued the PSD permit in 2001.

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**CORRECTED**

Declaration of Gary S. Rubenstein  
PSD APPEAL No. 09-02