BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMETAL PROTECTION AGENCY
WASHINGTON D.C.

In the Matter Of:	)	**PSD 09-02**
	)	**PETITIONERS ROB SIMPSON ET AL**
	)	**REPLY TO JURISDICTIONAL BRIEFS**
Gateway Generating Station	)	**AND**
	)	**REPLY TO OBJECTION OF BAAQMD**

INTRODUCTION

On June 18, 2009 the Environmental Appeals Board order required Briefs on jurisdictional Issues from EPA Region 9 and Bay Area Air Quality Management District (BAAQMD) Region 9 and BAAQMD complied. Intervenor Pacific Gas and Electric (PG&E) also filed a brief. The Board also created the opportunity that Petitioner may file a reply by no later than July 17, 2009.

SUMMARY

The Board received 3 distinctly disparate briefs from BAAQMD, Region 9 and PG&E It is not possible that the conflicting briefs are all correct. They certainly do demonstrate a permit dispute that could be solved through the Boards adjudication. While my brief is also distinctly disparate from the above it is entirely consistent with my petition and the facts in this proceeding. My petition states "Rob Simpson contends that the District committed numerous procedural and substantive errors in issuing and renewing the Gateway PSD Permit." Petition Page 5. BAAQMD seems to agree with this statement at this point (at least regarding renewals) PG&E vigorously opposes it and Region 9 seems ignorant of the controversy. They all give great weight to the original permit (which PG&E was not even a party to) and largely ignore the subsequent series of permitting actions that have culminated in

PG&E operating a facility illegally to the detriment of the community, environment and integrity of the Clean Air Act.

ARGUMENT

The final permitting action is likely that which permits the facility's present operation. It bears little resemblance to the 2001 permit. Major differences include the facility ownership, the equipment used, and commencement dates. The facility does not employ BACT and poses a hazard to the public and the environment. The present permit may or may not be in writing and may or may not be identified as a PSD permit. The District has clarified that being in writing and identified as a PSD permit has not been a requisite for a PSD permit. The evidence of the permit is prima facie in the fact that the facility is operating and PG&E claims to have a permit. The Final action was likely after the February 13, 2009 letter when PG&E allegedly "withdrew" its Major Amendment of the permit and went ahead and operated the facility consistent with the withdrawn amendment. My petition was filed less than 90 days after this action. The Final Action could have been the District's failure to abate the operation within 60 days of the letter from PG&E. My petition would then be within 30 days of this final action. The PSD permit may take a more affirmative form in some document that has not been introduced or is contained in the administrative record that has been kept a secret or some document that will be subsequently characterized as a PSD permit.

As an example of BAAQMD re-characterizing, the latest edition of the Russell City Draft statement of basis states "the District has concluded that when the facility was initially permitted in 2002, the District did not issue a final Federal PSD permit along with its state-law Authority to Construct, as is the District's normal practice. The record indicates that the District did not finalize the Federal PSD permit at the time it issued the Authority to Construct because EPA Region 9 had not completed its Endangered Species Act consultation with the US Fish & Wildlife Service." This permit is from the same era and was a subject in the Russell City Remand. BAAQMD defended its permitting action before the EAB and now attempts to render the Board's decision moot by re-characterizing its

prior actions. So Sometimes a permit identified as a PSD permit is not a PSD permit and sometimes a permit that is not identified as a PSD permit is a PSD permit. Without action from the Board on Gateway there would be nothing stopping BAAQMD from flip flopping again on its position that there is no permit and deciding that PG&E is correct that there is a permit based upon some withheld document or reconstruction of events. If BAAQMD's real position is that there is no permit then why would they not seek the Board's assistance in clarifying this fact for the applicant. Although the BAAQMD brief effectively is briefing in favor of a remand, BAAQMD should be requesting a remand and acknowledging that their Authority To Construct or whatever action they have taken that is permitting this facility to operate is void without a PSD permit. There is clearly a permitting dispute and the EAB is the correct forum to settle it.

The briefs purport to rely on the state law ATC as if it retained some validity in the absence of a PSD permit. Any state permit could not take precedence over the federal PSD permit and should be void without it. There are state law issues contained in the NSR provisions of the Clean Air act that are very similar to the requirements for an extension under PSD provision that I have not raised in this venue based upon my belief that the EAB chooses to review aspects of the PSD permit. There has been no indication that the facility posseses any other required Permit to Operate, Title IV or Title V permits and BAAQMD has given no indication that it would be taking action on any state law violations. Access to the Administrative record may prove otherwise.

Each of their briefs chastises my lack of evidence. The Board should excuse any purported lack of evidence or order the Parties including Region 9 to produce all records for this facility prior to making a decision that is contrary to my appeal for a remand because BAAQMD and Region 9 have continued to withhold the administrative record for this proceeding. I again tried to obtain an index of the administrative record for this facility On June 22, 2009 I sent an email to Alexander Crockett BAAQMD attorney as follows: "data/discovery request. Pursuant to the present EAB appeal regarding Gateway. Please provide an index of the administrative record for this facility. Thank You Rob

Simpson" BAAQMD attorney Crockett responded. "As the District has represented elsewhere, it will file all appropriate materials in the Gateway EAB proceeding at the appropriate time. Thank you Sandy Crockett"

To adjudicate this petition without review of the closely guarded administrative record would be contrary to the EAB practice Manual "The EAB also asks the permitting authority to file with the Clerk of the Board, and to serve upon the petitioner, a certified index of all documents in the administrative record of the permit decision as well as copies of those parts of the record that pertain to the matters raised in the petition. The permitting authority should provide the petitioner and the Clerk of the Board with a Certificate of Service showing the date and method of service." The Board "asked" in its first letter to BAAQMD I asked repeatedly and the information should be available to the public. If BAAQMD is allowed to circumvent informed public participation and withhold evidence necessary for the Boards considerations it will be empowered to further push its permitting actions underground and the Board may make an error in a decision without review of the relevant facts.

See also In re City of Phoenix 9, 9 E.A.D. 515, 526 (EAB 2000) ("In NPDES proceedings, as well as other permit proceedings, the broad purpose behind the requirement of raising an issue during the public comment period is to alert the permit issuer to potential problems with a draft permit and to ensure that the permit issuer has an opportunity to address the problems before the permit becomes final."). This occurred in this case, fellow CARE member and proposed intervener Bob Sarvey raised issues during the comment period, See; Public comments provided regarding the Amendment by Bob Sarvey (Exhibit 9) of petition. I would have commented too if BAAQMD had responded to my requests for notice and interest in other permits. See; series of public requests (EXHIBIT 3) of petition Mike Boyd President of CARE commented. See Intervention request. BAAQMD has not responded to Mr. Sarvey and has not provided notice of any Final Action to CARE. The 30 day review period is supposed to begin when notice of the final permit is issued. "The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's

action unless a later date is specified in that notice" (40 C.F.R. § 124.19(a) BAAQMD has offered no evidence of providing public notice of any proposed PSD or Final PSD permit. For the same reason allegations that the Board erred in my Russell City Appeal because the appeal was untimely are without merit because it was filed within 30 days of public notice of the final action and it earned a remand. The parties should review the record before making baseless claims.

Region 9 opens its "STATEMENT OF FACTS" with "The District issued a final permit to PG&E on July 24, 2001" Region IX brief page 2. This is false, the District may have issued a permit to Mirant at that time but PG&E was not a party. Region IX further states; "Petitioner makes several unsubstantiated and conclusory allegations of improper notice, Petitioner has not submitted any specific information regarding the Districts notice of the Gateway Generating Station" Region 9 brief page 7. Proposed intervener CARE/ Mike Boyd and Bob Sarvey substantiate my allegations in their request to intervene. Beyond that the evidence has been suppressed by BAAQMD and Region 9 by refusing to provide access to the administrative record. Allegations of not providing notice inherently could not include a copy of a notice since it was not provided. So Region 9 arguments would be a catch 22 effectively voiding any claim that notice was not provided. I have found no evidence of notice of the Extensions or original PSD permit.

BAAQMD states; "[t]he transmittal letter for the integrated permit document did not explicitly cite the PSD element of the District's permitting action, but the fact that the document was issued to serve as the PSD permit is clear in the actual permit conditions themselves, many of which cite 'PSD' as their legal basis, as well as from numerous discussions" BAAQMD Brief page 2. This proposal appears to infer that any document issued by BAAQMD that included reference to a PSD could in fact be a PSD permit, Perhaps a title V permit has PSD conditions. Perhaps the PSD permit was issued by the California Energy Commission, they gave extensive reference to PSD in their documents? It also claims that the record of a PSD permit can be justified based upon discussions buried in a hidden administrative record with no record on the permit or notice. I contend that there is likely some other

document that is still hidden in the administrative record that the parties now (or after this appeal will) rely on as a PSD permit. All record of "Gateway" has been removed from BAAQMD's website after this appeal was filed. There is an important policy decision that the Board in its discretion should review. How far can a permitting authority stray from its responsibility and still retain authority to issue PSD permits and how far can they stray in an individual permit without a remand.

"The project owner ultimately withdrew the application however, on February 13, 2009 ...the project owner therefore went ahead and completed construction, and began operating the facility, based on the California and Federal authorizations that were originally issued in 2001.." BAAQMD Brief page 3-4. This statement seems to claim that PG&E completed construction and began operation after the February 13, 2009 letter. While this position bolsters my claim of timeliness, it appears that the facility was completed and operational well before the letter date. The date of the letter appears to be part of an orchestrated effort to defraud the public by PG&E and BAAQMD to keep the public focused on the proposed amendment while running out the clock on any appeal. It was clear to the permitting authority and the applicant that a PSD permit was required and it would be problematic to issue in the applicant's time period so the calculated decision was made to just go for it and operate the plant before anybody could know to appeal, make it long enough for an appeal to be moot and they would completely circumvent the Clean Air Act. This is an exercise of discretion that the Board should in its discretion review.

BAAQMD stated; "Petitioner argues that he should be excused from the timeliness requirement because he claims he was not given adequate notice of the draft permit, and as a result did not have notice that the appeal clock had started to run at the time the final permit was issued." ... "by logical extension of his theory he would also claim to be able to challenge permits issued 18 years or 28 years ago or more" BAAQMD brief page 5. The logical extension of BAAQMD's argument as I see it would be that if they can keep their permitting action secret until after the appeal opportunity is expired then they do not need to comply with the Clean Air Act. This appears to be a part of the strategy here since

they must have known that they could not obtain a valid PSD permit for this facility after they reviewed the RCEC remand and comments of CARE member Sarvey. This is not a 18 or 28 year old action it is contemporaneous (which is more than what can be said for the emission credits used) with permitting action directly before the appeal.

BAAQMD claims "[t]he PSD permit is a preconstruction permit, and it would make no sense to have to adjudicate such permits where construction has already occurred." BAAQMD brief page 6. BAAQMD further supports my theory of "running out the clock" in the above statement but they ignore the EAB authority to review Modifications and extensions of PSD permits which both occurred here. Their claim is that waiting until construction is almost complete to apply to amend the permit then claiming to withdraw the amendment after the start of operation would serve to evade review.

BAAQMD states "Region 9 has informed the District that it does not consider the extensions of the Authority to Construct under District regulations to extend the facility's Federal PSD permit." BAAQMD Brief page 4. Region 9 had ample opportunity to express this themselves and chose not to. Instead they stated "the facility has been constructed and is operating in accordance with the federal PSD conditions in the permit" Region 9 brief page 6. Region 9 appears completely ignorant of the dispute or its position (as purported by BAAQMD and PG&E) and has offered no evidence that any enforcement action has occurred, is occurring, or will occur.

BAAQMD admits "his petition comes several months after the facility completed construction" BAAQMD Brief page 4-5 My petition came directly after I discovered that I had been deceived by the district with regard to the draft permit being reissued and that the facility had commenced operations consistent with the amendment. Evidence of the final action is withheld but is evident in the fact that the agencies are continuing to permit the facility to operate. BAAQMD has given no indication that it would be pursuing enforcement action based upon its void state actions.

BAAQMD attempts to place the blame on me. "Petitioner has attempted to create confusion over this issue by pointing out that the cover letter transmitting the permit states that it is the "Authority

to Construct" but does not explicitly state that it is also the federal PSD permit" BAAQMD Brief page 8. While there is certainly confusion and the Board can provide clarity. I have not attempted to create it. It is the actions of BAAQMD likely in collusion with PG&E and perhaps the CEC that created the confusion and now seek to use it to their advantage, profiting by it. It is not just a cover letter at issue there is no permit or notice provided that a reasonable person would identify as a PSD permit or notice. I apologize to the Board if I have in fact created any confusion or undue difficulty for the Board to understand the basis for my petition. I am not paid by CARE to represent them and I am not an attorney. I feel that a crime is being perpetrated by BAAQMD and PG&E against myself, CARE (the organization of which I am a member) and the public. The Clean Air Act is being violated by a major corporation in conjunction with its governmental oversight agency to the detriment of all and I am trying to report it to the proper authority, the EAB.

BAAQMD and PG&E propose different theories; "Because there is no dispute on the issue of whether the initial PSD permit was validly extended, the petition should be dismissed as moot" BAAQMD brief page 11. If PG&E had not become a party to this action BAAQMD 's contention of no valid permit may have weight but given the obvious dispute "PG&E unequivocally disagrees with any implication that the facility's PSD permit expired or that all of 'the parties' are in agreement on this point." PG&E brief page 4. There is finding of fact or conclusion of law that is clearly erroneous by at least one of the parties that the Board in its discretion should review.

BAAQMD would like the EAB to believe that; "Petitioner Does Not Have Standing Even if the EAB waives the requirement for timeliness, Section 124.19(a) grants standing only to a 'person who filed comments on that draft permit or participated in the public hearing.' Petitioner did neither, and has not provided any evidence that he participated or sought to participate in the facility's 2001 PSD permitting process in any manner." PGE page 7 I am a member of CARE authorized to represent CARE in these proceedings (see CARE intervention document) CARE has standing and so do I. The 3 briefs also ignore the standing conferred in:

EPA REGION 9 POLICY ON PSD PERMIT EXTENSIONS
(2) Public Comment EPA will require the same public comment procedure for extension requests as for permit modifications including a 30-day public comment period. Requests for public hearings and petitions for permit appeals shall follow the applicable procedures of 40 CFR Part 124

This appeal is of all PSD permits, extensions or modifications for the Facility. PG&E stated "[t]he permit issued to the facility in 2001 was a joint ATC/PSD permit. To the extent that the Petitioner may be appealing the 2001 ATC or later versions of the District-only portions of the facility's permit, the EAB does not have jurisdiction over such an appeal." PG&E page 8. I have not claimed to be appealing the "District-only portions" and the statement does not deny standing to appeal "later versions" of the PSD permit. The original Petition states; "[p]etitioner also challenges the validity of 'renewals' of the permit given the 5-year lapse in construction and lack of opportunity for public participation." Petition page 8 *and* "[i]f the content of this petition is insufficient to earn a remand of any PSD permit for this facility, Petitioner requests that the Board compel the District to respond to Petitioner's Public Records request so that he could be informed in order to participate in this action."

PG&E discounts public participation "Petitioner's request for a remand so that he may participate in the permitting process is nonsensical since, as acknowledged in the Petition (Pet. at 10) and mentioned in the EAB Order (EAB Order at p. 2, n.1),the permit process ended when PG&E withdrew its application for the permit amendment. PG&E brief page10. I never acknowledged that the permit process "ended" but I do acknowledge that there was a permitting action when BAAQMD received the letter and apparently failed to act. If it ended, and since the facility is operating consistent with the amendment, it ended with a permit and this is an action being appealed that is much more timely than the claims of the defending parties.

PG&E is not stating the truth. "Whether or not Gateway complies with 2009 BACT standards is irrelevant because Gateway has not undergone any permitting activity that would require application of BACT since issuance of the PSD permit in 2001. Furthermore, there have been no major modifications to the facility since the issuance of the PSD permit in 2001." PG&E page 11. This is false. There is

ample evidence that there have been major modifications to the facility since the purported "issuance of the PSD permit" 2 days after the date of my Petition PG&E hastily filed a new Petition to Amend Air Quality Conditions with the California Energy Commission Dated May 7, 2009 (EXHIBIT 1) detailing extensive modifications that were made to the facility after the issuance of the purported "PSD permit in 2001."[1] PG&E is simply not being honest with the EAB in its above contention. In a February 13, 2009 Withdrawal of Petition to Amend Various Air Quality Conditions of Certification from PG&E to the CEC[2] (EXHIBIT 2) repeatedly references a January 2009 petition to amend that has not been produced "The principal reason for the changes requested in the January 2009 Petition was because PG&E believed that the original conditions governing commissioning and startups were overly stringent and could not be complied with." The document also describes some of the permitting scheme and changes to the project design.

PG&E bolsters its deceit by casting aspersions to my testimony "By alleging that BAAQMD "chose to quietly allow" operation of a modified facility without the necessary permits, Petitioner apparently is alleging that PG&E is operating its facility in violation of state and/or federal law. These allegations are simply untrue and unsupportable, and Petitioner has provided no evidence to support this position." PG&E brief page 11. PG&E is operating its facility in violation of state and federal law. I have provided ample evidence as has BAAQMD "there is in fact no current, valid permit" BAAQMD motion to stay page 3. PG&E has also provided ample evidence, albeit in another venue the CEC. They did not withdraw the amendment because the changed equipment magically changed back to what was purportedly permitted, they withdrew the amendment because they thought that they ran out the clock for an appeal.

PG&E would like to evade EPA policy. "The policy relied on by Petitioner (which has not been

[1] See http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-05-07_PETITION_TO_AMEND_CONDITIONS_OF_CERTIFICATION_TN-51498.PDF

[2] See http://www.energy.ca.gov/sitingcases/gateway/compliance/2009-06-01_Withdrawal_of_Petiton_to_Amend_Air_Quality_Conditions_TN-50406.pdf

codified into regulation) refers to guidance applicable only to the process for renewing a PSD permit for a source that has not commenced construction. *See EPA Region 9 Policy on PSD Permit Extensions*, p. 1 (July 6, 1988) ("This policy clarifies the subject of extensions of the 18-month commencement of construction deadline found in 40 CFR 52.21(r)(2)."). Gateway commenced construction in 2001, shortly after it received the PSD permit, thus satisfying the deadline to commence construction." PG&E brief page10 PG&E's brief ignores the effect of: 40 CFR 52.21(r)(2) which states "approval to construct shall become invalid ... if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time." Although they seemed to understand this provision in the; *Petition to Amend Air Quality Conditions in the Gateway Generating Station submitted to the California Energy Commission*, dated January 15, 2008 Petition EXHIBIT 6[3] "[b]ecause substantial use had been made of the ATC, the BAAQMD renewed the ATC in accordance with Rule 2-1-407.3. However, the NSPS defines "commence" as "undertak[ing] a continuous program of construction…or…entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction…" (40 CFR 60.2) A suspension in construction of longer than 18 months is generally used by EPA to determine that construction has not been continuous" PG&E's brief associated footnote states: "The PSD regulations define "commence construction" as "*Commence* as applied to construction of a major stationary source . . . means that the owner or operator has all necessary preconstruction approvals or permits and . . . [e]ntered into binding agreements or contractual obligations . . . to undertake a program of actual construction of the source. . . ." *See* 40 C.F.R. Part 52.21(b)(9)." PG&E brief page10

PG&E's statement appears to refer to 40 C.F.R. Part 52.21(b)(9)(i) yet that portion of the code is completely omitted from the footnote. If PG&E is contending that commencement pertains to some binding agreement that the previous owner Mirant entered in 2001 prior to the California attorney

[3] See http://www.energy.ca.gov/sitingcases/gateway/compliance/2008-01-15_PETITION_TO_AMEND_AIR_QUALITY_CONDITIONS.PDF

General finding them guilty of manipulating the energy market and their subsequent bankruptcy, which resulted in the transfer to PG&E, they have offered no evidence of this. If instead they are claiming that the commencement of construction was (as it appears) on-site construction; ample evidence has been provided that the construction was not "continuous" and not completed "within a reasonable time" and 40 CFR 52.21(r)(2) would be cause for the EAB to remand any purported permit. To the extent the applicant wishes to evade policy "which has not been codified into regulation" the below codified sections should be basis for a remand.

> 40C.F.R. Part 52.21(b)(9) (9) *Commence* as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:
>
> (i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
>
> (ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

RESPONSE TO DISTRICTS OBJECTION

In its opposition to motion to compel BAAQMD stated "[t]he District also objects to Petitioners inflammatory characterizations of the Districts actions and motives, in this motion and throughout this proceeding. The District does not intend to dignify them with a response, but notes for the record that it categorically disagrees." Page 4. It is difficult to understand exactly what the basis for this objection is or what relief is sought. I have tried to give the District the benefit of the doubt and have faith that they are merely incompetent and not dishonest. As my knowledge of the District grows and I continue to encounter groups and individuals having similar experiences with the District it is difficult to keep that faith. I have documented that Mr. Crockett has lied and attempted to deceive me from our very first conversation, this was not disputed in the first Russell City Energy Center Proceeding 08-01. I am proving repeated failure of their permitting actions. The District's refusal to act in good faith and

exercise their duties is costing the Board and petitioner valuable time, compromising the integrity of the Clean Air Act and harming air quality. It is absurd that given the District's present position they are not supporting the remand or taking some action on their (also invalid) State permit, pursuant to their mandated duties, to stop this polluter or bring it into compliance.

For the District to respond to the motion to compel without at least an index of the administrative record and claim to be "eminently reasonable" should warrant sanctions in itself. In the Board's letter to the District, the Board seemed to believe that 30 days was reasonable to produce an index of the administrative record. How then is it reasonable that I have been requesting the information for months. The District has recently removed all searchable reference to "Gateway" from it website. My participation on this proceeding continues to be compromised by the District's refusal to comply with reasonable discovery. Mr. Crockett contends the "District has already provided Petitioner with much relevant documentation regarding this facility based on Petitioners earlier inquiries." This is not true. When I went to the District I was placed in what can only be described a storage room piled with boxes, with my children and a jumbled box of documents. There was not space to sit down. The conditions were so abysmal and such a stark contrast to the luxurious conference rooms and offices in the rest of their high rise San Francisco complex that I photographed it. Mr. Crockett indicated that he may be able to copy 15-20 pages of the 2000 or so in the box so I got about 20 pages and those were the last documents provided. This was not an isolated event I have been thwarted many times from obtaining records from the District. These are not handwritten documents. They are generated on a computer. The District should be able to figure out a way to provide the documents electronically to the public if not to satisfy its Federal regulatory obligations for public participation opportunities, at least to prevent the pollution associated with travel to the air District and paper copies. The district Stated that I alluded to these issues. I am not alluding to anything I am stating that the District has been derelict in its duties and failed to provide the administrative record for their permitting action. Their failure is beyond incompetence and can only be construed as a deliberate effort to circumvent the rights

of the public to participate that are rooted in the Democratic principles of the first amendment and permeate throughout the Clean Air Act. Theses rights were reiterated to the District in the Russell City Remand with clear guidance that the Board provided in the Russell City Remand "the purpose of this remand order is to remedy the District's flawed public notice of the draft permit and thus allow the public to fully exercise its public participation rights under part 124" I object to any unfavorable decision based upon my lack of evidence or "good reason" as long as the administrative record is withheld.

I received a written response recently to a record request for the Russell City Energy Center that I made 9 months ago as part of a year long attempt to obtain records before the close of the public comment opportunity . The letter basically states that I can now come rifle through a big box of scattered papers but it is too late for me to comment about the permit.

The district indicated in its response to my comments "[t]he District does not intend to dignify them with a response." I disagree that I have made any undignified comments. I also contend that, if I had, the District is not in a position to dignify them. I certainly apologize to the Board if it considers any of my comments undignified. I have full respect for the authority and judgment of the Board. If my presentation of the issues is at all unprofessional I apologize to the Board as I am an unrepresented Citizen. I do believe that my issues are valid and warrant the Board's consideration and I do not intend to waste the Board's time. I would suggest that the District focus on the inflammatory characterizations "of fossil fuel burning facilities".

CONCLUSION

The Board has ample evidence to remand any PSD permit for this facility and is hereby requested to do so. The Board does not have ample evidence to dismiss the petition for lack of jurisdiction until such time as an administrative record is produced that provides such evidence. Perhaps the Board need not opine on the motives of the parties but to simply examine the factual basis of the permitting history for this facility. The facility has managed to bypass scrutiny, BACT, and now

intends to bypass review. There is an immediate and tangible harm by allowing the facility to continue to operate in violation of the Clean Air Act based upon purported permit(s) that could and should be remanded. Relegating this to another venue will only delay resolution and exacerbate the damage. I hope that the Board acts decisively with a remand that repairs the PSD permitting process in Region IX and enjoins parties from present violations or orders the parties to produce their records for further review.

I declare under the penalty of perjury that the above is true and correct. This declaration was executed on July 17, 2009

Always Respectfully submitted,

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February 13, 2009 Withdrawal of Petition to Amend Various Air Quality Conditions of Certification from PG&E to the CEC (EXHIBIT 1)

Petition to Amend Air Quality Conditions with the California Energy Commission Dated May 7, 2009 (EXHIBIT 2)