

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

4 In the Matter Of:

5 Gateway Generating Station
6

PSD Appeal No. 09-02

8 **INTERVENOR PACIFIC GAS AND ELECTRIC COMPANY'S**

9 **MOTION FOR STAY**

10 Petitioner Rob Simpson ("Petitioner") has filed with the Environmental
11 Appeals Board (the "Board") a Petition for Review purporting to challenge the
12 Prevention of Significant Deterioration ("PSD") permit for the Gateway Generating
13 Station ("Gateway" or "the facility"), located at 3225 Wilbur Avenue in Antioch,
14 California and owned and operated by the Pacific Gas and Electric Company
15 ("PG&E"). The Bay Area Air Quality Management District ("BAAQMD" or "District"),
16 pursuant to authority delegated to the District by EPA, issued the PSD permit to the
17 facility on July 24, 2001 as part of a single, comprehensive "Authority to Construct"
18 ("ATC") permit. The terms and conditions of the PSD permit have not been
19 amended since the permit was issued. The facility has completed construction and
20 is now operating in compliance with all emission limits and other conditions of that
21 permit.

22 In lieu of filing a Motion for Summary Disposition of the Petition for Review,
23 PG&E is filing this Motion for Stay. BAAQMD has informed PG&E that it will join in
24 PG&E's request for a stay. Petitioner was contacted regarding the stay, but did not
25 respond in time to represent his position in this Motion.

26 PG&E and EPA Region 9 are involved in discussions regarding allegations
27 of potential noncompliance with federal PSD regulations in connection with the
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1 Gateway facility. PG&E believes that a stay will provide time for EPA Region 9 and
2 PG&E to complete these discussions and to resolve any issues regarding the PSD
3 permit that could impact the EAB's jurisdiction and/or consideration of this Petition
4 for Review. A stay will also avoid any potential prejudice to the positions of EPA
5 Region 9 and PG&E with regard to their discussions, and will avoid any
6 unnecessary expenditure of the Board's time and resources. Further, a stay will
7 not prejudice Petitioner's ability to pursue his arguments upon the conclusion of the
8 stay. Accordingly, PG&E hereby requests that the Board stay this proceeding for
9 90 days.

10 In requesting a stay of the Board's consideration of the Petition for Review,
11 PG&E reserves any and all rights to present arguments that the Petition for Review
12 is untimely and that the Board otherwise lacks jurisdiction over the Petition for
13 Review. In that regard, PG&E requests that if the EAB decides to deny this Motion
14 for Stay, it provide PG&E with ten business days from the date of service of such
15 order to file a Motion for Summary Disposition or such other pleadings as may be
16 appropriate at that time.

17 PG&E reserves any and all rights to present further evidence and argument
18 in the event that the Board asserts jurisdiction over this PSD appeal.

19 PG&E is concurrently filing a Motion for Leave to Intervene in this matter.
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1 Dated: May 27, 2009

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3 Respectfully submitted,

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5 ~~PILLSBURY WINTHROP SHAW PITTMAN LLP~~

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7 By 

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CERTIFICATE OF SERVICE

I the undersigned, hereby certify that on the 27 day of May, 2009,
service of a true and complete copy of **Motion for Stay of Petition for Review**
was made upon the following parties:

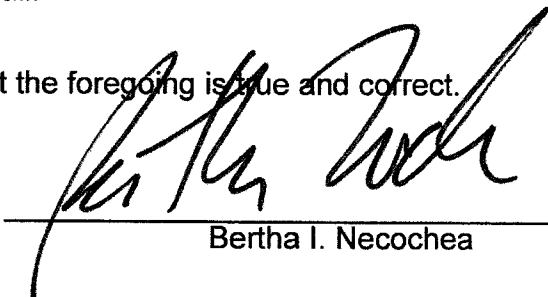
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by depositing the same in the U.S. Mail.

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



Bertha I. Necochea