

BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

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## FACSIMILE TRANSMITTAL SHEET

DATE:

8/10/2009

FROM:

Alexander G. Crockett, Esq.

TO:

FAX:

(202) 233-0121

Honorable Judges of the  
Environmental Appeals Board  
United States Environmental  
Protection Agency  
c/o Clerk of the Board, Environmental  
Appeals Board

COMPANY/FIRM:

In re Gateway Generating Station  
PSD Appeal No. 09-02

PHONE NUMBER:

REFERENCE:

TOTAL NO. OF PAGES INCLUDING COVER:

21

SUBJECT:

*Correspondence of August 10, 2009*

HANDLING:

*X Hard copy will be mailed*  
*Will not be mailed*

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PER YOUR REQUEST

NOTES/COMMENTS:

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BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT  
SINCE 1955

**DISTRICT COUNSEL'S OFFICE****Phone: (415) 749-4920****Fax: (415) 749-5103**

August 10, 2009

**BY FAX & FEDEX**

Honorable Judges of the Environmental Appeals Board  
United States Environmental Protection Agency  
c/o Clerk of the Board, Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington, DC 20005

Re: *In re Gateway Generating Station*, PSD Appeal No. 09-02.

Dear Environmental Appeals Judges:

Respondent the Bay Area Air Quality Management District ("District") submits this letter to bring to the Board's attention recent relevant factual information that has arisen since the completion of briefing in the above-referenced matter.

Specifically, the District wishes to bring to the Board's attention the filing of a 60-Day "Notice of Intent" by Proposed Intervenor Californians for Renewable Energy ("CARE") under the Clean Air Act Citizen Suit provision, CAA section 304(a), 42 U.S.C. section 7604(a) (hereinafter, "Citizen Suit 60-Day Notice"). A copy of this Citizen Suit 60-Day Notice, as transmitted by email to the District's undersigned counsel in this proceeding on August 6, 2009, is attached hereto. As the Citizen Suit 60-Day Notice states, Petitioners<sup>1</sup> intend to initiate a Clean Air Act citizen suit enforcement action against PG&E, the owner/operator of the Gateway

<sup>1</sup> Mr. Rob Simpson filed the Petition in this matter, and the organization CARE is the entity that is seeking to intervene (along with CARE's treasurer, Mr. Robert Sarvey). But according to their filings, their interests are identical and they are in essence one and the same entity. As Mr. Simpson states in his reply brief (at p. 8), "I am a member of CARE authorized to represent CARE in these proceedings". For simplicity, the District therefore refers to Mr. Simpson and CARE collectively as "Petitioners".

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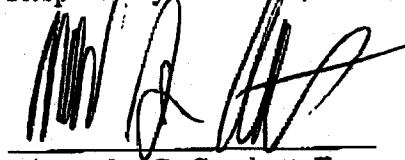
Honorable Judges of the Environmental Appeals Board  
August 10, 2009  
Page 2

facility, for "operation[]" of the . . . Gateway Generating Station, without a PSD permit."<sup>2</sup>

The fact that Petitioners have indicated that they intend to commence a Clean Air Act enforcement action regarding the PSD non-compliance claims that form the basis of their Petition is relevant for the following reason. Petitioners' intention to commence an enforcement action demonstrates that Petitioners themselves understand and concede that this matter is an enforcement case, not an issue to be adjudicated by the Board in a permit appeal proceeding under 40 C.F.R. Section 124.19. As the Air District has explained in its briefing to date, the Environmental Appeals Board cannot and should not hear an appeal of a preconstruction permit at this late stage, years after the permit was issued, after the permit expired and apparently was not validly renewed, and after the facility has completed construction and begun operating. Instead, now that the facility has been built, claims asserting that the facility was built without a valid PSD Permit should be addressed through the Clean Air Act's enforcement provisions, and the filing of this Citizen Suit 60-Day Notice demonstrates that Petitioners themselves acknowledge the truth of this proposition.

The District would be happy to submit a brief the importance of this recent factual development in more detail if the Environmental Appeals Board so desires.

Respectfully submitted,



Alexander G. Crockett, Esq.  
Assistant Counsel

Attachment

cc: Mr. Rob Simpson  
David R. Farabee, Esq.  
Ann H. Lyons, Esq.  
Mr. Michael E. Boyd

---

<sup>2</sup> Note also that CARE alluded to the Clean Air Act Citizen Suit provision in its motion for leave to intervene (see pp. 2-3). In that document, however, CARE stated only that it was making a "complaint" to the EPA Administrator and had a right to a civil action against EPA Region 9, not that it was giving notice that it intended to sue PG&E for construction and operation of the Gateway facility without a permit, as CARE states in the attached Citizen Suit 60-Day Notice.

**Alexander Crockett**

**From:** Michael Boyd [michaelboyd@sbcglobal.net]  
**Sent:** Wednesday, August 05, 2009 11:39 PM  
**To:** Ken Celli; Robert Gladden; David Wiseman; Scott Galati; Deborah Behles; Lisa Jackson; rios.gerardo@epa.gov  
**Cc:** caacornbpro@acorn.org; SarveyBob@aol.com; Lucas Williams; RCox@pacificenvironment.org; rob@redwoodrob.com; scrockett@baaqmd.gov  
**Subject:** 60-Notice of Intent to bring Clean Air Act Citizens Suit Pursuant to 42 USC § 7604 for Docket Number 00-AFC-1C:GatewayGeneratingStation

August 5, 2009

Dear Mr. Galati,

During today's evidentiary hearing Mr. Crockett's public statements where that US EPA Region IX had stated that there was no PSD Permit for the Gateway project and PG&E did not seem to indicate that it planned to stop operating the facility since there was no PSD Permit and this was on the record. Since to our knowledge US EPA Region IX has been aware of this matter since Mr. Simpson filed his Appeal to the US EPA Environmental Appeals Board, PG&E has continued the Gateway project operations un-abated with no indication of US EPA Region IX taking any enforcement action any time soon we must out of the utmost of caution notify you of 60-

Notice of Intent to bring Clean Air Act Citizens Suit Pursuant to 42 USC § 7604<sup>(1)</sup> for continued operations of the project under CEC Docket Number 00-AFC-1C, Gateway Generating Station, without a PSD permit.

The Clean Air Act authorizes under this provision CARE to commence a civil action against Pacific Gas and Electric Company (PG&E) and this constitutes 60 days notice to do so. This serves as a complaint under the CAA against PG&E and as such I am e-mailing a copy of this complaint to the US EPA Administrator Lisa Jackson, and Mr. Rios at US EPA Region IX.

Respectfully submitted,

s/ Michael E. Boyd

Michael E. Boyd President (CARE)  
 Californians for Renewable Energy, Inc.  
 Phone: (408) 891-9677  
 E-mail: michaelboyd@sbcglobal.net  
 5439 Soquel Drive

Soquel, : 10pt; font-family: Arial;">CA 95073

cc.

Sandy Crockett BAAQMD Counsel, scrockett@baaqmd.gov,  
 Gerardo Rios Region IX USEPA Permits, rios.gerardo@epa.gov,  
 Lisa Jackson US EPA Administrator, jackson.lisa@epa.gov,  
 Martin Homec Esq, martinhomec@gmail.com,  
 <!--endif-->

<!--[if !supportFootnotes]-->

<!--[endif]-->

<!--[if supportFootnotes]-->[1]<!--[endif]--> 42 USC § 7604. Citizen suits

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the

alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607 (b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607 (b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) of this section shall be provided 180 days before commencing such action.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation

(i) to the Administrator,

(ii) to the State in which the violation occurs, and

(iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412 (i)(3)(A) or (i)(4) of this title or an order issued by the Administrator pursuant to section 7413 (a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; service of complaint; consent judgment

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.

(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the

Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

- (1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or
- (2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) "Emission standard or limitation under this chapter" defined

For purposes of this section, the term "emission standard or limitation under this chapter" means—

- (1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,
- (2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or [1]<!--[if !supportNesting]-->[endif]>
- (3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment), [2]<!--[if !supportNesting]-->[endif]> section 7419 of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545 (e) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under subchapter VI of this chapter (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise); [3]<!--[if !supportNesting]-->[endif]> or
- (4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations [4]<!--[if !supportNesting]-->[endif]> which is in effect under this chapter (including a requirement applicable by reason of section 7418 of this title) or under an applicable implementation plan.

(g) Penalty fund

(1) Penalties received under subsection (a) of this section shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed \$100,000.

--- On Mon, 8/3/09, Deborah Behles <dbehles@ggu.edu> wrote:

From: Deborah Behles <dbehles@ggu.edu>  
 Subject: RE: Filing for Docket Number00-AFC-1C:GatewayGeneratingStation  
 To: "Ken Celli" <Kcelli@energy.state.ca.us>, "Robert Gladden" <BGlad@gb-llp.com>, "David Wiseman" <DWiseman@gb-llp.com>, "Scott Galati" <SGalati@gb-llp.com>  
 Cc: caacornbpro@acorn.org, SarveyBob@aol.com, "Lucas Williams" <lwilliams@ggu.edu>, RCox@pacificenvironment.org, rob@redwoodrob.com, michaelboyd@sbcglobal.net  
 Date: Monday, August 3, 2009, 8:19 PM

Scott -

Attached please find Ex. 20 which will be presented by the referenced ACORN witnesses. As you will see, this is not any new information. We are planning to have these two witnesses represent Contra-Costa ACORN in the hearing and offer this summary.

Thank you,

Deborah N. Behles  
Visiting Assistant Professor  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369-5336  
Fax 415.896.2450

>>> "Scott Galati" <SGalati@gb-llp.com> 8/3/2009 8:36 AM >>>  
Deborah,

I am sorry that I was unable to respond to your email until now. Attached is a Revised Exhibit List providing additional reasons for relevance to our Exhibits. Also, attached is a copy of Exhibit 315. Please send me Exhibits 20 and 21 so I may properly prepare for hearing. Please add David Wiseman and Robert Gladden to your email list as they are assisting me in this matter. There emails are copied above. Can you also clarify if you are representing all parties in this matter? Thank you.

Scott A. Galati  
GALATI@BLEK  
455 Capitol Mall, Suite 350  
Sacramento, CA 95814  
Tel. (916) 441-6575  
Fax (916) 441-6553  
Cell (916) 505-6570

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

From: Deborah Behles [mailto:dbehles@ggu.edu]  
Sent: Saturday, August 01, 2009 7:10 PM  
To: Scott Galati  
Cc: caacornbpro@acorn.org; SarveyBob@aol.com; Lucas Williams;  
RCox@pacificenvironment.org; rob@redwoodrob.com; michaelboyd@sbcglobal.net

Page 5 of 18

Subject: RE: Filing for Docket Number 00-AFC-1C: Gateway Generating Station

Scott -

I noticed that in my quick typing, I wrote down the wrong description for the Local Clean Energy Alliance. It is comprised of over 40 public interest organizations, businesses and community groups based in the East Bay Area, and it includes Sierra Club California.

In your submission, I saw that you have listed a document dated February 13, 2008. I assume that date is an error because the document that I have seen is dated February 13, 2009. In addition, your prehearing statement fails to provide a brief summary of the relevance to the proceeding of any of your exhibits. Although I can guess the relevancy of some of the exhibits, it is not clear for many of them. Please provide of the relevance of the exhibits 301, 302, 303, 305, 306, 307, 308, 310, and 311 as is required under the Hearing Officer's order. In addition, can we see a copy of exhibit 315? We may already have a copy of it, but it is not clear by your description.

Thank you,

Deborah N. Behles  
Visiting Assistant Professor  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369-5336  
Fax 415.896.2450

>>> "Scott Galati" <SGalati@gb-llp.com> 07/31/09 6:03 PM >>>

Yes. I am giving this to my witnesses to make sure that we understand the basis of your testimony.

Scott A. Galati

GALATI@BLEK

455 Capitol Mall, Suite 350

Sacramento, CA 95814

Tel. (916) 441-6575

Fax (916) 441-6553

Cell (916) 505-6570

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From: Deborah Behles [mailto:dbehles@ggu.edu]  
Sent: Friday, July 31, 2009 5:48 PM  
To: Ken Celli; Scott Galati; Lucas Williams  
Cc: John Adams  
Subject: RE: Filing for Docket Number00-AFC-1C:GatewayGeneratingStation

Here are additional clarifications. Some of these documents do not have page numbers.

b. Definition of Commissioning Period - based on reference to statements in Ex. 14 (in the definition section of Attach C, the definition of Commissioning Period is changed), Ex. 6 (this same change requested in this exhibit), Ex. 13 (withdrew Ex. 6)

e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 24 (I mistyped "24", it should read 14), in Ex. 14 - PG&E requested a change to how cumulative emissions are measured for the facility by changing the equipment that are required to comply with this condition. This request was made in Ex. 6 and withdrawn in Ex. 13.

i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15 (quotes from pages 2 and 3), Ex. 23 (the testimony will refer to date of document and date operation started as referred to in document, page 1/2 (ICE form)), Ex. 24 (reference to notice of violation issued to the Gateway facility described on page 19)

j. Commissioning Period Issues - based on reference to statements in Ex. 10 (pages 1, 4 and 5) and Ex. 12 (no page numbers)).

I just realized that I did not list your testimony in the documents

Page 7 of 18

reviewed. I plan to give that to our witnesses as well. Based on your last email, am I correct to assume that you will give these summaries to your witnesses?

We will compile this all into the prehearing statement and resend that around shortly.

Deborah N. Behles  
Visiting Assistant Professor  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369-5336  
Fax 415.896.2450

>>> "Scott Galati" <SGalati@gb-llp.com> 7/31/2009 5:29 PM >>>

Thank you . With this clarification my witnesses and I believe we can adequately prepare.

Scott A. Galati

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From: Deborah Behles [mailto:dbehles@ggu.edu]  
Sent: Friday, July 31, 2009 5:28 PM  
To: Ken Celli; Scott Galati; Lucas Williams  
Cc: John Adams  
Subject: RE: Filing for Docket Number00-AFC-1C:GatewayGeneratingStation

I just saw this. Yes, we can provide more information shortly.

Deborah N. Behles  
Visiting Assistant Professor  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369-5336  
Fax 415.896.2450

>>> "Scott Galati" <SGalati@gb-llp.com> 7/31/2009 5:12 PM >>>

Thank you very much. This is very helpful. I just have a few questions that I hope you can clear up.

Can you please provide some specific page references to the Exhibits so I can understand what you mean by these headings?

b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Ex. 6, Ex. 13

e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 24

i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24

j. Commissioning Period Issues - based on reference to statements in Ex. 10, Ex. 12

Scott A. Galati

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Any review, reliance or distribution by others or forwarding without express written permission is strictly prohibited.

From: Deborah Behles [mailto:dbehles@ggu.edu]  
Sent: Friday, July 31, 2009 5:03 PM  
To: Ken Celli; Scott Galati; Lucas Williams  
Cc: John Adams  
Subject: RE: Filing for Docket Number00-AFC-1C:GatewayGeneratingStation

Mr. Celli and Mr. Galati:

Our witnesses will testify to the following:

#### ACORN Witnesses

- We are trying to consolidate this testimony into one or two witnesses. I will provide an outline of what each witness will testify to in an abundance of caution. If I know we will not call one of the witnesses, I will notify you both before the hearing.

John Adams

1. Background / Qualification - Experience with ACORN, experience in political and community organizations including Oregon State capital, educational background which is a BS in political science at the University of Oregon and currently working on Masters at JFK University.

2. ACORN Contra Costa description - Who the organization is, who they represent, what issues they work on

3. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.

4. ACORN's Non-compliance Issues:

a. General Compliance with Certification - based on reference to statements in Ex 14

b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Ex. 6, Ex. 13

c. Change to Gas Preheater related to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3

d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23

e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 24

f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13

g. Changes to Optional Monitoring of O2 - based on reference to statements in Ex. 14, i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24

j. Commissioning Period Issues - based on reference to statements in Ex. 10, Ex. 12

5. Conclusion Based on Review of Above Referenced Documents

Erik Kochketola

1. Background / Qualification - Experience with ACORN, experience before regulatory agency public hearing, studied history at Indiana University.
2. ACORN Contra Costa description - Who the organization is, who they represent, what issues they work on
3. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.
4. ACORN's Non-compliance Issues:
  - a. General Compliance with Certification - based on reference to statements in Ex. 14
  - b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Ex. 6, Ex. 13
  - c. Change to Gas Preheater related to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3
  - d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23
  - e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 24
  - f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13
  - g. Changes to Optional Monitoring of O2 - based on reference to statements in Ex. 14, Ex. 1, Ex. 4
  - h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7
  - i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24
  - j. Commissioning Period Issues - based on reference to statements in Ex. 10, Ex. 12

5. Presentation of Summary Based on Review of Documents as detailed and described above

Marie Dreyer

1. Background / Qualification - Experience with ACORN, experience in political and community organizations including Oregon State capital, educational background which is a BS in political science at the University of Oregon and currently working on Masters at JFK University.
2. ACORN Contra Costa description - Who the organization is, who they represent, what issues they work on
3. Basis for Knowledge About GATEWAY facility - Description of review of complaint, review of Exhibits 1-14, 23-24 that are listed in our exhibit list.
4. ACORN's Non-compliance Issues:
  - a. General Compliance with Certification - based on reference to statements in Ex 14
  - b. Definition of Commissioning Period - based on reference to statements in Ex. 14, Ex. 6, Ex. 13
  - c. Change to Gas Preheater related to AQ5, AQ24, AQ47 -based on reference to statements Sept 2008 PG&E report (Ex. 9), Ex. 11, Ex. 13, Ex. 14, Ex. 3
  - d. Change to Fire Water Pump - based on reference to statements in Ex. 1, Ex. 3, Ex. 6, Ex. 13, Ex. 3, Ex. 23
  - e. Change in Cooling Conditions and Cumulative Emissions Measurements in reference to AQ 24 - based on reference to statements in Ex. 6, Ex. 13, Ex. 24
  - f. Power Augmentation in AQ 20, AQ 26, and AQ 30 - based on reference to statements in Ex. 14, Ex. 6, Ex. 13
  - g. Changes to Optional Monitoring of O2 - based on reference to

statements in Ex. 14, Ex. 1, Ex. 4

h. Requirements for Petition for Changes to Certification - based on reference to statements in Ex. 1, general conditions, Ex. 7

i. Air Quality Requirements and Conditions - based on reference to statements in Ex. 15, Ex. 23, Ex. 24

j. Commissioning Period Issues - based on reference to statements in Ex. 10, Ex. 12

5. Presentation of Summary Based on Review of Documents as detailed and described above

I've been working with the other parties and will send similar summaries of their testimony shortly. Mr. Celli, we will amend our prehearing statement Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369-5336  
Fax 415.896.2450

>>> "Ken Celli" <Kcelli@energy.state.ca.us> 7/31/2009 4:19 PM >>>  
Ms. Behles:

Just to be clear, I read your response below to indicate that there will be no new information contained in Exhibit 20, it is merely a chart of other evidence which you've provided to Mr. Galati. As to Exhibit 21, it is merely a Declaration stating that he supports the complaint, with no new information. Otherwise, if either of these exhibits contain new information, YOU MUST PROVIDE THE NEW INFORMATION TO MR. GALATI TODAY.

Further, the Summary of Testimony To Be Offered by the five witnesses listed in your Witness List is inadequate. You must summarize the substance of each witnesses testimony with sufficient detail to enable the respondent to prepare a defense. Please amend your Prehearing Statement to provide the substance of the witnesses' testimony and email it to all parties and me TODAY.

Thank you,

Kenneth D. Celli  
Hearing Advisor II  
California Energy Commission

Hearing Office  
1516 9th Street, MS 9  
Sacramento CA 95814-5512  
(916) 651-8893

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>>> "Deborah Behles" <dbehles@ggu.edu> 7/31/2009 3:53 PM >>>  
Scott -

I just got a call from Mr. Celli and it cleared up some of your confusion and concern. When questions like this arise, feel free to call me directly at 415-369-5336.

Exhibits 20 and 21 erroneously state that they are documents dated July 29, 2009. These documents are currently being prepared and will be ready next week. I plan to get them to you before the hearing. The documents will contain the following:

1. Exhibit 20 - Summary of statements and information taken from the other publicly available and PG&E generated exhibits listed on our exhibit list.. As you will see, many of our exhibits are the same. This summary chart will summarize the factual information that forms the basis of ACORN's Complaint which was filed in June 2009.
2. Exhibit 21 - Declaration of Bob Sarvey - This declaration will include Mr. Sarvey's support of the Complaint, similar to what was filed by Mr. Cox, and describe and attach Mr. Sarvey's previous comments for this facility. These comments have been attached to the EAB docket by Mr. Simpson. If you do not have these comments, let me know and I will send you a copy.

As for the witness summaries, an outline of each of the witness' testimony is provided in the complaints filed by the parties. Our witnesses plan to explain what evidence supports the allegations of non-compliance alleged in these complaints. The information that the witnesses will refer to is in the exhibits described in the exhibit list. We have specifically provided a description for each exhibit that

describes what the witnesses plan to use each exhibit for.

As mentioned above, if you have further questions, give me a call at 415-369-5336.

Thank you,

Deborah N. Behles  
Visiting Assistant Professor  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369-5336  
Fax 415.896.2450

>>> "Scott Galati" <SGalati@gb-llp.com> 7/31/2009 3:28 PM >>>

My reading of the order was that Each Prehearing Statement shall set forth under a separate heading:

1. The identity of each witness called to testify; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct teThe summaries you provided for each witness "Statements, documents, and information underlying ACORN's complaint for PG&E's noncompliance" is not sufficient of a summary for my client to prepare meaningful cross-examination of your witnesses. As you can see from our filing, you have a complete copy of our direct testimony so that you may prepare for hearing. I copy the Hearing Officer, Ken Celli, on this email in attempt to get clarification on this issue. I again ask for you to please provide adequate summaries of your witness testimonies so that PG&E may properly prepare.

Scott A. Galati  
GALATI@BLEK  
455 Capitol Mall, Suite 350  
Sacramento, CA 95814  
Tel. (916) 441-6575  
Fax (916) 441-6553  
Cell (916) 505-6570

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From: Lucas Williams [mailto:lwiliams@ggu.edu]  
Sent: Friday, July 31, 2009 3:22 PM  
To: Scott Galati  
Cc: Deborah Behles  
Subject: RE: Filing for Docket Number 00-AFC-1C:  
GatewayGeneratingStation

Mr. Galati:

In accordance with the 7/27 order we will provide you with copies of all of the exhibits before the hearing next week. We will not be asking for stipulations on Exhibits 20 and 21. Deborah will give you a call next week to discuss the exhibits.

Thank you,

Lucas Williams  
Graduate Fellow  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369.5351  
Fax 415.896.2450

>>> "Scott Galati" <SGalati@gb-llp.com> 7/31/2009 2:43 PM >>>

Thank you Mr. Williams. Can you please send me Exhibits 20 and 21 as identified on your Exhibit List?

Page 17 of 18

Scott A. Galati  
GALATI|BLEK  
455 Capitol Mall, Suite 350  
Sacramento, CA 95814  
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From: Lucas Williams [mailto:lwiliams@ggu.edu]  
Sent: Friday, July 31, 2009 2:32 PM  
To: Scott Galati  
Cc: Deborah Behles  
Subject: Fwd: Filing for Docket Number 00-AFC-1C: Gateway  
GeneratingStation

Mr Galati:

Your email address as indicated by the service list bounced back.  
Please find attached the Joint Prehearing Statement of ACORN, CARE,  
and  
LCEA.

Lucas Williams  
Graduate Fellow  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369.5351  
Fax 415.896.2450

>>> Lucas Williams 7/31/2009 2:17 PM >>>

Dear Docket Office, Parties, and Committee:

Please find attached the Complainants' Joint Prehearing Statement for filing in the Gateway Generating Station compliance proceedings, Docket

No. 00-AFC-1C. The Prehearing Statement is being submitted pursuant to the Notice of Hearing, Decision, and Order issued by the Committee on July 27, 2009.

Please also note that the Service List for this proceeding (revised on 7/28/09) does not contain the correct e-mail addresses for service to the Environmental Law & Justice Clinic, who represents ACORN in this matter. Please send any documents or correspondence related to this proceeding to the following: dbehles@ggu.edu, lwilliams@ggu.edu, and hkang@ggu.edu.

Please contact Deborah Behles at (415) 369-5336 or Lucas Williams at (415) 369-5351 if you have any questions about this filing.

Thank you,

Lucas Williams  
Graduate Fellow  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105-2968  
Phone: 415.369.5351  
Fax 415.896.2450