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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA



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13 Attorneys for Plaintiff United States of America

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,)
17 Plaintiff,)
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28)
PACIFIC GAS AND)
ELECTRIC COMPANY)
Defendant.)

CV 09 4503

Civil Action No. _____

CONSENT DECREE

EMC

CONSENT DECREE

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1 WHEREAS, Plaintiff United States of America, on behalf of the United States
2 Environmental Protection Agency (“EPA”), is concurrently filing a complaint (“Complaint”)
3 initiating this action against Pacific Gas and Electric Company (“PG&E”);

4 WHEREAS, the United States alleges that PG&E has constructed and commenced
5 operation of its 530 megawatt combined cycle, natural gas-fired combustion turbine power plant
6 located near Antioch, California, known as the Gateway Generating Station (“GGs”), in
7 violation of the Prevention of Significant Deterioration (“PSD”) provisions of the Clean Air Act
8 (“Act”), 42 U.S.C. § 7475, and the regulations promulgated thereunder as set forth at 40 C.F.R.
9 52.21;

10 WHEREAS PG&E’s predecessor-in-interest, Mirant Delta, LLC (“Mirant”), commenced
11 construction of GGS in late 2001 pursuant to an Authority to Construct (“ATC”) issued by the
12 Bay Area Air Quality Management District (“BAAQMD”) on July 24, 2001, which ATC also
13 constituted a PSD permit;

14 WHEREAS Mirant formally suspended construction of the facility in February, 2002;

15 WHEREAS on March 3, 2003, after making revisions to its federal PSD regulations,
16 EPA withdrew the delegation of PSD authority from BAAQMD;

17 Whereas BAAQMD believed EPA’s withdrawal of delegation of PSD authority did not
18 affect its authority to extend existing PSD permits;

19 WHEREAS at the request of Mirant, BAAQMD extended the ATC twice, in 2003 and
20 2005, and believed, at those times, it was also extending the PSD permit;

21 WHEREAS PG&E acquired the unfinished GGS construction project from Mirant in
22 November, 2006, and resumed construction of the project on February 5, 2007;

23 WHEREAS in January, 2007, BAAQMD transferred the ATC to PG&E and believed it
24 was also transferring the still-effective PSD permit;

25 WHEREAS EPA alleges that BAAQMD was without authority to extend the PSD permit
26 after March 3, 2003, and that the PSD permit expired by operation of law 18 months after Mirant
27 ceased construction in February, 2002;

28 WHEREAS, PG&E denies the material allegations of the Complaint;

1 WHEREAS, this Consent Decree does not constitute an admission by PG&E of any facts
2 or of any liability;

3 WHEREAS, the United States and PG&E (the "Parties") agree that settlement of the civil
4 claims as alleged in the Complaint is in the public interest and that entry of this Consent Decree
5 without further litigation is the most appropriate way to resolve this action;

6 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

7 **I. JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over the subject matter of this action and over the Parties
9 pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, 1355,
10 and 1367. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1395, and 42
11 U.S.C. § 7413(b). PG&E consents to and shall not challenge entry of this Consent Decree or this
12 Court's jurisdiction to enter, enforce, modify, or terminate this Consent Decree.

13 **II. APPLICABILITY AND BINDING EFFECT**

14 2. Each signatory to this Consent Decree certifies that he or she is fully authorized to
15 enter into the terms and conditions of this Consent Decree and to execute and legally bind the
16 party for whom the signatory has signed.

17 3. The provisions of this Consent Decree shall apply to and be binding upon the United
18 States and PG&E, its subsidiaries and divisions, and its successors and assigns. Any change in
19 ownership or corporate status of PG&E, including, but not limited to, any transfer of assets or
20 real or personal property, shall in no way alter PG&E's responsibilities under this Consent
21 Decree.

22 **III. CIVIL PENALTY**

23 4. Within thirty (30) days after the entry of this Consent Decree, PG&E shall pay a civil
24 penalty to the United States of twenty thousand dollars (\$20,000.00). Payment shall be made by
25 Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with
26 the current electronic funds transfer procedures, referencing DOJ Case Number 90-5-2-1-09753
27 and the civil action case name and case number. Payment shall be in accordance with written
28 instructions which will be provided to PG&E by the Financial Litigation Unit of the United

1 States Attorney's Office for the Northern District of California following entry of this Consent
2 Decree. PG&E shall provide notice of payment, referencing DOJ Case Number 90-5-2-1-09753
3 and the civil action case name and case number to EPA and the Department of Justice at the
4 addresses set forth in Section IX (Form of Notice).

5 5. Upon entry of this Consent Decree, the United States shall be deemed a judgment
6 creditor for purposes of collection of the penalties required by this Consent Decree and
7 enforcement of this Consent Decree. In any collection proceeding, the validity, amount, and
8 appropriateness of the civil penalty specified in this Consent Decree shall not be subject to
9 review.

10 **IV. INJUNCTIVE RELIEF**

11 6. PG&E shall, within thirty (30) days after entry of this Consent Decree, submit to the
12 California Energy Commission ("CEC") a Petition to Amend Conditions of Certification in the
13 matter of Gateway Generating Station (00-AFC-1) requesting an Order to Amend the Energy
14 Commission Decision in the matter of Gateway Generating Station (00-AFC-1). The
15 amendments sought by PG&E shall: 1) immediately lower GGS' current limit for oxides of
16 nitrogen ("NOx") emissions from the combined cycle units from 2.5 parts per million volume
17 ("ppmv") to 2.0 ppmv on a dry basis corrected to 15% oxygen and averaged over any one-hour
18 period; 2) immediately lower GGS' current limit for carbon monoxide ("CO") emissions from
19 the combined cycle units from 6.0 ppmv to 4.0 ppmv on a dry basis corrected to 15% oxygen and
20 averaged over any rolling three-hour period; and 3) lower GGS' rolling 12-month NOx emissions
21 cap for the combined cycle units from 174.3 tons per year ("tpy") to 139.2 tpy beginning on June
22 1, 2010.

23 7. PG&E shall, within thirty (30) days after entry of this Consent Decree, submit an
24 application to the Bay Area Air Quality Management District ("BAAQMD") requesting inclusion
25 in the permit to operate and in the Title V Operating Permit for GGS of permit conditions which:
26 1) immediately lower the current limit for NOx emissions from the combined cycle units from
27 2.5 ppmv to 2.0 ppmv on a dry basis corrected to 15% oxygen and averaged over any one-hour
28 period; 2) immediately lower the current limit for CO emissions from the combined cycle units

1 from 6.0 ppmv to 4.0 ppmv on a dry basis corrected to 15% oxygen and averaged over any
2 rolling three-hour period; and 3) lower the rolling 12-month NOx emissions cap for the
3 combined cycle units from 174.3 tpy to 139.2 tpy beginning June 1, 2010.

4 8. Beginning November 1, 2009, and notwithstanding any permitting action by the CEC
5 and/or BAAQMD, NOx emissions from the combined cycle units at GGS shall not exceed 2.0
6 ppmv on a dry basis corrected to 15% oxygen and averaged over any one-hour period, and CO
7 emissions from the combined cycle units at GGS shall not exceed 4.0 ppmv on a dry basis
8 corrected to 15% oxygen and averaged over any rolling three-hour period.

9 9. NOx emissions during Natural-Gas Combustion Turbine Start-up Mode shall not be
10 included in calculating compliance with the one-hour emission limit of 2.0 ppmv set forth in
11 Paragraphs 6, 7, and 8. CO emissions during Natural-Gas Combustion Turbine Start-up Mode
12 shall not be included in calculating compliance with the three-hour emission limit of 4.0 ppmv
13 set forth in Paragraphs 6, 7, and 8. Natural-Gas Combustion Turbine Start-up Mode is the lesser
14 of the first 256 minutes of continuous fuel flow to the natural gas-fired combustion turbine after
15 fuel flow is initiated or the period of time from natural gas-fired combustion turbine fuel flow
16 initiation until the natural gas-fired combustion turbine achieves two consecutive continuous
17 emission monitor data points in compliance with the emission concentration limits set forth in
18 Paragraphs 6, 7, and 8.

19 10. NOx emissions during Natural-Gas Combustion Turbine Shutdown Mode shall not
20 be included in calculating compliance with the one-hour emission limit of 2.0 ppmv set forth in
21 Paragraphs 6, 7, and 8. CO emissions during Natural-Gas Combustion Turbine Shutdown Mode
22 shall not be included in calculating compliance with the three-hour emission limit of 4.0 ppmv
23 set forth in Paragraphs 6, 7, and 8. Natural-Gas Combustion Turbine Shutdown Mode is the
24 lesser of the 30 minute period immediately prior to the termination of fuel flow to the natural
25 gas-fired combustion turbine or the period of time from noncompliance with the emission
26 concentration limits set forth in Paragraphs 6, 7, and 8 until termination of fuel flow to the
27 natural gas-fired combustion turbine.

28 11. Beginning no later than June 1, 2010, and notwithstanding any permitting action by

1 the CEC and/or BAAQMD, the rolling 12-month NOx emissions from the combined cycle units
2 at GGS shall not exceed 139.2 tpy.

3 12. Beginning November 1, 2009, PG&E shall provide EPA, as provided in Section IX
4 (Form of Notice), detailed excess emission reports for NOx and CO emissions as described at 40
5 C.F.R. § 60.7(c). These reports shall be submitted within 30 days after the end of each calendar
6 quarter and shall cover that preceding calendar quarter. The first report shall cover the partial
7 calendar quarter from November 1, 2009, through December 31, 2009.

8 **V. ENVIRONMENTAL MITIGATION PROJECTS**

9 13. By January 1, 2010, PG&E shall submit applications to the CEC and/or BAAQMD,
10 as necessary, for the installation of the General Electric OPFLEX Turndown and OPFLEX
11 Startup NOx products as described in Paragraphs 14 and 15, below.

12 14. By January 1, 2011, PG&E shall install and make fully operational at GGS'
13 combined cycle units the General Electric OPFLEX Turndown product. EPA is requiring use of
14 this product in order to allow the combined cycle units to run at low capacity, thereby avoiding
15 shut downs, startups, and the higher NOx emissions associated with startups.

16 15. By January 1, 2011, PG&E shall install and make fully operational at GGS'
17 combined cycle units the General Electric OPFLEX Startup product. EPA is requiring use of this
18 product in order to reduce the higher NOx emissions associated with startups.

19 **VI. STIPULATED PENALTIES**

20 16. PG&E shall pay the following stipulated penalties for failure to comply with this
21 Consent Decree:

22 (a) Failure to submit any of the applications as required pursuant to Paragraphs 6,
23 7, or 13 above: \$500 per day for each failure to apply.

24 (b) Failure to submit any of the reports as required pursuant to Paragraph 12
25 above: \$500 per day for each failure to submit.

26 (c) Failure to pay the civil penalty required pursuant to Paragraph 4 above: \$500
27 per day.

28 (d) Failure to implement either of the projects required pursuant to Section V

1 (Environmental Mitigation Projects) above: \$500 per day for each failure to implement.

2 (e) Failure to comply with the one-hour NOx emissions limitation of 2.0 ppmv in
3 Paragraph 8: where the emission level constituting a violation is less than or equal to 3.0 ppmv,
4 \$500 per violation; where the emission level constituting a violation is greater than 3.0 ppmv and
5 GGS has exceeded the 2.0 ppmv limit on 15 or fewer days in the existing calendar year, \$2,000
6 per violation; where the emission level constituting a violation is less than or equal to 3.0 ppmv
7 and GGS has exceeded the 2.0 ppmv limit on more than 15 days in the existing calendar year,
8 \$5,000 per violation; and where the emission level constituting a violation is greater than 3.0
9 ppmv and GGS has exceeded the 2.0 ppmv limit on more than 15 days in the existing calendar
10 year, \$10,000 per violation.

11 (f) Failure to comply with the three-hour CO emissions limitation of 4.0 ppmv in
12 Paragraph 8: where the emission level constituting a violation is less than or equal to 6.0 ppmv,
13 \$500 per violation; where the emission level constituting a violation is greater than 6.0 ppmv and
14 GGS has exceeded the 4.0 ppmv limit on 15 or fewer days in the existing calendar year, \$2,000
15 per violation; where the emission level constituting a violation is less than or equal to 6.0 ppmv
16 and GGS has exceeded the 4.0 ppmv limit on more than 15 days in the existing calendar year,
17 \$5,000 per violation; and where the emission level constituting a violation is greater than 6.0
18 ppmv and GGS has exceeded the 4.0 ppmv limit on more than 15 days in the existing calendar
19 year, \$10,000 per violation.

20 (g) Failure to comply with the rolling 12-month NOx emissions limitation in
21 Paragraph 11: \$20,000 per ton in excess of the applicable limit.

22 17. PG&E shall notify EPA in writing of any failure to meet Consent Decree
23 requirements for which stipulated penalties may be due as soon as it has knowledge of such
24 failure.

25 18. All stipulated penalties shall begin to accrue on the day after the complete
26 performance is due or the day that a violation occurs, and shall continue to accrue through the
27 final day of the completion of the activity or the correction of the noncompliance. Nothing
28 herein shall preclude the simultaneous accrual of separate stipulated penalties for separate

1 violations of this Consent Decree. Penalties shall accrue regardless of whether EPA has notified
2 PG&E of a violation.

3 19. Stipulated penalties owed to the United States shall be paid by certified or cashier's
4 check, payable to the "U.S. Department of Justice," and referencing this Consent Decree by
5 caption, civil action number, and DOJ Ref.# 90-5-2-1-09753. PG&E must deliver any such
6 payments by certified mail with return receipt requested to:

7 United States Attorney
8 Northern District of California
9 Attention: Financial Litigation Unit
450 Golden Gate Ave, 10th Floor
San Francisco, California 94102

10 20. Concurrently with making any payment for stipulated penalties, PG&E must send
11 notice of payment to EPA and DOJ directed to the addresses provided in Section IX (Form of
12 Notice). The notice of payment shall also identify: (a) the specific provision of Section VI
13 (Stipulated Penalties) related to such payment, and (b) a description of the violation(s) of this
14 Consent Decree for which the stipulated penalties or interest are being tendered.

15 21. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable
16 upon demand and due not later than thirty (30) days from EPA's written demand. The United
17 States may, in its unreviewable discretion, waive payment of any portion of stipulated penalties
18 that may accrue under this Consent Decree.

19 22. If PG&E fails to pay stipulated penalties owed pursuant to this Consent Decree
20 within thirty (30) days of receipt of a written demand, it shall pay interest on the late payment for
21 each day of late payment after the initial thirty-day time period. The rate of interest shall be the
22 most recent interest rate determined pursuant to 28 U.S.C. § 1961.

23 **VII. FORCE MAJEURE**

24 23. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event
25 that has been or will be caused by circumstances beyond the control of PG&E, its contractors, or
26 any entity controlled by PG&E that delays compliance with any provision of this Consent Decree
27 or otherwise causes a violation of any provision of this Consent Decree despite PG&E's best
28 efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using the best

1 efforts to anticipate any potential Force Majeure Event and to address the effects of any such
2 event (a) as it is occurring and (b) after it has occurred, such that the delay and any adverse
3 environmental effect of the violation is minimized to the greatest extent possible.

4 24. Notice of Force Majeure Events. If any event occurs or has occurred that may delay
5 compliance with or otherwise cause a violation of any obligation under this Consent Decree, as
6 to which PG&E intends to assert a claim of Force Majeure, PG&E shall notify the United States
7 in writing as soon as practicable, but in no event later than twenty-one (21) calendar days
8 following the date PG&E first knew, or by the exercise of due diligence should have known, that
9 the event caused or may cause such delay or violation. In this notice, PG&E shall reference this
10 Paragraph of this Consent Decree and describe the anticipated length of time that the delay or
11 violation may persist, the cause or causes of the delay or violation, all measures taken or to be
12 taken by PG&E to prevent or minimize the delay and any adverse environmental effect of the
13 violation, the schedule by which PG&E proposes to implement those measures, and PG&E's
14 rationale for attributing a delay or violation to a Force Majeure Event. PG&E shall adopt all
15 reasonable measures to avoid or minimize such delays or violations. PG&E shall be deemed to
16 know of any circumstance which PG&E, its contractors, or any entity controlled by PG&E knew
17 or should have known.

18 25. Failure to Give Notice. If PG&E fails to comply with the notice requirements of this
19 Section, the United States may void PG&E's claim for Force Majeure as to the specific event for
20 which PG&E has failed to comply with such notice requirement.

21 26. United States's Response. The United States shall notify PG&E in writing regarding
22 PG&E's claim of Force Majeure within twenty (20) business days of receipt of the notice
23 provided under Paragraph 24. If the United States agrees that a delay in performance has been or
24 will be caused by a Force Majeure Event, the United States and PG&E shall stipulate to an
25 extension of deadline(s) for performance of the affected compliance requirement(s) by a period
26 equal to the delay actually caused by the event. In such circumstances, an appropriate
27 modification shall be made pursuant to Section XIII (Modification) of this Consent Decree.

28 27. Disagreement. If the United States does not accept PG&E's claim of Force Majeure,

1 or if the United States and PG&E cannot agree on the length of the delay actually caused by the
2 Force Majeure Event, the matter shall be resolved in accordance with Section VIII (Dispute
3 Resolution) of this Consent Decree.

4 28. Burden of Proof. In any dispute regarding Force Majeure, PG&E shall bear the
5 burden of proving that any delay in performance or any other violation of any requirement of this
6 Consent Decree was caused by or will be caused by a Force Majeure Event. PG&E shall also
7 bear the burden of proving that PG&E gave the notice required by this Section and the burden of
8 proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event.
9 An extension of one compliance date based on a particular event may, but will not necessarily,
10 result in an extension of a subsequent compliance date.

11 29. Events Excluded. Unanticipated or increased costs or expenses associated with the
12 performance of PG&E's obligations under this Consent Decree shall not constitute a Force
13 Majeure Event.

14 30. Potential Force Majeure Events. The Parties agree that, depending upon the
15 circumstances related to an event and PG&E's response to such circumstances, the kinds of
16 events listed below are among those that could qualify as Force Majeure Events within the
17 meaning of this Section: construction, labor, or equipment delays; malfunction of a combined
18 cycle unit or emission control device; unanticipated natural gas supply or pollution control
19 reagent delivery interruptions; acts of God; acts of war or terrorism; and orders by a government
20 official, government agency, other regulatory authority, or a regional transmission organization,
21 acting under and authorized by applicable law, that directs PG&E to supply electricity in
22 response to a system-wide (state-wide or regional) emergency. Depending upon the
23 circumstances and PG&E's response to such circumstances, failure of a permitting authority to
24 issue a necessary permit in a timely fashion may constitute a Force Majeure Event where the
25 failure of the permitting authority to act is beyond the control of PG&E and PG&E has taken all
26 steps available to it to obtain the necessary permit, including, but not limited to: submitting a
27 complete permit application; responding to requests for additional information by the permitting
28 authority in a timely fashion; and accepting lawful permit terms and conditions after

1 expeditiously exhausting any legal rights to appeal terms and conditions imposed by the
2 permitting authority.

3 31. As part of the resolution of any matter submitted to this Court under Section VIII
4 (Dispute Resolution) regarding a claim of Force Majeure, the United States and PG&E by
5 agreement, or this Court by order, may in appropriate circumstances extend or modify the
6 schedule for completion of work under this Consent Decree to account for the delay in the work
7 that occurred as a result of any delay agreed to by the United States or approved by the Court.
8 PG&E shall be liable for stipulated penalties for its failure thereafter to complete the work in
9 accordance with the extended or modified schedule (provided that PG&E shall not be precluded
10 from making a further claim of Force Majeure with regard to meeting any such extended or
11 modified schedule).

12 **VIII. DISPUTE RESOLUTION**

13 32. The dispute resolution procedure provided by this Section shall be available to
14 resolve all disputes arising under this Consent Decree, provided that the Party invoking such
15 procedure has first made a good faith attempt to resolve the matter with the other Party.

16 33. The dispute resolution procedure required herein shall be invoked by one Party
17 giving written notice to the other Party advising of a dispute pursuant to this Section. The notice
18 shall describe the nature of the dispute and shall state the noticing Party's position with regard to
19 such dispute.

20 34. The Party receiving such a notice shall acknowledge receipt of the notice, and the
21 Parties shall expeditiously schedule a meeting to discuss the dispute informally not later than
22 fourteen (14) days following receipt of such notice.

23 35. Disputes submitted to dispute resolution under this Section shall, in the first instance,
24 be the subject of informal negotiations between the Parties. Such period of informal negotiations
25 shall not extend beyond thirty (30) calendar days from the date of the first meeting between the
26 Parties' representatives unless they agree in writing to shorten or extend this period.

27 36. If the Parties are unable to reach agreement during the informal negotiation period,
28 the United States shall provide PG&E with a written summary of its position regarding the

1 dispute. The written position provided by the United States shall be considered binding unless,
2 within forty-five (45) calendar days thereafter, PG&E seeks judicial resolution of the dispute by
3 filing a petition with this Court. If PG&E seeks judicial resolution, the United States's written
4 summary shall be deemed its initial filing with this Court regarding the dispute. The United
5 States may submit a response to the petition within forty-five (45) calendar days of filing.

6 37. The time periods set out in this Section may be shortened or lengthened upon motion
7 to the Court of one of the Parties to the dispute, explaining the Party's basis for seeking such a
8 scheduling modification.

9 38. This Court shall not draw any inferences nor establish any presumptions adverse to
10 either Party as a result of invocation of this Section or the Parties' inability to reach agreement.

11 39. As part of the resolution of any dispute under this Section, in appropriate
12 circumstances the Parties may agree, or this Court may order, an extension or modification of the
13 schedule for the completion of the activities required under this Consent Decree to account for
14 the delay that occurred as a result of dispute resolution. PG&E shall be liable for stipulated
15 penalties for its failure thereafter to complete the work in accordance with the extended or
16 modified schedule, provided that PG&E shall not be precluded from asserting that a Force
17 Majeure Event has caused or may cause a delay in complying with the extended or modified
18 schedule.

19 40. The Court shall decide all disputes pursuant to applicable principles of law for
20 resolving such disputes. In their filings with the Court under Paragraph 36, the Parties shall state
21 their respective positions as to the applicable standard of law for resolving the particular dispute.

22 **IX. FORM OF NOTICE**

23 41. Unless provided otherwise in this Consent Decree, all written notification, reporting
24 or communication among the Parties required by this Consent Decree shall be addressed as
25 follows:
26
27
28

1 For the United States:

2 Section Chief
3 Environmental Enforcement Section
4 United States Department of Justice
5 P.O. Box 7611
6 Washington, DC 20044-7611
7 DJ Ref.# 90-5-2-1-09753

8 and

9 Allan Zabel
10 Senior Counsel
11 Office of Regional Counsel (ORC-2)
12 United States Environmental Protection Agency - Region IX
13 75 Hawthorne Street
14 San Francisco, CA 94015

15 and

16 Steve Frey
17 Senior Engineer
18 Air Division (Air-5)
19 United States Environmental Protection Agency - Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94015

22 For PG&E

23 Randal S. Livingston
24 Vice President – Power Generation
25 Pacific Gas and Electric Company
26 P.O. Box 770000, Mail Code N11E
27 San Francisco, CA 94177

28 Ronald A. Gawer
Senior Plant Manager – Gateway Generating Station
Pacific Gas and Electric Company
3225 Wilbur Avenue
Antioch, CA 94509

David R. Farabee
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94105-2228

Matthew A. Fogelson
Pacific Gas and Electric Company
P.O. Box 7442, B30A
San Francisco, CA 94120-7442

The United States, EPA or PG&E may change the address to which notices shall be sent by notifying the Parties in writing at the above addresses.

1 42. Unless the United States and EPA agree to a different form of submission,
2 notification to or communications with the United States or EPA shall be deemed submitted on
3 the date they are (1) received or (2) sent, if sent by overnight express mail.

4 **X. PUBLIC NOTICE REQUIREMENT**

5 43. This Consent Decree shall be lodged with the Court for a period of not less than
6 thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United
7 States reserves the right to withdraw or withhold its consent if the comments regarding the
8 Consent Decree disclose facts or considerations that indicate that the Consent Decree is
9 inappropriate, improper, or inadequate. PG&E consents to the entry of this Consent Decree
10 without further notice.

11 44. If, for any reason, the Court should decline to approve this Consent Decree in the
12 form presented, then this agreement is voidable at the discretion of any Party, and the terms of
13 this Consent Decree may not be used as evidence in any litigation between the Parties.

14 **XI. RESOLUTION OF PAST CIVIL CLAIMS**

15 45. This Consent Decree resolves the civil claims of the United States for the violations
16 alleged in the Complaint filed in this action through the date of lodging of this Consent Decree.
17 The United States and EPA retain all authority and reserve all rights to take any and all actions
18 authorized by law to protect human health and the environment.

19 46. Except as provided in Paragraph 45 above, the United States and EPA hereby reserve
20 all statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable,
21 civil, criminal, or administrative, including those that may pertain to PG&E's failure to comply
22 with any of the requirements of this Consent Decree.

23 **XII. EFFECTIVE DATE AND TERMINATION**

24 47. This Consent Decree will take effect on the date it is entered by the Court.

25 48. This Consent Decree shall terminate when all of the following conditions have been
26 met:

27 (a) PG&E has satisfactorily complied with the requirements set forth in Section
28 IV (Injunctive Relief) for a period of not less than 12 consecutive calendar months; and

1 (b) The BAAQMD has issued a permit to operate for GGS containing the limits
2 set forth in Paragraph 7; and

3 (c) PG&E has completed the actions required by Section V (Environmental
4 Mitigation Project); and

5 (d) PG&E has paid the civil penalty as set forth in Section III (Civil Penalty);
6 stipulated penalties, if any, as specified in Section VI (Stipulated Penalties); and the United
7 States' enforcement expenses, if any, as specified in Section XVII (Payment of Enforcement
8 Expenses).

9 49. For purposes of Paragraph 48, PG&E shall be deemed to have satisfactorily complied
10 with the requirements set forth in Section IV (Injunctive Relief) if the United States has not
11 collected any stipulated penalties for violations of this Consent Decree occurring during the 12-
12 month period, and during the 12-month period there are no unresolved demands for stipulated
13 penalties for violations of this Consent Decree.

14 50. PG&E shall initiate termination of this Consent Decree by submitting a notification
15 to the United States that all conditions for termination pursuant to Paragraph 48 above have been
16 satisfied. If the United States agrees with PG&E's notification, then the Parties shall file a joint
17 motion or stipulation for termination of this Consent Decree. If the United States does not agree
18 that the Consent Decree may be terminated, PG&E may invoke Dispute Resolution under Section
19 VIII of this Consent Decree.

20 XIII. MODIFICATION

21 51. The terms of this Consent Decree may be modified only by a subsequent written
22 agreement signed by the United States and PG&E. Where the modification constitutes a material
23 change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

24 XIV. RETENTION OF JURISDICTION

25 52. Until the termination of this Consent Decree pursuant to Section XII (Effective Date
26 and Termination), this Court shall retain jurisdiction over this action and all disputes arising
27 hereunder for the purposes of implementing, interpreting, and enforcing the terms and conditions
28 of this Consent Decree.

XV. COSTS OF SUIT

53. Each Party shall bear its own costs and attorneys' fees incurred in this action through the date upon which this Consent Decree is entered.

XVI. PAYMENT OF ENFORCEMENT EXPENSES

54. Notwithstanding Section XV (Costs of Suit), PG&E shall pay the United States' enforcement expenses, including, but not limited to, reasonable attorneys' fees and costs, when the United States incurs such expenses to enforce the terms of this Consent Decree or to collect any unpaid balance of the civil penalty specified in Section III (Civil Penalty) and any unpaid balance of stipulated penalties to be paid in accordance with Section VI (Stipulated Penalties). PG&E shall not be liable for such enforcement expenses if the Court denies the underlying relief sought by the United States pursuant to this Section XVI.

XVII. SERVICE

55. PG&E hereby agrees to accept service of process by mail with respect to the Complaint and all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. PG&E shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process with respect to the Complaint and all matters arising under or relating to this Consent Decree.

XVIII. FINAL JUDGMENT

56. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and PG&E. The Court finds

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1 that there is no just reason for delay and therefore enters this judgment as a final judgment under
2 Fed. R. Civ. P. 54 and 58.

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7 **ORDER**

8 IT IS SO ORDERED:

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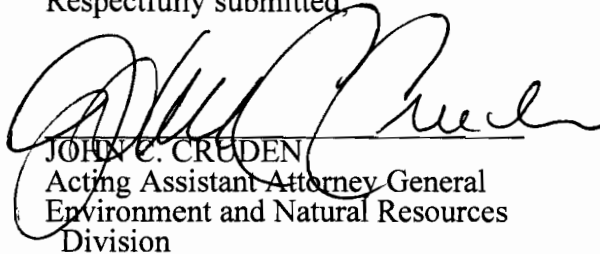
11 Dated: 10/6/09

12 _____
13 United States District Judge
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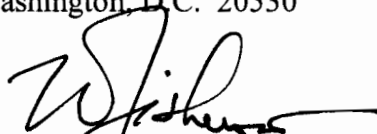
1 Signature page for *United States of America v. Pacific Gas and Electric Company* Consent
Decree

2 FOR UNITED STATES DEPARTMENT OF JUSTICE:
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4 Respectfully submitted,

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7 JOHN C. CRUDEN
8 Acting Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

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15 W. BENJAMIN FISHEROW
16 Deputy Chief
17 BRADLEY R. O'BRIEN
18 Senior Attorney
19 Environmental Enforcement Section
20 Environment and Natural Resources
21 Division
22 U.S. Department of Justice
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1 Signature page for *United States of America v. Pacific Gas and Electric Company* Consent
Decree

2 FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:
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4 Respectfully submitted,

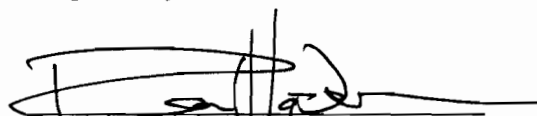
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6 LAURA YOSHII
7 Acting Regional Administrator, Region 9
8 United States Environmental Protection Agency
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1 Signature page for *United States of America v. Pacific Gas and Electric Company* Consent
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2 FOR PACIFIC GAS AND ELECTRIC COMPANY
3

4 Respectfully submitted,

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7 Randal S. Livingston
Vice President - Power Generation

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