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04-AFC-1
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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

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| In the Matter of: | ) | |
| | ) | Docket No. 04-AFC-1 |
| Application for Certification | ) | |
| For the San Francisco Electric | ) | |
| Reliability Project | ) | |
| | ) | |

# STAFF RESPONSE TO PETITIONS FOR RECONSIDERATION

## I. BACKGROUND

The California Energy Commission ("Commission") unanimously approved the Application for Certification ("AFC") on October 3, 2006. Petitions for reconsideration were timely filed by intervenors Californians for Renewable Energy ("CARE") and Robert Sarvey on November 1, 2006. The petitions will be deemed denied in the absence of an affirmative vote to grant them by at least three members of the Commission. (Cal. Code Regs., tit. 20, § 1720, subd. (d).) Commission Staff ("Staff") urges that the petitions be denied for the reasons set forth below.

## II. CARE'S PETITION

CARE's petition contends that 1) a letter from the City of San Francisco's Public Utility Commission ("City") to the Department of Water Resources ("DWR") provides new information about the project's environmental impacts that have not been analyzed, and 2) the project does not need to be sited in San Francisco and that there are better feasible alternatives. Both contentions are without merit.

Proof of Service (Revised 7/5/06) filed with original.
Mailed from Sacramento on November 20, 2006.

### A. The information in the City's letter to DWR is not new, and describes no impacts that have not been analyzed and mitigated.

CARE claims that an August 14, 2006, letter from the City's Barbara Hale to DWR discloses for the first time that the project's turbines will be using mechanical chillers to increase output, and that the effects of using chillers on reliability and particulate emissions have not been analyzed. (CARE Pet., pp. 1-2.)

In fact, the SFERP project has proposed the use of chillers from the time of its initial application in March 2004. (See AFC, § 2.2.4, p. 2-3 (March 2004).) In 2005 the City filed an AFC Supplement for its new site, at which time it again described the chilled water system and elaborated on its purpose. (See AFC Supplement, § 2.2.4, pp. 2-3 and 2-4 (March 2005).) In other words, chillers have always been part of the project analyzed by Staff and the air district, and there is no evidence in the record that such chillers either compromise reliability or increase particulate emissions. The project mitigation includes conditions of certification which limit particulate emissions, and such limits are subject to verification by the local air district. If CARE believed that the chillers present air quality or reliability issues, it should have raised such issues during the proceeding. It did not, and it may not raise such issues for the first time upon reconsideration.

### B. The Final Decision, as well as the evidence of record, fully explain that the reliability benefits of SFERP are only realized if the project is located north of the Martin substation.

CARE next argues that there is "no reason" the project could not be located at San Francisco International Airport rather than in the City of San Francisco. (CARE Pet., p. 3.) This issue has been specifically addressed by expert witness testimony from the California Independent System Operator ("ISO"), Staff, and the City. All of this testimony underscored the necessity of placing the project's generation north of the Martin substation

(which is north of the airport) to meet the City's (and the ISO's) essential reliability goals. Based on such testimony, the Commission made the following finding:

> 2. Generation must be located north of the Martin Substation in order to provide San Francisco with essential electric reliability. (Final Decision, p. 94.)

There is no evidence to the contrary.

CARE next argues that the project is unnecessary because there is an alternative—the TransBay Cable project. (CARE Pet., p. 4.) Yet the witness testimony, including that of the ISO, was that transmission line projects such as TransBay Cable do not provide the same level of reliability as in-City generation. (See, e.g., Exh. 50, p. 3; May 1 RT 24-25.) In fact, the ISO witness testified that no transmission project would suffice in place of in-City generation. (See, e.g., May 1 RT 44-46.) Based on such testimony, the Commission made the following finding:

> 4. The TransBay Cable Project would not provide, for reliability purposes, electrical benefits equal to the combination of area transmission upgrades and generation located in San Francisco. (Final Decision, p. 94.)

There is no evidence to the contrary.

## III. SARVEY'S PETITION

Sarvey raises a purely procedural issue regarding the evidentiary hearing record. He contends that the written and signed witness declarations for the City's witnesses were never made a part of the evidentiary record, and that this invalidates their testimony, or reduces it to "public comment. (Sarvey Pet., p.2.) Staff believes that Sarvey is in error, and that the written declarations were entered into the record as part of Exhibit 95

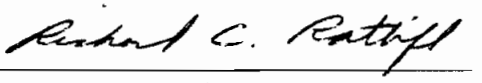
at the May 31, 2006, hearing. (May 31 RT 72.) But even if the written declarations were, by oversight, omitted, it does not matter.

No statute or regulation requires such declarations. They are traditional Commission administrative practice, and allow such testimony to be accepted, if there is stipulation to such, without the witness actually testifying orally at the hearing. However, in this proceeding there was no such stipulation, and all of the significant witnesses gave sworn oral testimony under oath. Sarvey has identified no findings that are not supported by sworn evidence. Moreover, there was no challenge by intervenors to any of the witnesses, their declarations, or their expertise during the entire hearing process. Even if the written declarations were by inadvertence never properly entered, the witnesses pre-filed their testimony, appeared, were under oath, and were subject to cross-examination. This is the "due process" required, not the formality that Sarvey alleges was omitted.

The petitions should be denied.

Dated: November 20, 2006

Respectfully submitted,



RICHARD C. RATLIFF
Senior Staff Counsel IV

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

| | |
|---|---|
| APPLICATION FOR CERTIFICATION FOR THE SAN FRANCISCO *ELECTRIC* RELIABILITY POWER PROJECT | **Docket No. 04-AFC-1**<br>**PROOF OF SERVICE**<br>***Revised 7/5/06** |

**INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:**

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## DECLARATION OF SERVICE

I, Julie Mumme, declare that on November 20, 2006, I deposited copies of the attached **STAFF RESPONSE TO PETITIONS FOR RECONSIDERATION**, in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

and

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. Electronic copies were sent to all those identified on the Proof of Service list above.

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

*[signature]*