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DOCKET
04-AFC-1
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State of California
Energy Resources Conservation
and Development Commission

In the matter of	)	Docket No. 04-AFC-1
	)	
	)	
San Francisco Electric Reliability Project	)	
Power Plant Licensing Case	)	**Prehearing Conference Statement**
	)	

Pursuant to the Committees order dated February 24, 2005 Intervenor Sarvey submits this Prehearing Conference statement.

3-17-06

DATE

PROOF OF SERVICE (REVISED 2/17/06) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 3/17/06

Section 1. The topic areas that a party believes are complete and ready to proceed to evidentiary hearings;

The only topics that are not ready for hearings are Air Quality and Soils and Water.

Section 2. The topic areas that a party believes are not complete and not yet ready to proceed to evidentiary hearings, and the reasons therefore;

1) **Hazardous Waste**

The applicant has failed to complete the site characterization for the SFERP accordingly Intervenor is unable to asses the contamination at the site and the possible effects on worker safety and public health form the construction phase of the project and possible contamination of Bay resources from storm water runoff . Results of the final field sampling plan must be available and the parties need time for their experts to evaluate the results from the site characterization. Intervenor has an outstanding data requests number 17 and 18 which remain unanswered.

17. Please prepare and provide a SC/CMS report for the SFERP site.
18. Please provide an analysis of soil samples and investigate the presence of asbestos contamination of the site.
(Robert Sarvey SFERP Data Request 17,18 Dated 6-24-06)

Discovery on this issue is still open since the CEC Staff is still requesting information for its analysis on this issue. The status of this data request demonstrates the prejudicial application of the discovery rules and unequal treatment of the parties in this proceeding. While CEC Staff is allowed to ask for evidence in soils which provide information to my data requests 17 and 18 I am not allowed to compel the applicant to fulfill his CEQA duty to analyze all **reasonably foreseeable projects** that would contribute to a cumulative air quality impact in the project area as requested in my data request # 6 presented below.

Data Request
1-6. Please provide a Cumulative Air Quality Impact analysis including the impacts from the Illinois Street Bridge project, the Muni Maintenance Center, the pending Potrero Power Plant Project (00-AFC-4) suspended till November 15, 2005 along with **other reasonably foreseeable development projects.** Please discuss the Environmental Justice implications of these developments on air quality in the project area.

Air Quality

In Supplement A issued in May of 2005 applicant promised to provide a completed PM-10 mitigation plan to the CEC Staff and the parties by June of 2005. The applicant now proposes to provide the details of the plan in the compliance phase of the project. As this is the only significant impact that has agreed upon by all parties the PM 2.5 mitigation plan must be completed for the parties to analyze the CEQA efficacy of the plan. Air Quality and Public health will not be ready for adjudication until the entire plan has been presented to all the parties. No cumulative impact analysis exists it must be provided to fully understand project impacts. Answers to Intervenor Sarvey data request 6 are necessary to have hearings on air quality.

Section 3. The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic;

Air Quality

Cumulative Impact Analysis

Neither applicant nor staff has completed a cumulative impact analysis that includes all reasonably foreseeable projects near the proposed SFERP. The applicant the City and County of San Francisco through the Port Commission Resolution 01-44 has approved the Bode Gravel and Mission Valley Rock lease at Pier 92, RMC Lonestar, British Pacific Aggregates/Hanson Aggregate, ISG Resources, Coach USA, Waste Management Inc., the proposed waste recycling facility, the Muni Bus parking and repair facility, the Mission Bay Development project, the City Department of Parking and Traffic Impound facility, the expansion of the wastewater treatment plant , and the Illinois street bridge project. Evidence in the record indicates that these projects have a significant cumulative impact. The applicant who sponsors these projects has knowingly excluded them from the cumulative impact report. The applicant and staffs failure to model these sources and predict the impacts in conjunction with the SFERP are a violation of CEQA and especially heinous in light of the applicants admission throughout the proceeding that the residents of Southeast San Francisco are overburdened by industrial pollution. The Committees March 6, 2006 denial of intevenors motion to compel does not relieve the applicant's and the Commission's duty under CEQA to fully analyze the environmental impacts of the proposed project in conjunction with the applicants other projects all within a couple miles of the SFREP.

Proposed PM-10 and PM 2.5 mitigation

Throughout this project the applicant has promised to present a completed PM-10 mitigation plan. Now after nearly two years the Applicant proposes to delay the completion of the plan till the compliance phase of the project in order to evade evidentiary scrutiny of the adequacy of the proposed mitigation. The plan must be fully presented before the commencement of the hearings to allow the experts to analyze and determine the CEQA efficacy of the plan. The hearing should not commence until the plan is completed. The PM 2.5 impacts are considered by all parties as significant and the applicants admission that the community is overburdened with industrial pollution make it essential that the mitigation be effective. The proposal as it stands is inadequate and it is impossible to determine if local impacts will be mitigated to a less than significant impact without the PM 2.5 mitigation and community benefits plan.

Local Air Quality impacts to the minority community

The SFERP has greater local impacts than existing in city generation. The project is in violation of the Maxwell ordinance and environmental justice principals.

NOx Mitigation

The proposal to use ERC's from 1985 to mitigate the projects NOx emissions are unacceptable and in violation of CCSF LORS. The applicant poses to use ERC's from the very plant that it touts will be shut down to enhance air quality in the project area. Negative health effects from the pollution exist today in the year 2006 the NOx ERC's from 1985 will not mitigate the SFERP impacts in the year 2007 over 22 ears later. CCSF LORS require and environmental justice principals require current real-time mitigation schemes to offset any increases in pollution from power generation in Southeast San Francisco. EPA has disallowed the use of pre 1990 ERC's in areas of nonattainment and consultation with the EPA is necessary to determine LORS compliance.

Ammonia Emissions

The project's 47 tons per year of ammonia emissions if left unmitigated have the potential to form a significant amount of secondary PM 2.5. CARB and EPA regulations encourage a 5ppm ammonia slip level. The 5ppm ammonia slip level is feasible. There are other alternatives for NOx control that do not require ammonia. The project should be required to implement all feasible mitigation measures to eliminate or minimize the ammonia emissions.

Background PM 2.5 levels

The applicant and staff use the Arkansas Street monitoring station as the representative background for impact assessment. The Hunters Point Monitoring station shows higher PM 2.5 levels and should be used to analyze impacts to the minority community

Public Health

Non Cancer effects are underestimated

In assessing the risk of non cancer effects both the applicant and staff fail to consider the effects of criteria air pollutants on human health. Their methodology ignores the well documented effects of criteria air pollutant impacts below current state standards and in conjunction with the overburdened minority population that already has elevated instances of asthma and cardio pulmonary disease. Monitoring results from the Bayview Hunters Point station reveal exceedances of the federal 24 hour PM 2.5 standard. The Hunters Point monitoring station demonstrates a consistently higher 24 hour PM 2.5 level than the Arkansas monitoring station which was used to evaluate project impacts. Annual PM 2.5 exposures are not evaluated for impacts to the minority residents.

Cumulative Toxic Impacts

The applicant as the government body that is supposed to protect the citizens should analyze the cumulative effects of hazardous air pollutants on the Bayview and Potrero residents. The applicant has testified that the residents of the Bayview and the Potrero Hill area already are overburdened by Toxic emissions form power plants and other industrial sources. The Air Resources Board has identified an elevated cancer risk in southeast San Francisco nearly 5 times the state average.

Purpose and Need

The Action Plan for San Francisco

The action plan for San Francisco will result in the net removal of 300 Megawatts of in city generation jeopardizing reliability. The action plan increases the Peninsulas reliance on imported generation in an area where a natural disaster is certain to occur. The action plan eliminates fuel diversity for power production units in San Francisco.

Release the Hunters Point Power Plant form its RMR agreement

The siting of the SFERP has nothing to do with the shutdown of the Hunters Point power plant. Several transmission improvements are responsible for the

release and shutdown of the Hunter Point Power Plant. The Hunters Point Plant will be closed before the SFERP begins construction

Release The Potrero Power Plants units 3,4,5,6 from their applicable RMR agreements

The SFREP does not guarantee the release of the Potrero Units from their RMR agreements nor does it guarantee the shutdown of the Potrero Project.

The SFREP will not support environmental Justice

The SFERP will increase local impacts of pollution in the project area and increase hazards form the transportation and storage of hazardous materials. The SFERP will increase electricity bills in San Francisco because of its high generation costs.

Environmental Justice

The SFREP does not support Environmental Justice

The project does not have any effect on the closure of the Hunters Point Power plant. The project applicant has no control over the operation of the Potrero units 3,4,5,6. Mirant may run he project more than ever due to an increased price in the market for electricity or increased power demand on the SF Peninsula. The applicant has not secured an agreement with Mirant to shut down the Potrero Plant. The project will increase local impacts to the minority community and the PM-2.5 mitigation plan is ineffective in the PM season as proposed. The project will be one the largest hazardous material sites in San Francisco and will increase the transport of hazardous materials through the project area increasing the probability of an accidental release. The SFERP will be one of the most expensive generating units in the PGE control area and will increase the average cost of generation to ratepayers in the minority community. Simply put the City is entering the power market and has no concern for the minority residents in the area. If the City did care it would incur the alleged increased costs of alternative sites and make an attempt to close current polluting in city generation without adding another pollution source in the minority community. The applicant is siting several other polluting facilities in close proximity to the SFERP the Bode Gravel and Mission Valley Rock lease at Pier 92, RMC Lonestar, British Pacific Aggregates/Hanson Aggregate, ISG Resources, Coach USA, Waste Management Inc., the proposed construction waste recycling, the Muni Bus parking and repair facility, the Mission Bay Development project, the City Department of Parking and Traffic Impound facility, and the Illinois street bridge project all while refusing to do a cumulative impact report or a cumulative Toxic health risk assessment.

Alternatives

Staff's alternative analysis is flawed and rejects the envioromentally superior alternative. Applicant's alternatives analysis is limited and does not fully examine a full range of all alternatives sites and technologies. Nieher Staff or Aplicant properly evaluate the environmental Justice considerations in the alternatives analysis.

Reliability

The SFERP reduces reliability on the SF Peninsula. Other alternatives are superior.

Hazardous Materials Handling

The applicant's analysis ignores the risks of ammonia transportation in the minority community and along the entire route. The environmental justice considerations are unaddressed. Staff analysis underestimates the risk of an accidental release and the EJ considerations of the hazardous materials transportation in minority community. The streets in San Francisco are inherently more dangerous that the average street evlauated in DOT statistics. Staff fails to examine the entire transportation route they only examines a limited portion of the route therefore their risk analysis understates the probability of an accidental release. The transportation of Sodium Hypochlorite and other hazardous materials through the minority community is not addressed. Staff and applicants analysis only considers fatalities and not serious injuries and disruption to public health services from an ammonia transportation incident. Seismic issues are not adequately addressed

Efficiency

The project uses utilizes four turbines in simple cycle mode which will result in the waste of natural gas resources. No analysis of combined cycle fuel savings is included in staffs or applicants analysis.

Waste Management

Asbestos and soil contamination impacts are only mentioned but not addressed in the applicant's analysis. The extent of Soil contamination is still unknown due to the incomplete site characterization of Soils.

Geology

The project is built on landfill which has very little stability and is very likely to liquefy in an earthquake. Recent studies on earthquakes on structures built on infill materials in earthquake zones have increased understanding of the seismic effects on stratums built on landfills. The applicants and Staffs analysis do not incorporate the most recent research on this issue.

Worker Safety and Fire Protection

Seismic Issues and hazardous material storage are not properly evaluated

Section 4. The identity of each witness a party intends to sponsor; the topic area(s) upon which each witness will present testimony; a brief summary of the substantive testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness:

Air Quality: 30 minutes

Bill Powers and Robert Sarvey as a panel

Air Quality Impacts of the project
Air quality impacts of the project as compared to in city generation,
Ammonia Impacts
PM 2.5 mitigation
Cumulative Impacts

Environmental Justice 30 minutes

Francisco Da Costa
Cumulative impacts
Local projects impacts,
CCSF Discrimination Policies
Maxwell Ordinance

Robert Sarvey 10 minutes

Project impacts to Minority ratepayers

Cultural Resources 15 minutes

Francisco Da Costa

Soils and Water time unknown

Robert Sarvey and John Lynch as a panel (dependent on the results of site characterization)

Hazardous Materials 10 Minutes

Robert Sarvey

Resumes will be provided and testimony is outlined above in section 2

Section 5. Topic areas upon which a party desires to cross-examine witness(es), a summary of the scope of such cross-examination, and the time desired for such cross-examination;

[redacted]

Scope of Examination is explained above in disputed areas.

Section 6. A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply;

Tentative Exhibit List (Subject to change)

1. Intervenor City and County of San Francisco Prehearing Conference statement for the Potrero 7 power Plant 00-AFC-04 Docket number 25306 dated 4/16/02

2. Intervenor City and County of San Francisco comments on PSA Mirant Potrero Unit 7 00-AFC-04

3. Monitoring data from the BAAQMD website for San Francisco http://gate1.baaqmd.gov/aqmet/aq.aspx Air Quality

4. Projected emission Inventories CARB website http://www.arb.ca.gov/app/emsinv/fcemssumcat_query.php Air Quality

5. Memo from John Seitz EPA to Dave Howekamp Pre 1990 ERCs, dated August 24, 1994. Docketed August 29, 2003. Air Quality

6. ARB Guidance for Power Plant Siting and Best Available Control Technology
http://www.arb.ca.gov/energy/powerpl/guidocfi.pdf Air Quality

7. Expert Testimony of Bill Powers and Robert Sarvey Air Quality

8. Expert Testimony of Francisco Da Costa Environmental Justice

9. Expert Testimony of Francisco Da Costa Cultural resources

10 Expert Testimony of Robert Sarvey ratepayer impacts

11. Expert Testimony of Robert Sarvey Hazardous Materials

12 ARB Report to the Legislature on NOx Control Air Quality
http://www.arb.ca.gov/energy/noxlegrpt.htm

13. Liqufication Risks Maps and article Geological Hazards and Resources
http://www.usgs.gov/newsroom/article.asp?ID=1448

7. Proposals for hearing dates, briefing deadlines, vacation schedules, and other scheduling matters; and

Intervenor Sarvey will not be available from April 15 -22 2006 due to vacation schedule

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

APPLICATION FOR CERTIFICATION FOR THE SAN FRANCISCO ELECTRIC RELIABILITY PROJECT

Docket No. 04-AFC-01
PROOF OF SERVICE
Revised 2/17/06

DOCKET UNIT

Instructions: *Send an original signed document plus 12 copies* ***or*** *an electronic copy plus one original paper copy to the address below:*

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Also send a printed ***or*** *electronic copy of all documents to each of the following:*

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DECLARATION OF SERVICE

I, **Laura J. Murphy**, declare that on **March 17, 2006**, I deposited copies of the attached **Pre-Hearing Conference Statement** in the United States mail at Sacramento, California with first class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. I declare under penalty of perjury that the foregoing is true and correct.

Laura J. Murphy

[signature]

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