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04-AFC-1
DATE NOV 21 2006
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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:	)	
	)	
Application for Certification	)	Docket No. 04-AFC-01
For the San Francisco	)	
Electric Reliability Project	)	

RESPONSE TO THE PETITIONS FOR RECONSIDERATION OF CARE AND MR SARVEY BY THE CITY AND COUNTY OF SAN FRANCISCO

The City and County of San Francisco (CCSF or City) respectfully responds to the petitions for reconsideration filed by CAlifornians for Renewable Energy, Inc. (CARE) and Mr. Sarvey in response to the California Energy Commission's (CEC or Commission) final decision approving the San Francisco Electric Reliability Project (SFERP). CARE's petition for reconsideration presents arguments made by CARE during the course of the proceedings that were not persuasive then and are no more persuasive now. Mr. Sarvey's petition is factually incorrect. Both petitions should be denied.

I. CARE's Petition for Reconsideration Is Not Persuasive and Should be Denied.

CARE's petition for reconsideration includes three arguments: 1) that there is or may be a design change associated with the SFERP that requires further study; 2) that either locating four combustion turbines at the San Francisco International Airport (SFIA) or the Transbay Cable Project should be preferred to proceeding with the SFERP; and 3) that it was inappropriate for the Commission to give more weight to the testimony of the reliability witness for the California Independent System Operator (CAISO) than to that of CARE's reliability witness. These arguments are neither new nor persuasive and

do not provide grounds for reconsideration of the Commission's final decision in this matter.

A. There Are No Proposed Design Changes Associated With the SFERP That Require Further Study.

The CARE petition for reconsideration makes reference to correspondence between Barbara Hale of the San Francisco Public Utilities Commission (SFPUC) and Tim Haines of the California Department of Water Resources (DWR) dated August 14, 2006, to suggest that the design of the SFERP will change and that there will be associated impacts that need to be studied. CARE first attempted to raise identical concerns in its September 20, 2006, comments on the Presiding Member's Proposed Decision (PMPD).

The DWR correspondence was addressed during the subcommittee hearing on September 25, 2006. At that time, the City was unaware that the document had been docketed. The City still has no information about who docketed the August 14, 2006 letter, when or for what purposes. The exchange was not introduced into the evidentiary record by any party. The letter is an exchange between DWR and the City associated with the responsibility of DWR to ensure that the City's expenditures on the project are reasonable and the City's work to justify the costs of its proposal. In the City's view, the exchange is not relevant to the Commission's proceeding since the City has adequately defined the SFERP to the Commission and sought (and obtained) approval of the SFERP in accordance with that description.

The correspondence merely reflects the fact that the City is in the process of seeking to fully justify all aspects of the project approved by the Commission to DWR. If at some point, DWR and the City are unable to agree on a component of the project

approved in the final Commission decision, the City will have to determine whether to proceed with that component or seek an amendment to the final decision. The Commission's rules have a process, that the City will follow, in the event that any changes are identified in the future. Siting Regulations, Section 1769.

CARE suggests that the August 14, 2006 correspondence indicates that the SFERP will operate in excess of the performance guarantees of the vendors or in accordance with some kind of "unproven design." The August 14, 2006 correspondence contains no such information. Rather, the correspondence indicates that the SFPUC will seek to optimize the design to maximize the output of the plant. Such optimization is a routine and appropriate step in the detailed design that will precede construction, and will include a review of alternatives to maximize the efficiency of the plant parasitic load. As stated earlier, should any modification be identified that departs from the scope of the project approved in the final decision, the City will comply with the CEC's rules to address such modifications.

CARE suggests that the use of chillers will change the impacts of the SFERP on air quality. In fact, the use of chillers was contemplated in the City's project description, see Exh. 15, Supplement A, Vol. 1, at 2-3, and the air quality analysis assumed the use of chillers, see id. at 8.1-25.

B. The Final Decision Properly Finds that the SFIA Alternative and the Transbay Cable Project Alternative Do Not Meet a Key Project Objective.

CARE's petition for reconsideration makes reference to the fact that a single combustion turbine project that the City is pursuing at SFIA is being designed to provide backup power to SFIA and, hence, serve an "Airport" purpose and provide regional benefits. CARE implies that these facts support siting four combustion turbines at SFIA.

CARE also contends that the Transbay Cable Project should be preferred over the SFERP. CARE stresses that pursuant to the California Environmental Quality Act (CEQA), a reasonable range of alternatives must be analyzed. CARE avers, without any logic, support or citation to the evidentiary record that "[d]edication of the airport turbine for airport use only in an emergency clearly further limits the SFERP's ability to meet the reliability criteria for the peninsula necessary to shut down the Potrero 3 unit." CARE petition for reconsideration at 5.

In fact, the alternative of siting all four combustion turbines at SFIA was thoroughly analyzed by staff, see Final Decision at 19; Exh. 46, Final Staff Assessment (FSA) at 6-26 through 6-35, as was the Transbay Cable Project, see Final Decision at 19; Exh. 46, FSA, at 6-56 through 6-75. The SFERP was preferred over the SFIA Alternative and the Transbay Cable Project because these projects would not satisfy a key requirement of the CAISO for closure of in-City generation, namely replacement in-City generation, and, hence, would not meet a key objective of the SFERP. Final Decision at 21.

CARE's petition for reconsideration further argues that because the SFERP is one component of several required to eliminate the reliability need for the Potrero Power Plant, alternatives such as the SFIA Alternative or the Transbay Cable Project, that similarly would be one component of several, should be preferred. However, as noted during oral arguments, the CAISO has made it clear that some in-City generation is required to maintain reliability within San Francisco. Siting replacement in-City generation is probably the most difficult component of a plan to shut down the Potrero Power Plant. Neither the SFIA Alternative nor the Transbay Cable Project comprises this

difficult component. Accordingly, it is appropriate to approve the SFERP. CARE also argues that the SFERP will not provide the necessary in-City generation to replace the Potrero Power Plant. This is contrary to the evidentiary record. The Final Decision properly finds, based on that record, that the CAISO has determined that the placement of three combustion turbines, such as the SFERP, north of the Martin substation will permit the shutdown of Potrero Unit 3. Final Decision at 19, footnote 8.

CARE's petition for reconsideration also complains that there is no assurance that the SFERP will close down the Potrero Power Plant. The Final Decision specifically so finds. In this regard, it is unclear what CARE is concerned about. The Final Decision also properly finds that the SFERP creates an opportunity for the closure of the Potrero Power Plant because, unlike the SFIA Alternative or the Transbay Cable Project, it provides adequate replacement in-City generation. This distinction provides an adequate basis for selecting the SFERP over the alternatives preferred by CARE, which would not provide the opportunity for closure of the Potrero Power Plant because the most contentious item of a plan to do so would not be in place.

C. The Final Decision Properly Give More Weight to the CAISO Reliability Witness Than to CARE's Reliability Witness.

CARE's petition for reconsideration suggests that the reliance of the Final Decision on testimony by the CAISO reliability witness over that of CARE's reliability witness is evidence of racial and economic discrimination. CARE petition for reconsideration at 6. CARE notes that both CARE and the CAISO are not-for-profit public benefit corporations. CARE's claims ignore the credentials of the CAISO witness, Mr. Tobias, and those of the City reliability witness, Mr. Flynn, whose testimony coincided with that of Mr. Tobias. Both these persons have extensive transmission

planning experience and have expended much time addressing the reliability needs of San Francisco, in particular. See Exh. 50, Testimony of Lawrence Tobias on behalf of the California Independent System Operator, Attachment 1; 5/31/2006 Tr. (Flynn) at 238: 18-23. In contrast, Mr. Homec, CARE's witness, admitted that he is not a transmission planning expert. 5/31/2006 Tr. (Homec) at 259-60. Moreover, Mr. Homec's testimony was exclusively based on his interpretation of ambiguous testimony from another witness that related to need in the year 2006. Exh. 97. In these circumstances, the Commission properly gave more weight to the testimony of Mr. Tobias.

In sum, CARE's arguments were properly rejected in the Commission's Final Decision, and there is nothing in CARE's petition for reconsideration to make them more persuasive at this time.

II. Mr. Sarvey's Contentions Regarding the Resumes and Declarations of City Witnesses Are Incorrect.

Mr. Sarvey's petition for reconsideration alleges that the resumes and declarations of certain City witnesses are not included in the final exhibit list or anywhere else in the evidentiary record. This contention is incorrect. Moreover, the appropriate time for Mr. Sarvey to challenge the acceptance of any testimony as expert testimony was during the evidentiary hearings and not in a motion for reconsideration.

Consistent with the directions in the notice of a prehearing conference issued by the Commission on February 24, 2006, the City attached the qualifications and declarations of the witnesses listed in Mr. Sarvey's motion for reconsideration to its March 17, 2006, Prehearing Conference Statement. The qualifications and declarations were made part of exhibit 95 on the last day of evidentiary hearings. 5/31/06 Tr. at 72:

11-23. The Exhibit List indicates that Exhibit 95 was introduced into evidence on May 31, 2006.

Moreover, if Mr. Sarvey had an objection to the introduction of testimony by City witnesses either orally or by declaration, the appropriate time to raise a concern would have been at the evidentiary hearings and not in a petition for reconsideration. All parties were served the qualifications and declarations of the City's witnesses as attachments to the City's Prehearing Conference Statement. Before accepting any testimony by declaration, the hearing officer asked whether there was any objection by any party. If Mr. Sarvey had an objection, he should have raised it at that time. Furthermore, if Mr. Sarvey had any question or concern about the qualifications of any City witness providing oral testimony, the time to raise such concerns was similarly during the evidentiary hearings.

In sum, the petitions for reconsideration of CARE and Mr. Sarvey should be denied.

Dated: November 21, 2006

Respectfully submitted:

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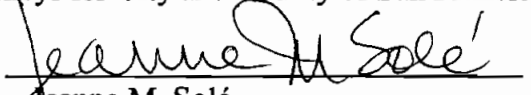
By: 

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In the Matter of: Application for Certification for the SAN FRANCISCO ELECTRIC RELIABILITY PROJECT	)))))	**Docket No. 04-AFC-1**

PROOF OF SERVICE

I, Kiana V. Davis, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, California 94102.

On November 21, 2006, I served the following document(s):

RESPONSE TO THE PETITIONS FOR RECONSIDERATION OF CARE AND MR SARVEY BY THE CITY AND COUNTY OF SAN FRANCISCO

on the following persons at the locations specified on the attached service list in the manner indicated on the attached service list:

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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

Executed on November 21, 2006, at San Francisco, California.

Kiana V. Davis

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