CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JEANNE M. SOLÉ
Deputy City Attorney
DIRECT DIAL: (415) 554-4619
E-MAIL: jeanne.sole@sfgov.org

May 17, 2005

DOCKET
04-AFC-1
DATE MAY 17 2005
RECD. MAY 19 2005

Mr. Poli A. Marmolejos
Director
U.S. Department of Energy
Office of Civil Rights and Diversity
1000 Independence Avenue, S.W.
Washington D.C. 20585
E-mail: poli.marmolejos@hq.doe.gov

Re: **Californians for Renewable Energy, Inc., et al v. California Independent System Operator, Inc.: DOE Complaint Nos. 03-001-HQ; 03-002-HQ; 03-003-HQ**

VIA ELECTRONIC MAIL AND US MAIL

Dear Mr. Marmolejos:

The City hereby submits a response to the United States Department of Energy's (DOE) information request received via electronic mail on May 9, 2005.

Information Request:

The Department of Energy is in the processes of preparing a Letter of Finding in the subject complaint. In order to determine jurisdiction in the matter, we would like to find out whether the City and County of San Francisco received any financial assistance from the Department during the period relevant to the complaint. Please provide us with documentation supportive of your response. You may also provide any further arguments, documents, etc., that supports your agency's position.

Response:

The City reiterates its position that it has not discriminated in the siting of the combustion turbines, nor will it do so in the future. As explained in the City's letter dated April 27, 2005, the City is, to the contrary, pursuing development of two small power projects in order to support the retirement of two existing in-City generating plants: the Hunters Point power plant and the Potrero power plant. The City has prioritized this objective in part to address environmental justice concerns that arise from the location of these old dirty power plants in Southeast San Francisco.

As set forth in the City's April 27, 2005, letter, the City's efforts to accomplish the objective of closing down the Hunters Point and Potrero power plants date back several years. In November 2004, the City's efforts received substantial impetus when the California Independent System Operator's Board of Governors adopted an Action Plan which details the requirements to close each of the units at the Hunters Point and Potrero power plants. As CARE details in its May 5, 2005, response to the City's letter, the current expectation, confirmed in the Action Plan, is that the Jefferson-Martin transmission line will provide for closure of the Hunters Point power plant. The City has been an aggressive supporter of the Jefferson-Martin transmission line in order to

accomplish this objective. The City has also persevered in its efforts to develop its power projects in order to provide the basis for closure of the Potrero power plant. Accordingly, the information contained in CARE's response regarding the impact of the Jefferson-Martin transmission line on the need for the Hunters Point power plant is inapposite.

The City also reiterates its position that in addition to failing to substantiate its claim that the City is pursuing development of the combustion turbines in a discriminatory fashion, CARE's complaint is premature. The City has not taken and cannot take a final position on siting until after the proposed project is subjected to a thorough environmental review by the California Energy Commission (CEC) under the California Environmental Quality Act (CEQA). This review will include an examination of the precise issues that CARE details in its response to the City's letter, including whether the project is needed to accomplish the stated objective, whether there are alternatives that would accomplish the objective without significant impacts, and a review of the environmental justice considerations. It is only after this review and licensing are concluded that the City will make a final determination about the project. If DOE were to undertake an investigation of CARE's claims at this time, it would be duplicating the efforts of the CEC and the City's own deliberations. Moreover, DOE would be undertaking the investigation without knowing the ultimate outcome of the CEC and City's deliberations or the package of mitigation measures that will be put into place to ensure that the project adequately addresses the environmental justice concerns that have been openly acknowledged by the City in its application for certification. In other words, the DOE would be undertaking an investigation of an action, alleged to be discriminatory, that has not yet occurred.

Your request for information asks "whether the City and County of San Francisco received any financial assistance from the Department during the period relevant to the complaint." The City considers that the period relevant to the complaint has not yet occurred since the City has not made a final siting determination about its combustion turbine projects. Action by the City is expected to occur in the first two quarters of 2006 after the CEC issues its decision on licensing. The City does not know at this time whether it will be the recipient of financial assistance by DOE at that time.

Without waiving the foregoing argument, in response to your request, the City Attorney has surveyed relevant City departments and obtained the following preliminary information, which it is in the process of confirming, about the current and past receipt of assistance from DOE. This information will be supplemented if the City Attorney obtains further information. The City does not consider that this information supports jurisdiction regarding the complaint by the DOE since none of the assistance is to be provided in 2006 when the City is expected to make a determination about the siting of its combustion turbine project. See e.g. Niehaus v. Kansas Bar Ass'n, 793 F.2d 1159, 1163 (10th Cir. 1986)(plaintiff could not sustain an action for discrimination in employment under the Rehabilitation Act of 1973 because the alleged federal funding ended eight months before the plaintiff was employed). Moreover, the City does not concede that any of the assistance received is financial assistance within the meaning of Title VI giving rise to a claim under that statute.

The City Department of the Environment received financial assistance for clean air vehicle subsidies and electric vehicle charging infrastructure through the DOE sponsored Clean Cities. These grants (known as State Energy Program grants) were administered in California by the California Energy Commission. The relevant grants have been closed for some years.

In 2004, the San Francisco Public Utilities Commission received a Solar Roof grant from DOE in the amount of $43,652.28. The funds have been expended and the final report was submitted. The San Francisco Public Utilities Commission also received technical assistance related to the Hunters Point Naval Shipyard.

There is a Memorandum of Understanding between the City and DOE (attached) which is set to expire at the end of 2005.

Finally, the City notes that the contracts sited by CARE in response to the City's April 27, 2005, letter do not provide support for DOE jurisdiction regarding CARE's complaint. It has been well established that the mere existence of contracts does not provide a basis for a claim of financial assistance by an agency. See e.g. Jacobson v. Delta Airlines, 742 F.2d 1202 (9th Cir.1984).

Very truly yours,

DENNIS J. HERRERA
City Attorney

Jeanne M. Solé

Jeanne M. Solé
Deputy City Attorney

cc: Service List

A CITY OF SAN FRANCISCO AND U.S. DEPARTMENT OF ENERGY MEMORANDUM OF UNDERSTANDING:

San Francisco Green Power Program

THIS MEMORANDUM OF UNDERSTANDING (MOU) is by and between the *City and County of San Francisco* (City) as represented by the *San Francisco Public Utilities Commission* (SFPUC), with offices located at1155 Market Street, San Francisco 94103, and the San Francisco Department of the Environment (SFE), at 11 Grove Street, San Francisco, CA, 94102, and the United States *Department of Energy* (DOE) with headquarters located in Washington, D.C. and the Regional Office located in Seattle, Washington.

The *City and County of San Francisco* has begun the development and implementation of large renewable energy and energy efficiency programs. Propositions B & H, approved by voters in 2001, authorize the issuance of over $100 million in revenue bonds to implement renewable energy and energy efficiency programs for City municipal, residential, and commercial sectors.

The *U.S. Department of Energy* is the primary Agency responsible for setting national energy policy; DOE's Office of Energy Efficiency and Renewable Energy has a pivotal role in conducting research and developing new energy technologies, and the Seattle Regional Office has the responsibility to deploy those technologies throughout the Pacific States.

DOE operates multiple programs including the Build and Rebuild America Programs, Clean Cities Program, Million Solar Roofs Program, and Energy Star for Buildings program. Building upon the collaboration established through discussions, support from these programs and the foundation for an ongoing relationship has been set.

The *City and County of San Francisco* and *U.S. Department of Energy* agree that a clean, reliable, and affordable energy supply is critical to the prosperity of a community, the well being of its citizens, and the integrity of its environment.

The *City and County of San Francisco* and the *Department of Energy* recognize that the City offers an ideal environment in which to demonstrate how cooperative activities between the City and Federal government can support clean energy and environmental objectives, and to demonstrate how technologies, policies, and resources can be integrated into local solutions that address current and future energy challenges. A review of the City's energy and environmental policies, procedures, and broad set of local stakeholder involvement can provide understanding to DOE of how to strengthen its community-based programs.

The *City and County of San Francisco* and the *Department of Energy* have identified specific areas of common opportunity. These are identified in Attachment B, Work Plan.

To achieve these ends:

1) The *Department of Energy* will provide expertise to support and assist the City in identifying practical technologies, policies, programs, and projects associated with renewable energy and energy conservation as related to the objectives jointly established herein.

2) The *City and County of San Francisco* agrees to develop a project plan, and will provide the coordination required with local, and federal partners, and will allocate necessary staff resources to meet the objectives.

3) Nothing contained in this MEMORANDUM OF UNDERSTANDING shall grant to either party the right to make commitments of any kind for or on behalf of any other party without the prior written consent of that party.

4) As currently structured, the MOU will begin November 12, 2002, and will continue until December 31, 2005.

For purposes of this MEMORANDUM OF UNDERSTANDING, the respective points of contact shall be:

For The *San Francisco Public Utilities Commission*
Patricia Martel
General Manager
San Francisco Public Utilities Commission
1155 Market Street, 4th Floor
San Francisco, CA 94103

For the *San Francisco Department of the Environment*
Jared Blumenfeld
Director
San Francisco Department of Environment
11 Grove Street
San Francisco, CA 94102

For *U.S. Department of Energy*:
Kathy M. Pierce
Director
Seattle Regional Office
Department Of Energy
800 Fifth Avenue, Suite 3950
Seattle, WA 98104-3122

IN WITNESS WHEREOF, the Parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed as of the effective date last written below.

U.S. Department of Energy

By:_____

Date:_____

City of San Francisco

By:_____

Date:_____

City of San Francisco

By:_____

Date:_____

ATTACHMENT A

ROLES AND RESPONSIBILITIES

The *City and County of San Francisco* shall:

1) Take all reasonable actions to ensure that the collaboration between local, State, and Federal partners will be guided by the goal of improving the region's quality of life. The San Francisco Public Utilities Commission and the San Francisco Department of the Environment are designated as the lead on behalf of the *City and County of San Francisco.* The parties agree to make all reasonable efforts to complete these tasks within the three-year time frame established for this agreement. The Parties understand that the *City and County of San Francisco* will facilitate and oversee the development and implementation of the energy efficiency and renewable energy programs, according to a schedule mutually agreed upon by the parties. However, ultimate responsibility for successful implementation of this collaborative project is dependent upon the capabilities and commitment of all participants, as well as the availability of financial resources.

The *U.S. Department of Energy* shall:

1) Take a leadership role in providing project information, training materials, implementation tools, and a variety of technical assistance services for the duration of this agreement.
2) Facilitate technical and policy assistance phone sessions with the *City* staff. These sessions will also help to track participants' progress.
3) Provide a minimum of semi-annual on-site visits in San Francisco at a mutually agreeable time.
4) Provide templates for press releases, and samples of outreach materials (articles, pamphlets, etc.) to assist participants with their outreach efforts.

ATTACHMENT B

WORK PLAN

1. *Support implementation of the Renewable and Energy Efficiency Goals of the City.*
   Provide educational assistance regarding the distributed generation scenario. Assist with education of the public, Board of Supervisors, stakeholders. Focus on: 1) distributed energy/resources 2) renewables; 3) efficiency; and 4) movement toward a "hydrogen" community.

2. *Support renewable energy, energy efficiency, and distributed energy generation at Hunters Point Naval Shipyard (HPNS).*

   Investigate opportunities to deploy energy efficiency, renewable energy, and other distributed energy technologies as part of the redevelopment of HPNS. Also evaluate the potential to create a "green power park" there. This would involve examining the potential for: a) developing residential and commercial building guidelines which incorporate energy efficiency and renewable usage; b) providing design reviews for commercial and residential buildings; c) working with the builders to implement projects; d) arranging financing; and work with the City to evaluate the potential for a green power park.

3. *Support Green Development on Treasure Island*

   This Navy owned site is being conveyed to the City Redevelopment Agency. There are potential opportunities for wind energy and a fuel cell demonstration project. The best opportunities for distributed generation and energy efficiency appear to be with the Department of Labor training facility, the Culinary Institute, and with housing on the island. DOE will work with the City to evaluate potential sites.

4. *Share Information on the City's Solar Experiences*

   DOE will host a forum for Million Solar Roofs Partners and other cities with new and existing solar programs, to share success stories and collaborate with regard to the challenges/solutions of replicating all or part of San Francisco's solar bond financing experiences. DOE can help organize and facilitate the peer forum, bringing experts together. Hawaii and Nevada have expressed interest with this.

5. *Support a School Program*

DOE will identify potential educational programs for target schools in key communities. Schools that will have solar installations through the City solar Plan will be targeted. DOE will explore models, institute pilot programs, and provide curriculum for delivery to schools.

Possible Future Activities:

6. *Introduce Energy Storage To The Muni Transportation System*

The City is interested in exploring the potential for energy storage applications in the Muni system. The idea is to capture regenerative braking energy with flywheels when trains enter stations and to use this stored energy to accelerate the trains out of the stations. This has been proven to reduce energy usage by over 30 percent, and significantly reduces peak loads on the system.

8. *Investigate the Benefits of Energy Storage For the City*

The City and the DOE are interested in studying the potential and benefits for energy storage in City facilities. Discussions will lead to the exploration of the concept.

9. *Identify Further Opportunities and Share Successes*

A. Hold regular meetings and conference calls to review progress and opportunities.

B. Identify and monitor accomplishments

C. Publicize MOU successes.

PROOF OF SERVICE

I, **PAULA FERNANDEZ**, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within 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 5/17/2005, I served the attached letter regarding Californians for Renewable Energy, Inc., et al v. California Independent System Operator, Inc.: DOE Complaint Nos. 03-001-HQ; 03-003-HQ on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as set forth in the attached service list and served the named document in the manner indicated below:

☒ **BY MAIL**: I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, City Hall, 1 Dr.Carlton B. Goodlett Place, Room 234, San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE**: I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

☐ **BY FACSIMILE**: I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was (415) 554-4763. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

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

Executed 5/17/2005, at San Francisco, California.

PAULA FERNANDEZ

N:\PUCW\PFERNAND\PROOFOF.SER\5-17pos.doc

Keith Tisdell
613 LaSalle Avenue
San Francisco, CA 94124

Lynne Brown-Vice President
Californians for Renewable Energy, Inc.
(CARE)
Resident, Bayview Hunters Point
24 Harbor Road
San Francisco, CA 94124

Sharon Green-Peace
613 LaSalle Avenue
San Francisco, CA 94124

Karen Pierce, President
Bayview Hunters Point Community Advocates
5021 Third Street
San Francisco, CA 94124

Caroline Washington
137 Atoll Circle
San Francisco, CA 94121

Don Paul, President
From the Ground Up
1852 Stockton Street
San Francisco, CA 94133

Bradley Angel, Executive Director
Greenaction for Health and Environmental Justice
1 Hallidie Plaza, Suite 760
San Francisco, CA 94102

Maurice Campbell, Executive Director
Community First Coalition
1100 Brussels Street
San Francisco, CA 94134

Tessie Ester, President
Huntersview Tenants Association
18 West Point
San Francisco, CA 94124

California Energy Commission
Bill Pfanner-Project Manager
Margret J. Kim-Public Adviser
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Gene Waas
J. Phillip Jordan, Counsel for CAISO
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

Pacific Gas & Electric Company
Holly Welles, Ph.D
Senior Program Manager
Enviromental Affairs
Pacific Gas & Electric Company
77 Beale Street, Room 2461
San Francisco, CA 94105-1815

Richard C. Ratliff
Staff Counsel
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Mary Anne Sullivan
Hogan & Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 200004

n:\pucw\pfernand\labels\jsoleiso.doc

Poli A. Marmolejos
Director
U.S. Department of Energy
Office of Civil Rights and Diversity
1000 Independence Ave, S.W.
Washington, DC 20585

n:\pucw\pfernand\labels\jsoleiso.doc