

ORIGINAL

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

DOCKET
00-AFC-4
DATE NOV 28 2005
RECD. NOV 28 2005

In the Matter of:)
)
Application for Certification)
For Potrero Power Plant)
Unit 7 Project)

Docket No. 00-AFC-04

**MOTION FOR TERMINATION AND RESPONSE OF THE CITY AND COUNTY OF
SAN FRANCISCO TO THE APPLICANTS REQUEST FOR CONTINUED
SUSPENSION OF PROCEEDINGS**

Pursuant to Rule 1720.2, the City and County of San Francisco (CCSF or the City) respectfully moves the Commission to terminate the instant proceeding. This proceeding has been suspended for two years. At this point, the record is entirely stale and would need to be recreated. Moreover, there are now alternatives well underway that can better address any needs purported to be met by Potrero7. Further, Mirant Potrero, LLC (Mirant or the Applicant) failed to comply with the terms of the Commission's prior suspension order, to provide forty five days advance notice to all parties should it wish to resume the proceedings within the time frame of the prior suspension. In these circumstances, the Commission should deny Mirant's request for a further extension.

The Commission has already granted two one year suspensions to Mirant for the review of its application to build Potrero 7. The application was initially submitted more than five years ago in May 2000. The final staff assessment for the project was issued in February 2002, more than three and a half years ago. Accordingly, the record for this proceeding is so stale as to call for the submission of a new application if Mirant is truly serious about recommencing its efforts to site a power plant in San Francisco. In fact, in its order continuing the suspension last year, the Commission had already acknowledged that "this case has been inactive for an extended

period." December 3, 2004 Order Continuing Suspension of Proceedings at 1. Given this extended period of time, many important issues would need to be updated including just to name a few, air impacts, in view of revised NOx rules and additional projected projects in the area, land use impacts in view of ongoing development in the area. Moreover, the issue of water quality impacts remains unresolved and Mirant's plans to address such impacts remain to be fleshed out. In reality, a new proceeding would be commenced. Given this reality, the Commission should end these proceedings.

In its prior suspension order, the Commission provided as one of its rationales for the continuance that "the transmission and generation dynamics affecting the Bay area are currently in a state of flux and will likely continue to remain unsettled, absent the implementation of concrete measures to alleviate energy uncertainties. Therefore we believe it is best to preserve our options for future action." December 3, 2004 Order Continuing Suspension of Proceedings at 1-2. However, since December 2004, much progress has been made on putting into place alternatives to meet electricity needs in the City and the Bay Area.

First, construction of the Jefferson Martin project, approved by the California Public Utilities Commission (CPUC) in August 2004, is underway and is expected to be completed in mid-2006. Second, the City is proceeding with development of two power generation facilities; licensing for the in-City facility is underway before the Commission. A preliminary staff assessment has been issued finding no significant impacts and a final staff assessment is expected within the next month. Third, the California Independent System Operator (CAISO) has approved a transbay cable from Pittsburg to San Francisco and environmental review of that project has commenced. Thus, there are several projects under active development to address

City reliability needs and there is no justification for allowing Mirant to maintain indefinitely its application before the Commission without making any progress whatsoever.

It is also worth noting that with the adoption of the San Francisco Action Plan by the CAISO Board of Governors in November 2004, there is a path in place for the retirement of existing generation within the City. Given the prior position by the CAISO that the Potrero 7 plant would constitute a single point of failure, there is no guarantee that the CAISO would accept Potrero 7 for purposes of closing down existing in-City generation, in lieu of the proposed combustion turbine projects by the City that provide much more flexibility with much less generation

Mirant avers in its request to continue the suspension that it expects to emerge from Chapter 11 in early 2006 and that it will be in a better position to evaluate the merits of its suspended projects once it emerges. This representation provides no certainty that Mirant will emerge from bankruptcy in early 2006 or that it will take any interest in its Potrero 7 application any time soon after doing so. Thus Mirant is asking the Commission to once again refrain from terminating these proceedings even though there has been absolutely no action for more than two years for the highly speculative possibility that the company might be in a position to and might determine to resume proceedings sometime in the next year. Given the extended lack of progress, the more appropriate approach is to terminate these proceedings. Given the age of the record in this docket, this course of action would have been appropriate even if Mirant were indicating now that it intends to resume permitting activities. It is certainly the appropriate course of action where Mirant still has no current intention to proceed with the development of Potrero 7. Mirant can always submit a new application should it determine sometime in the future that it wishes once again to attempt to develop a new power plant in San Francisco.

Finally, the City notes that the December 2004 suspension order required Mirant to notify parties forty five days before recommencing proceedings. Mirant has not provided any such notice; instead, it filed a last minute two page request to extend the suspension on the very day the suspension expired. Since Mirant did not notify other parties of its intent to resume proceedings during the term of the suspension and since Mirant did not obtain a Commission decision to extend the suspension prior to the suspension expiration date, this proceedings should be deemed terminated. At a minimum, the Mirant request should have been filed in time to give other parties and the Commission time to act before the suspension period expired.

The time has come to put an end to these proceedings. The resources of the many parties that have been monitoring and participating in these proceedings should be freed up to focus on the alternatives to address San Francisco needs that are truly ongoing and viable.

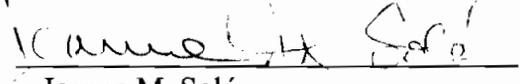
Dated: November 22, 2005

Respectfully submitted:

DENNIS J. HERRERA
CITY ATTORNEY
THERESA L. MUELLER
JACQUELINE MINOR
JEANNE M. SOLÉ
DEPUTY CITY ATTORNEYS

Attorneys for City and County of San Francisco

By:



Jeanne M. Solé

Deputy City Attorney

Office of the City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

(415) 554-4619 (Telephone)

(415) 554-4763 (facsimile)

jeanne.sole@sfgov.org

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:)
)
Application for Certification)
For Potrero Power Plant)
Unit 7 Project)

Docket No. 00-AFC-04

PROOF OF SERVICE

I, Kiana Davis, declare that on November 22, 2005, I deposited copies of the attached **MOTION FOR TERMINATION AND RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO TO THE APPLICANTS REQUEST FOR CONTINUED SUSPENSION OF PROCEEDINGS**

in the United States mail in San Francisco, California, with first-class postage thereon fully prepaid and addressed to all parties on the attached service list.

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

Kiana Davis

Kiana Davis

SERVICE LIST

Bay Area Air Quality Management District (BAAQMD), Permit Evaluation Attn: Steve Hill, Manager 939 Ellis Street San Francisco, CA 94109	Latham & Watkins Attn: Michael J. Carroll, Esq. 650 Town Center Drive, Suite 2000 Costa Mesa, CA 92626
Bay Area Air Quality Management District (BAAQMD), Permit Evaluation Attn: Steve Hill, Manager 939 Ellis Street San Francisco, CA 94109	Regional Water Quality Control Board (RWQCB) Attn: Alexa La Plante 1515 Clay Street, Suite 1400 Oakland, CA 94612
San Francisco Bay Conservation and Development Commission (BCDC) Attn: Leslie D. Lacko 50 California Street, Suite 2600 San Francisco, CA 94111	California Dept. of Fish & Game Attn: Deborah Johnston 20 Lower Ragsdale Drive, Suite 100 Monterey, CA 93940
USEPA – CWA Stds. & Permits Office Attn: Terry Oda 75 Hawthorne St. (WTR-5) San Francisco, CA 94105-3901	USEPA – CWA Stds & Permits Office Attn: Nancy Yoshikawa 75 Hawthorne St. (WTR-5) San Francisco, CA 94105-3901
National Marine Fisheries Service Attn: Joe Dillon 777 Sonoma Avenue, Room 325 Santa Rosa, CA 95404	Southeast Alliance for Environmental Justice (SAEJ) Attn: Claude Wilson 120 Jerrold Avenue San Francisco, CA 94124
Coalition for Fair Employment in Construction Attn: Eric Christen 2320 Courage Drive, Suite 110 Fairfield, CA. 94533	Jody London Gruneich Resource Advocates 582 Market Street, Suite 1020 San Francisco, CA 94104
Golden Gate University Environmental Law and Justice Clinic Attn: Alan Ramo 536 Mission Street San Francisco, CA 94105	Californians for Renewable Energy (CARE) Attn: Michael Boyd 5439 Soquel Drive Soquel, California 95073

<p>Camp, Dresser & McKee, Inc. Attn: Andria Pomponi 100 Pringle Avenue, Suite 300 Walnut Creek, CA 94596</p>	<p>Executive Director Our Children's Earth Foundation(OCE) Attn: Tiffany Schauer 100 First Street Suite 100-367 San Francisco, CA 94105</p>
<p>Potrero Boosters Neighborhood Association (PBNA) Attn: John DeCastro, President 1459 18th Street, #133 San Francisco, CA 94107</p>	<p>William B. Rostov Communities for a Better Environment (CBE) 1611 Telegraph Street, Suite 450 Oakland, CA 94612</p>
<p>Dogpatch Neighborhood Association (DNA) c/o John Borg 888 Illinois Street San Francisco, California 94107</p>	<p>Edward Hatter Potrero Hill Neighborhood House 953 De Haro Street San Francisco, CA 94107</p>