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04-AFC-1

<b>DOCKET</b> <b>04-AFC-1</b>
DATE <u>MAY 05 2005</u>
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Mr. Marmolejos,

As the Vice-President of CALifornians for Renewable Energy, Inc. (CARE), and as a resident of the low-income community of color<sup>1</sup> of Bay View Hunters Point (BVHP) in Southeast San Francisco California I respectfully file this Answer to the Response of the City and County of San Francisco (City or CCSF) to the Complaint of CALifornians for Renewable Energy, inc., et al v. California Independent System Operator, Inc. No. 03-003-HQ, dated April 27, 2005. I must respectfully disagree and must protest the claim that the "City has not engaged in discrimination in its actions associated with the electricity system"<sup>2</sup>, and I believe that facts and evidence I provide herein establishes that the opposite conclusion is true.

As a mere footnote the City falsely claims that it is not a recipient of federal financial assistance from the US DOE and therefore not subject to US DOE's Title VI regulations claiming<sup>3</sup>,

<sup>1</sup> The Complaint does not set forth any current federal financial assistance to the City that would provide DOE jurisdiction. Instead, the undated letter includes one footnote with a reference to the City's participation in an Alternative Fuel Vehicles program. The grant in question has been closed.

As recently as December 15<sup>th</sup>, 2004 the City Finance Committee approved under item number three a contract for electric services with the US DOE with the special benefits purportedly being "low cost electric power";

"Ordinance approving two contracts between the City and County of San Francisco and the United States, through the Department of Energy Western Area Power Administration, for electric services required to ensure reliable delivery of low cost electric power for use at Treasure Island on file with the Clerk of the Board of Supervisors in File No. 041351; and approving indemnifying and holding harmless the United States against claims arising from the activities of the City under the contract; and waiving requirement of Section 21.35 of the San Francisco Administrative Code that every contract contain a statement regarding liability of claimants for submitting false

<sup>1</sup> Bay View Hunters Point (BVHP) is predominantly a community of African American and Samoan descent.

<sup>2</sup> April 27, 2005 Response of CCSF to DOE Complaint No. 03-003-HQ at Paragraph 1.

<sup>3</sup> April 27, 2005 Response of CCSF to DOE Complaint No. 03-003-HQ at Paragraph 2 footnote 1.

claims; and waiving requirement of Section 21.19 of the San Francisco administrative code that every contract contain a statement regarding guaranteed maximum costs.”

Based on its misunderstanding of its duties under the Title VI regulations as further described below the City finds that there exists no evidence that Title VI of the Civil Rights Act of 1964 has been violated.<sup>4</sup>

The Civil Rights Complaint and the undated letter fail to establish a violation of Title VI or DOE's regulations by the City.<sup>1</sup> The Complaint does not demonstrate any intended or actual discrimination by the City. The complainants are correct that the City is engaged in an effort to site a small power plant in Southeast San Francisco, the San Francisco Electric Reliability Project (SFERP). However, as the application for certification (AFC)<sup>2</sup> for the facility details, the City is pursuing the project as part of a comprehensive strategy to facilitate the retirement of existing unreliable and highly-polluting in-City generating plants, located in Southeast San Francisco, while maintaining the reliability of the electric system. Closure of existing dirty generation in Southeast San Francisco will eliminate a significant source of pollution that affects local communities.

By admitting to having “engaged in an effort to site a small [sic] power plant in Southeast San Francisco” the City clearly recognizes it is discriminating with intent against the low-income community of color of Bay View Hunters Point, and also that this violates Title VI regulations. Why else would they then use their half hearted attempts to shutdown “existing unreliable and highly-polluting in-City generation”, to justify the siting of their power plants in BVHP, when they know a viable alternative site is available at the San Francisco Municipal Airport and the approval of the Pacific Gas and Electric (PG&E) Application for a Certificate of Public Convenience and Necessity (CPCN) authorizing the construction of the Jefferson-Martin 230 kV Transmission Project<sup>5</sup> and other associated transmission upgrades means that PG&E has went on record that the City’s project is not needed.

The site for the United Golden Gate peaker plant is already approved and is a 51 MW natural gas fired simple cycle power generating facility approved on March 7<sup>th</sup>, 2001 by the California Energy Commission (CEC)<sup>6</sup>. CARE was an Intervener and therefore a Party in the Application For Certification (AFC) before the CEC under Docket No. 00-AFC-5. This site is ideal because it constitutes an expansion of an existing facility, and Golden Gate Power Project, Phase II (GGPP-II)<sup>7</sup> is an expansion of the 51 megawatt simple cycle peaker plant United Golden Gate, Phase I Peaking Unit. The

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<sup>4</sup> April 27, 2005 Response of CCSF to DOE Complaint No. 03-003-HQ at Paragraph 2.

<sup>5</sup> Proceeding Number: A0209043 at <http://www.cpuc.ca.gov/proceedings/A0209043.htm> approved by the California Public Utilities Commission (CPUC) on August 19, 2004.

<sup>6</sup> See <http://www.energy.ca.gov/sitingcases/goldengate/index.html>.

<sup>7</sup> See <http://www.energy.ca.gov/sitingcases/unitedgoldengate/index.html>

proposed larger facility is also located at the San Francisco International Airport (SFIA or SFO), San Mateo County, California. The Energy Commission approved UGGPP Phase I on March 7, 2001. The UGGPP Phase I was licensed under the terms of the four-month expedited permitting process enacted in section 25552 of the Public Resources Code, which requires that Phase I either converts to a combined-cycle configuration, or ceases operation within three years. The proposed GGPP-II expansion would be a nominal 570-megawatt (MW), natural gas-fired, combined cycle electric generating project adjacent to the existing United Cogeneration, Inc. (UCI) cogeneration facility at the United Airlines maintenance facility. The UCI facility has been in operation since the 1980's. CARE had contacted the UGGPP Phase I permit holder for the site, El Paso Energy, in late 2003, and their counsel seemed willing to negotiate with the City for the site.

CARE has consistently maintained that the airport site is the only viable site for the City's powerplants. In a letter to the City Department of Environment on December 4<sup>th</sup>, 2003 CARE stated "we don't oppose the City siting these peakers at the airport where the CEC has already issued a permit to El Paso Energy. Mike Boyd of CARE contacted El Paso's attorney in the FERC proceedings and they seemed interested in some sort of lease or purchase arrangement with the City for their permit."<sup>8</sup> It is apparent to me as a person of African American descent that the only reason the City has not sited their peakers at the San Francisco Municipal Airport is because the neighborhood is predominantly more affluent people of European American descent than me or my neighbors. Manho Yeung was PG&E's Witness on the Need for the Jefferson Martin transmission project. The January 12th, 2004 transcript for this proceeding provided evidence in the form of sworn testimony by PG&E (after admitting the beneficial impacts of this project on distributed generation) that without the Jefferson-Martin project, there would not be adequate new capacity to enable the shut down of PG&E's power plant even without the four CCSF 45 MW CTs.

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5 WITNESS YEUNG: An I am not quite sure I understand  
6 the question. Are you asking would the proposed  
7 Jefferson-Martin project help achieve renewable -- not  
8 renewable, I guess -- distributed generation goals.  
9 MR. BOYD: Q Yes, exactly. Would it adversely impact

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<sup>8</sup> See attachment Letter to San Francisco Department of Environment in reference to *Siting of Williams Electricity Peaker Plants in South East San Francisco*.

10 it, or would it benefit that use?  
11 A I don't believe there would be any direct impact  
12 to distributed generation. There may be some secondary  
13 effects in terms of increasing the transmission capability  
14 into and out of the project area.  
15 Q Then I had only one other question for you, which  
16 was it seems to be a disagreement over the need for these  
17 four peakers in San Francisco in order to shut down the  
18 Bayview-Hunter's Point power plant. And I know that  
19 without -- my understanding is that without the  
20 Jefferson-Martin project, that that wouldn't be adequate new  
21 capacity to enable us to shut down that power plant; is that  
22 true? Do you know if that's true or correct?  
23 A I don't believe there is a disagreement per se.  
24 The proposed Jefferson-Martin project along with other  
25 transmission projects that are being proposed for this area  
26 will provide enough capacity to meet all applicable planning  
27 requirements, even with the retirement of the entire Hunter's  
28 Point power plant.

This provides evidence of sworn testimony by PG&E that with the Jefferson-Martin project, there will be adequate new capacity to enable the shut down of PG&E's power plant even without the four CCSF 45 MW CTs being sited in San Francisco.

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22 ALJ TERKEURST: Can you put a time frame.  
23 MR. BOYD: Q Upon construction of the  
24 Jefferson-Martin is the time period. If the Jefferson-Martin  
25 is constructed, do we need those peakers? Or is there  
26 sufficient capacity once the construction is complete to meet  
27 the peak demand of San Francisco?  
28 WITNESS YEUNG: A Are you referring to the year 2006,

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1 2005 or beyond?  
2 Q Assuming late 2005, 2006, early 2006 the project  
3 is complete, I am asking about at that time period would  
4 there be sufficient capacity with that transmission upgrade  
5 to meet the demand without those peakers?  
6 A As described in my direct testimony on page 2, on  
7 page 2 there is a chart showing the capability of the  
8 transmission system. And if we are focusing on the year  
9 2006, assuming that the proposed Jefferson-Martin project is  
10 constructed, then there would be enough capacity to meet the  
11 expected demand for the year 2006.  
12 Q Without the need for the peakers?  
13 A Without installation of the peakers.  
14 Q Thank you.

In the CCSF AFC to the CEC the City provided further false information in an attempt to cloud the CEC decision maker's perception by labeling their project the "San Francisco

Electric Reliability Project” when in fact according to PG&E it is not needed for any reliability criteria that applies to PG&E.

This portion of the January 12th, 2004 transcript also provides evidence that the City’s claims regarding their half hearted attempts to shutdown “existing unreliable and highly-polluting in-City generation”, to justify the siting of their power plants in BVHP” are fraudulent at best and evidence of discrimination with intent at the worst because they fail to even mention the approval of the Jefferson Martin transmission project knowing PG&E does not believe it is needed.<sup>9</sup> Why then wouldn’t they consider our offer to not oppose their siting their fossil fuel energy project at SFO, unless they are discriminating against me and my neighbors because of my race and income?

The City’s efforts to close existing power plants in Southeast San Francisco date back several years. In July 1998, the City entered into an agreement with PG&E that provides for the shut down of the Hunters Point Power Plant as soon as the facility is no longer needed to sustain electric reliability in San Francisco and the surrounding area. On May 21, 2001, the Board of Supervisors passed Ordinance 124-01, which set forth conditions for the siting of new generation at the Potrero Power Plant including the closure of Hunters Point Power Plant and the clean up, limitations on use of, and eventual closure of the Potrero Power Plant. On November 21, 2002, the Board of Supervisors passed Resolution No. 827-02 adopting the Electricity Resource Plan which provides for closure of the older, dirty plants in Southeast San Francisco and their replacement with a combination of energy efficiency, renewable energy, clean distributed generation, transmission upgrades and cleaner, more reliable and flexible fossil-fueled resources. The SFERP constitutes the fossil-fueled component of the Electricity Resource Plan.

On November 6<sup>th</sup>, 2001 San Franciscans overwhelmingly approved two solar energy measures that were supposed to transform our city into the nation's largest municipal producer of sun-generated electricity. Proposition B won with 73 percent of the vote. It was supposed to allow the city to issue a \$100 million revenue bond and build solar and wind power systems. Another solar measure, Proposition H, was supposed to allow the City supervisors to issue future bonds for renewable energy projects without voter approval, it won with 55 percent support. Where did the \$100 million revenue bond money go? Based on the information I have been able to see from the City, it has gone to the City’s Peaker Plant Project, not a dime for solar power for my BVHP neighborhood.

The City does not dispute our Civil Rights Complaint’s claim that BVHP is community of color “disproportionately impacted by industrial facilities including electric power generation”.<sup>10</sup>

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<sup>9</sup> April 27, 2005 Response of CCSF to DOE Complaint No. 03-003-HQ at Paragraph 3.

<sup>10</sup> April 27, 2005 Response of CCSF to DOE Complaint No. 03-003-HQ at Paragraph 4.

The City has recognized that Southeast San Francisco is a community of color with relatively high rates of serious respiratory diseases; and that Southeast San Francisco has been disproportionately impacted by industrial facilities including electric power generation. Accordingly it has been the City's goal to minimize adverse air quality and public health impacts from the proposed SFERP to the maximum extent feasible. The City will use best available control technology to reduce plant emissions to the greatest extent possible. Modeling shows that the SFERP is not expected to contribute significantly to cumulative regional or localized impacts of any air pollutant, and impacts of toxic air contaminants from the project are below the levels considered to be significant by the regulatory agencies. Nonetheless, the City has procured an option to obtain local emission reduction credits to offset the emissions of nitrogen oxides and precursor organic compounds from the SFERP to assure that it is not exchanging impacts from the SFERP to the local San Francisco communities for the benefits from emission reduction credits that were created in distant communities. In addition, the City is developing, with community input, a plan to mitigate the impacts of particulate emissions from the facility, and a community benefits package. The City will target the mitigation to the areas affected by the impacts from the projects.

The City goes on to make the false claim that it is using the best available emission controls technology for the project. In a December 4<sup>th</sup>, 2003 letter to the City's Department of the environment CARE identified the best available control technology as SCONOx<sup>11</sup>, and we asked that,

“the City install SCONOx emission control for the peakers where ever they are located but specifically at the airport, because as a closed system there is no emission plume from the project which creates an aircraft turbulence hazard. SCONOx is being used on the same size and type of turbine as is in operation in Redding California.”

The City also fails to point out that their project is going to use secondary treated effluent (sewage) water to cool their power plant combustion turbines, which will create air-born pathogens like Legionnaires, and Prions (self replicating proteins that are the precursor to mad cow disease) and the local BAAQMD doesn't have any regulations to deal with these type of air emissions.

The City then goes on to make more false claims regarding actions they have purportedly taken in BVHP to justify the siting of their power plants in BVHP.<sup>12</sup>

The City has also engaged in activities which are not strictly related to the SFERP to improve air quality in Southeast San Francisco. The City recently devoted \$500,000 from the settlement of a lawsuit with a power generator to planting trees and installing solar generation in the community. Moreover, the City is supporting energy efficiency and renewables in Southeast San Francisco through its Environmental Justice grants program. The program provides funding to local non-profit organizations and businesses to promote energy efficiency, home weatherization and solar projects in the Potrero and Bayview-Hunters Point neighborhoods. With support from this program, forty solar systems have been installed and more than 400 homes, businesses and non-profit organizations have received weatherization and energy efficiency measures.

The City also sites its so-called Environmental Justice grant program purportedly “supporting energy efficiency and renewables” in BVHP. On May 5<sup>th</sup>, 2004 I filed a California Public Records Act (CPRA) request on the City Department of Environment

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<sup>11</sup> See EmeraChem's website at <http://www.emerachem.com/product/emx/> for the manufacturer's information on the availability and US EPA approval of SCONOx technology, in practice.

regarding our request for information on the Environmental Justice grant program expenditures of the thirteen million dollar grant from PG&E to the City. Some example questions where as follows:

**BROWN/CCSF 1.1**

- a. Provide in electronic format when available all data and/or documents that CCSF or SFE has provided to or received from Greenaction in regards to the \$ 150,000 received in order to “Empower [the San Francisco Bayview Hunters Point] community to play a role and make an impact on the neighborhood through outreach, education and advocacy for the following: The shutdown of power plant and increased energy conservation/efficiency and renewables”, and the \$50,000 for “continuation of the Green Energy Environmental Justice Project, Greenaction will conduct outreach in Bayview Hunters Point to promote energy conservation and support the shut down of the Hunters Point Power Plant. Greenaction will work to ensure the community will be able to influence government decisions surrounding energy issues.” Data and documentation should include any contract(s), cost analysis, budget, time sheets, receipts for materials, goods, and services performed, include all revenue and expense records reports provided by the Grant Recipient with full justification for all expenditures made for the purported benefit of the San Francisco Bayview Hunters Point Community.
- b. As a recipient of government grant funds from CCSF provide all communications and/or documents relating to the recipient’s agreement to hold CCSF harmless from legal action by the recipient in return for said grant(s).
- c. As a recipient of government grant funds from CCSF provide all communications and/or documents relating to the recipient’s actions to shut down PG&E’s Bayview Hunters Point and or support siting of three CCSF owned gas fired combustion turbines (CTs) at the Mirant Potrero Hill power plant site in Southeast San Francisco.
- d. Identify all persons responsible for developing any agreements, policies, strategies, comments and/or testimony before the CCSF and /or SFE or other Agency in regards to the Grant(s).

**BROWN/CCSF 1.2**

- a. Provide in electronic format when available all data and/or documents that CCSF or SFE has provided to or received from Bayview Hunters Point Community Advocates \$ 1,500,000 to “[r]educe reliance of fossil fuels by conducting energy audits and installing alternative energy systems. Component of program is to train/employ residents in solar installation and energy conservation outreach. Goal of program is to install systems and create jobs in alternative energy/ energy efficiency arena.” Data and documentation should include any contract(s), cost analysis, budget, time sheets, receipts for materials, goods, and services performed, include all revenue and expense records reports provided by the Grant Recipient with full justification for all expenditures made for the purported benefit of the San Francisco Bayview Hunters Point Community.
- b. As a recipient of government grant funds from CCSF provide all communications and/or documents relating to the recipient’s agreement to hold CCSF harmless from legal action by the recipient in return for said grant(s).
- c. As a recipient of government grant funds from CCSF provide all communications and/or documents relating to the recipient’s actions to train/employ residents in solar installation and energy conservation outreach, to

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<sup>12</sup> April 27, 2005 Response of CCSF to DOE Complaint No. 03-003-HQ at Paragraph 5.

install systems and create jobs in alternative energy/ energy efficiency arena. Evidence of training BVHP residents on jobs in the alternative energy/ energy efficiency arena with evidence of employment or other positive outcome provide all documentation.

- d. Identify all persons responsible for developing any agreements, policies, strategies, comments and/or testimony before the CCSF and /or SFE or other Agency in regards to the Grant.

**BROWN/CCSF 1.3**

- a. Provide in electronic format when available all data and/or documents that CCSF or SFE has provided to or received from Housing Conservation & Development Corporation \$300,000 purportedly to” improve housing in the Bayview Hunter's Point and Potrero Hill areas through energy retrofits, weatherization, energy-efficient appliance replacement and other conservation measures.” Data and documentation should include any contract(s), cost analysis, budget, time sheets, receipts for materials, goods, and services performed, include all revenue and expense records reports provided by the Grant Recipient with full justification for all expenditures made for the purported benefit of the San Francisco Bayview Hunters Point Community.
- b. As a recipient of government grant funds from CCSF provide all communications and/or documents relating to the recipient’s agreement to hold CCSF harmless from legal action by the recipient in return for said grant(s).
- c. As a recipient of government grant funds from CCSF provide all communications and/or documents relating to the recipient’s actions to improve housing in the Bayview Hunter's Point and Potrero Hill areas through energy retrofits, weatherization, energy-efficient appliance replacement and other conservation measures.
- d. Identify all persons responsible for developing any agreements, policies, strategies, comments and/or testimony before the CCSF and /or SFE or other Agency in regards to the Grant.

On August 9<sup>th</sup>, 2004 CARE asked substantially the same questions in the CEC AFC siting process for the City’s project. The City has been unable to provide any evidence that any of the thirteen million dollar Environmental Justice grant program has been spent to create a single job, install any solar panels, or install anything but fluorescent light bulbs that contain mercury in the BVHP community. I ask the DOE OCRD conduct a thorough investigation of the City’s so-called expenditure of any of the solar bond funds or funds from the Environmental Justice grant program for the benefit of the intended beneficiaries, the low-income residents of BVHP. I allege that these funds have not been spent for their intended purpose but instead have been given to patronage jobs of those who supported the former Mayor, Willie Brown’s, and the current Mayor, Gavin Newsom’s election campaigns.<sup>13</sup> We the intended beneficiaries have been

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<sup>13</sup> See attached January 26<sup>th</sup>, 2005 Conflict of Interest Complaint to the California Fair Political Practices Commission (FPPC).

defrauded of the intended benefits of this funding, instead it has went to outsiders and those who profit from our suffering and depravation. This I contend is evidence of discrimination by the City that is racially and economically motivated.

In conclusion I respectfully request that you conduct a thorough investigation of the City's claims that the "City has not engaged in discrimination in its actions associated with the electricity system". If your investigation is thorough enough I believe that you will find that there is no substantial evidence presented to support the City's claims, and that in fact there exists substantial evidence that the opposite is true and that the City has been engaged and is currently engaged in discrimination, with intent, in its actions associated with the electricity system, and that this discrimination is racially and economically motivated, against myself, and my neighbors who live, and work in the Bay View Hunters Point community is Southeast San Francisco, California.

Respectfully submitted,



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### Verification

I am an officer of the Complaining Corporation herein, under US DOE complaint 03-003-HQ, and I am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Dated on this 5<sup>th</sup> day of May 2005, at San Francisco, California.



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cc.  
CEC Docket 04-AFC-1 electronic service list.