CITY AND COUNTY OF SAN FRANCISCO

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April 27, 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
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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 and County of San Francisco (City or CCSF) appreciates the opportunity to submit this statement in response to your letter, dated March 10, 2005, inviting a response from the City within forty-five days of receipt. We believe your letter was received by the City the week of March 14. The March 10 letter relates to a number of complaints received by the Department of Energy (DOE) from residents of the Bayview Hunters Point community and various advocacy groups (the complainants) pursuant to Title VI and the DOE's implementing regulations. The complaints allege discrimination by the California Independent System Operator Corporation (Cal ISO), Pacific Gas and Electric (PG&E), the California Energy Commission (CEC) and CCSF related to various matters associated with the electricity system that serves the City. The City has not engaged in discrimination in its actions associated with the electricity system. To the contrary, the City has been working assiduously to support the closure of existing, highly polluting power plants in the Bayview Hunters Point and Potrero areas of the City (Southeast San Francisco) through a variety of means.

According to a January 7, 2005 Letter of Finding by DOE, DOE is in receipt of two complaints filed on June 11, 2003, and a third complaint filed sometime after June 21, 2003. The City is in receipt of a "Civil Rights Complaint of Bayview Hunters Point Communities" dated June 21, 2003 (Civil Rights Complaint), which sets forth alleged discriminatory actions by Cal ISO, PG&E, the CEC and CCSF. This letter addresses only the claims in the Civil Rights Complaint since the other documents have not been received by the City.

The Civil Rights Complaint focuses primarily on actions by the Cal ISO and PG&E related to the use of the "San Francisco Greater Bay Area Generation Outage Standard" and other alleged actions which result in the ongoing operation of the Hunters Point Power Plant. The Complaint fails to set forth in any detail the complainants' issues with the City. The Complaint states generally that "[t]o the degree the California Energy Commission and/or [CCSF] are or have acted in concert with Cal ISO in the siting of new generation they are also Parties to this complaint" and requests DOE to "[r]equire that proposed combustion turbine units . . . not be sited in Bayview Hunters Point." An undated letter responding to the January 7, 2005 DOE Letter of Finding reiterates that CCSF is named in the Complaint and complains that CCSF is seeking to site three combustion turbines in the "Bay view Hunters Point community".

The Civil Rights Complaint and the undated letter fail to establish a violation of Title VI or DOE's regulations by the City.[1] 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)[2] 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.

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 Plant.

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 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

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[1] 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.

[2] The AFC and related documents are available electronically at the following link: http://www.energy.ca.gov/sitingcases/sanfrancisco/documents/index.html

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's acknowledgement of environmental justice concerns in Southeast San Francisco and its commitment to address them demonstrates that the City did not discriminate in selecting a proposed site for the SFERP. Instead, as the AFC for the SFERP sets forth, the City selected the proposed site based on environmental justice considerations, availability of sufficient land area, proximity to an existing substation, proximity to main gas pipelines, consistency with the General Plan and zoning ordinances, location in an area appropriate for industrial development, and the ability, with implementation of reasonable mitigation measures, to have a less-than-significant impact on the environment. The City focused on locations within the City that would provide the reliability benefit needed to support closure of the existing generating plants in Southeast San Francisco. The City reviewed available land in the proximity of the four available substations within the City, and had to eliminate consideration of sites near three of the four substations based on the availability of appropriately zoned land, and a commitment to avoid locating another power facility in the Hunters Point area.

Finally, the City notes that the final characteristics of the SFERP are still under development. The project has been submitted to the California Energy Commission (CEC) for licensing at a proposed location. During the course of the licensing process, the CEC will review the environmental impacts of the project, as well as potential alternatives, under the California Environmental Quality Act (CEQA). This review will include a review of environmental justice implications, and may result in consideration of additional alternatives, changes to the project, or additional mitigation. A final City determination on the project and its characteristics cannot take place until after the CEQA assessment has been completed. Once licensing by the CEC is complete, financing for the project and key contracts must be submitted to the Board of Supervisor for approval. Thus, in addition to the absence of any basis for a claim of discrimination, such a claim is premature.

In sum, the Civil Rights Complaint fails to establish a violation of Title VI or the DOE's regulations.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Jeanne M. Solé

Jeanne M. Solé
Deputy City Attorney

cc: Service List

CERTIFICATE OF SERVICE

I PAULA FERNANDEZ declare that:

I am employed in the City and County of San Francisco, State of California. I am the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4623.

On April 27, 2005, I served a copy of the attached letter regarding: Californians for Renewable Energy, et. al. v. California Independent System Operator (DOE Complaint Nos. 03-001-HQ; 03-002-HQ; 03-003-HQ) by putting a copy thereof in a sealed envelope, with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed to each person shown on the attached service list:

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 27, 2005, at San Francisco, California.

PAULA FERNANDEZ

ATTACHED SERVICE LIST

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