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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	)	

MOTION OF THE CITY AND COUNTY OF SAN FRANCISCO TO HAVE PORTIONS OF INTERVENOR SARVEY'S REPLY BRIEF AND "REPLY TO STAFF'S LATE FILING" TREATED AS PUBLIC COMMENT

The City and County of San Francisco (CCSF or City) respectfully moves to have portions of Intervenor Sarvey's Reply Brief and "Reply to Staff's Late Filing" treated as public comment. Portions of these two documents rely on materials that are have not been made part of the evidentiary record in this case and should thus be treated as public comment. Mr. Sarvey's Opening Brief also made reference to materials not in evidence. However, the City's Reply Brief already identified and addressed those improper references.

The Presiding Member's Proposed Decision must be based exclusively upon the evidentiary record of the proceedings on the application. CEC Rule 1751(a). Because they rely on materials that are not in evidence, the following portions of Intervenor Sarvey's Reply Brief should be treated as public comment:

- Page 3, lines 24-26. Contains references to an Air Resources Board document that is not in evidence. The information in question was not in existence at the time of the evidentiary hearings; however, it is not relevant since staff concluded that the emissions of NOx and VOC from the project do have the potential to contribute to higher ozone levels if not mitigated. Exhibit 46 at 4.1-29. Thus, the City is mitigating its ozone precursor emissions at a ratio of 1.0:1. See Exhibit 15 at 8.1-50. Further, the information cited by Mr. Sarvey neglects to reflect the fact that the Air Resources Board website cited shows no ozone violations for the City of San Francisco in 2006.

- Page 10, lines 8-18. Asserts facts not in evidence: that there will be meaningful nitrogen deposition on San Bruno mountain from generating units that replace the Hunters Point and Potrero Power Plants. In fact, the only evidence on this point is to the contrary. See 5/31/06 RT (Rubenstein) at 136-7.

- Page 23, first full paragraph. There is a purported reference to Mr. Lee's prefiled testimony in the Potrero 7 proceeding. The City's testimony in the Potrero 7 proceeding is not in the evidentiary record of this case. Mr. Sarvey repeatedly attempted to introduce this testimony into the record but these attempts were denied. Mr. Sarvey indicated that his purpose in attempting to introduce the Potrero 7 testimony was to demonstrate the existence of LORS. 4/27/06 RT (Sarvey) at 214: 9-16; 5/31/06 RT (Sarvey) at 64: 4-8. The City repeatedly objected. 4/27/06 RT (Solé) at 158: 8-9 and 213: 20-21; 5/31/06 RT (Solé) at 63-64. Mr. Sarvey repeatedly agreed to rely on administrative notice of LORS rather than insist on the introduction of testimony or prehearing conference statements from the Potrero 7 case. 4/27/06 RT (Sarvey) at 215: 5-21; 5/31/06 RT (Sarvey) at 6-15. Hearing Officer Fay clarified during the April 27 hearing that documents other than Mr. Sarvey's hazardous materials testimony were not received into evidence. 4/27/06 RT (Fay) at 218:23-4. Hearing Officer Fay also clarified during the May 31 hearing that the Commission could take administrative notice of the City's LORS but not the contents of the Potrero 7 documents. 5/31/06 RT (Fay) at 67: 20-22. During the April 27 hearing, Mr. Sarvey argued that the Potrero 7 testimony had already been introduced into the record by the City. However, as explained in the City's opening brief, at pages 111-12 , footnote 15, the data response in question number 5 was not submitted into evidence by the City and was not otherwise introduced. Earlier that day, the responses to San Francisco Community Power data requests 1 and 3 were admitted into the record as Exhibit 83. 4/27/06 RT 62-63. Mr. Sarvey uses Exhibit 83 to label the testimony of Mr. Lee but Mr. Lee's testimony was provided in response to data request 5 as Mr. Sarvey himself admitted. 4/27/06 RT (Sarvey) at 213: 16-19.

- Page 24, lines 5-10. Contains references to Exhibit 96, the Electricity Resource Plan, which was marked for identification purposes only on May 31, 2006. (5/31/06 RT. at 159-161.) The reference states as follows: Exhibit 96 page RMI 145. There is no such page. The Electricity Resource Plan only has 72 pages.

- Pages 24 lines 18-22, and Page 26 lines 2-4. Contains a reference to the world climate website and the "weather reports" website. Neither of these references are part of the evidentiary record. If Mr. Sarvey wished to use these materials, he should have sought to introduce them during the evidentiary phase of the proceedings when the City and its witnesses would have had an opportunity to address Mr. Sarvey's claims about the materials and what they show. The materials in question were in existence at the time the evidentiary hearings took place.

- Page 27, line 22. There is a purported reference to Ms. Fox's testimony in the Potrero 7 proceeding. Please review the discussion above regarding the City's prefiled testimony in the Potrero 7 proceeding. Exhibit 63, which Mr. Sarvey references in his reply brief, is the City's prehearing conference statement in Potrero 7. Mr. Sarvey's attempt to introduce this document into the evidentiary record in this case was denied. 5/31/06 RT at 63.

- Page 27, line 8-9. Asserts facts not in evidence: "This has been estimated to be around $800,000 by Mr. Ngo."

Because they rely on materials that are not in evidence, the following portions of Intervenor Sarvey's "Reply Brief to Staff Late Filing" should be treated as public comment:

- Page 5, lines 14-16. Contains references to an Air Resources Board document that is not in evidence. The information in question was not in existence at the time of the evidentiary hearings; however, it is not relevant since staff concluded that the emissions of NO_x and VOC from the project do have the potential to contribute to higher ozone levels if not mitigated. Exhibit 46 at 4.1-29. Thus, the City is mitigating its ozone precursor emissions at a ratio of 1.0:1. See Exhibit 15 at 8.1-50. Further, the information cited by Mr. Sarvey neglects to reflect the fact that the Air Resources Board website cited shows no ozone violations for the City of San Francisco in 2006.

- Page 11, lines 21-23. Contains a reference to www.weatherreports.com which is not in evidence. If Mr. Sarvey wished to use these materials, he should have sought to introduce them during the evidentiary phase of the proceedings when the City and its witnesses would have had an opportunity to address Mr. Sarvey's claims about the materials and what they show. The materials in question were in existence at the time the evidentiary hearings took place.

- Page 11, lines 26-27 and most of page 12. Contains references to the record in licensing case for the Los Esteros Project (03-AFC-02). The materials referenced are not in the evidentiary record for the SFERP. If Mr. Sarvey wished to use these materials, he should have sought to introduce them during the evidentiary phase of the proceedings when the City and its witnesses would have had an opportunity to address Mr. Sarvey's claims about the materials and what they show. The materials in question were in existence at the time the evidentiary hearings took place.

- Page 13, lines 6-12. Contains references to the record in licensing case for the Los Esteros Project (03-AFC-02). The materials referenced are not in the evidentiary record for the SFERP. If Mr. Sarvey wished to use these materials, he should have sought to introduce them during the evidentiary phase of the proceedings when the City and its witnesses would have had an opportunity to address Mr. Sarvey's claims about the materials and what they show. The materials in question were in existence at the time the evidentiary hearings took place.

- Page 13, lines 16-19. Cites to facts not in evidence: "The applicant has estimated that the local SO2 credits required by staff in ASQC-12 will cost the applicant $400,000 alone including any contributions the applicant whishes [SIC] to provide in AQSC-11."

- Page 14, lines 3 –14. Cites to "testimony" without references and that was not provided. Mr. Sarvey is free to characterize his current position in this matter in his pleadings but he cannot on brief change his sworn testimony.

- Page 15, lines 7 through the end of the page and through Page 16, Table DR3-1. Contains references to the record in licensing case for the Los Esteros Project (03-AFC-02). The materials referenced are not in the evidentiary record for the SFERP. If Mr. Sarvey wished to use these materials, he should have sought to introduce them during the evidentiary phase of the proceedings when the City and its witnesses would have had an opportunity to address Mr. Sarvey's claims about the materials and what they show. The materials in question were in existence at the time the evidentiary hearings took place.

- Page 17, lines 12-16. Contains references to an Air Resources Board document that is not in evidence. If Mr. Sarvey wished to use these materials, he should have sought to introduce them during the evidentiary phase of the proceedings when the City and its witnesses would have had an opportunity to address Mr. Sarvey's claims about the materials and what they show. The materials in question were in existence at the time the evidentiary hearings took place.

- Page 17, last 4 words, and Page 18, entire page. Refers to studies and their conclusions which are neither identified or part of the evidentiary record in this case.

- Page 18 last three lines, Page 19 through middle of the page. Makes factual assertions that are not in evidence and provides no references. For example, Mr. Sarvey represents, without any reference to the evidentiary record in this case, the beliefs of the U.S. EPA, ARB, South Coast Air Quality Management District and San Luis Obispo Air District.

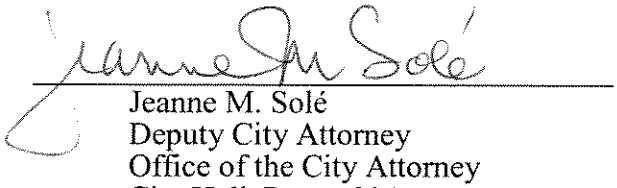
- Page 24, lines 6-16. Asserts facts not in evidence: that there will be meaningful nitrogen deposition on San Bruno mountain from generating units that replace the Hunters Point and Potrero Power Plants. In fact, the only evidence on this point is to the contrary. See 5/31/06 RT (Rubenstein) at 136-7.

Dated: August 2, 2006

Respectfully submitted:

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

Attorneys for City and County of San Francisco



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