

<b>DOCKET</b>	
<b>04-AFC-1</b>	
DATE	Jul 10 2006
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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:                     )  
                                                   )  
 Application for Certification        )  
 For the San Francisco                )  
 Electric Reliability Project         )

Docket No.    04-AFC-01

**RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO TO CARE'S  
 APPEAL TO THE FULL COMMISSION OF TWO COMMITTEE RULINGS**

The City and County of San Francisco respectfully responds to the appeal of Californians for Renewable Energy, Inc. (CARE) to the full commission of two committee rulings: one denying a joint motion to strike by CARE and Intervenor Sarvey; and a second, denying CARE's request to have a transcript from a California Public Utilities Commission (CPUC) proceeding introduced into evidence in the application for certification for the San Francisco Electric Reliability Project (SFERP). Both appeals are without merit.

**I.     The Relief Sought By CARE and Mr. Sarvey for a Fifty-three Minute Delay in Filing the Opening Brief is Out of Proportion and Unjustified.**

Opening briefs in this matter were due at close of business, June 26, 2006.

Because of last minute administrative glitches, the City's brief was circulated electronically at 5:53 PM rather than by 5:00 PM. On the basis of this fifty three minute delay, CARE and Intervenor Sarvey filed on that same day, June 26, 2006, at 8:57 PM a motion to strike the City's opening brief. The Committee properly denied their motion noting that 1) they did not condone the delay by the City; 2) the remedy sought was disproportionate to the harm; and 3) in any event, the CARE brief was sent to the wrong electronic address for City Counsel and hence City Counsel did not receive CARE's brief until June 27.

CARE appeals this ruling on the grounds that the mistaken email was not CARE's fault. Regardless of the delay in receipt of CARE's brief by CCSF Counsel, or whose fault caused the delay, the fact remains that the remedy sought by CARE and Mr. Sarvey is completely out of proportion to the fault on the part of the City. A fifty three minute delay in electronic filing does not merit striking an entire opening brief.

CARE argues that the CEC must enforce its rulings. Enforcing CEC rulings does not mean that the CEC should adopt disproportionately harsh remedies to minor delays. If any remedy is necessary for the short delay in question, a more reasonable approach would be to delay the deadline for receipt of the reply brief by a similar amount of time, which the City offered as a resolution to the problem. After all, City has a high stake in a prompt decision in this matter. In any event, striking the entire opening brief for a fifty three minute delay would be draconian and unfair. The harm to Intervenors CARE and Sarvey was clearly de minimis in nature, as both Intervenors received the City's opening brief on the evening of June 26<sup>th</sup>, and had sufficient time to prepare and submit their motions the same evening. Neither Intervenor has identified any substantive harm suffered in this proceeding as a result of the fifty-three minute delay.

## **II. The Transcript Was Properly Excluded from the Evidentiary Record.**

CARE also appeals denial by the Committee of CARE's request for admission of a transcript of the proceedings before the CPUC for the Jefferson-Martin transmission line. The Committee correctly ruled that the transcript should not be admitted because the City did not have the same interest to cross examine the Pacific Gas and Electric Company (PG&E) witness in the Jefferson-Martin case as it has in the instant case.

The Jefferson-Martin case was about whether the Jefferson-Martin transmission line should be licensed. This case is about whether the SFERP should be licensed. CARE's appeal suggests that the City should have known that CARE was using the Jefferson-Martin proceeding to litigate the need for the SFERP, and thus should have aggressively litigated the question of the need for the SFERP before the CPUC. This suggestion is absurd. In the Jefferson-Martin proceeding, the City properly focused on the issue in that proceeding, that is the need for the Jefferson-Martin line. To the extent CARE was attempting to use the Jefferson-Martin proceeding to litigate this one, in advance, such an attempt was inappropriate. It would have been equally inappropriate for the City to make such an attempt.

Moreover, CARE's suggestion that the City has accepted the Jefferson-Martin transcript as material, probative and consistent on the need for the SFERP is baseless. The City objected repeatedly to introduction of the transcript in the SFERP proceeding. But even if it had not, the City can always rebut evidence submitted by CARE through its own witnesses or through pointing out the deficiencies of the testimony itself.

Further, CARE suggests that the transcript in question means what CARE says it means, regardless of what the document actually says, and that the Commission must believe CARE because CARE was present in the Jefferson-Martin case. This reasoning is absurd as well. CARE is not a disinterested, nonpartisan observer. CARE was allowed to present testimony about the transcript in the SFERP case (over the objections of the City), and that testimony was completely unhelpful in terms of bolstering CARE's opinion of what the transcript means. CARE has a responsibility to make its case. Just admonishing, "trust me, I was there", is insufficient.

In the end, whether or not the transcript from the Jefferson-Martin case is admitted into the evidentiary record in the SFERP case should not matter in the least to the outcome. There is clear and uncontroverted testimony by the California Independent System Operator (CAISO) in *this* case that the SFERP is needed to accomplish the City's objective of displacing the reliability need for the Potrero Power Plant. Since it is the CAISO, and not PG&E, that has the responsibility to maintain reliability and the discretion to terminate a Reliability Must Run agreement, an ambiguous opinion from a PG&E planning engineer as to the need for the SFERP to close down Potrero Power Plant is largely irrelevant. And in any event, the opinion, such as it was<sup>1</sup>, was clearly limited to 2006, whereas the SFERP will not be in service until 2008.

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<sup>1</sup> It is unclear from the transcript whether the PG&E witness assumed that the Potrero Power Plant would be operating when he opined that the SFERP is not needed. A fair reading of the transcript suggests that the PG&E witness was focused on the closure of the Hunters Point Power Plant.

In sum, the Committee's rulings were appropriate and CARE's arguments to overturn them are without merit.

Dated: July 10, 2006

Respectfully submitted:

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A handwritten signature in cursive script, reading "Jeanne M. Solé", is written over a horizontal line.

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