BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE SAN FRANCISCO ELECTRIC RELIABILITY PROJECT	DOCKET NO. 04-AFC-01	DOCKET 04-AFC-1 DATE Jul 5 2006 RECD. Jul 5 2006

COMMITTEE RULING RE: JOINT MOTION OF CARE AND SARVEY TO STRIKE OPENING BRIEF OF APPLICANT

I. BACKGROUND

On June 26, 2006, Intervenors CARE and Sarvey (Intervenors) filed their *Joint Motion of CARE and Intervenor Sarvey to Strike Opening Brief of Applicant* (Joint Motion). In their pleading the Intervenors cite the deadline for opening briefs given by the Hearing Officer as "…due on June 26, 2006 by close of business…" (5/31/06 RT 269). Close of business at the Energy Commission is 5:00 p.m. Applicant's opening brief was electronically served on parties at 5:53 p.m. on June 26, 2006. Intervenors' requested remedy for Applicant's fifty-three minute tardiness is to entirely strike Applicant's brief, arguing that, "[t]o do otherwise will demonstrate prejudice against Intervenors in violation of our due process and equal protection rights." (Joint Motion, p. 1.)

II. DISCUSSION

We do not condone Applicant's acknowledged failure to meet a required deadline. In this instance, however, Intervenors' claim of prejudice is without merit. The fifty-three minute disadvantage Applicant imposed upon all parties as a result of its failure to meet the deadline is but a tiny fraction of the 14-day period the Committee allowed between the filing deadlines for both the opening and closing briefs. Intervenors have not been substantially prejudiced. In fact, Intervenors themselves failed to serve their opening briefs to the proper email

address for Applicant's counsel. Thus, Applicant was denied the benefit of receiving Intervenors' briefs until the day following the deadline, a "prejudice" to Applicant which far exceeds that experienced by Intervenors.

III. **Ruling**

Intervenors' failure to properly serve their opening briefs on Applicant eliminates any equitable argument they may have had based on Applicant's untimely filing. Furthermore, the remedy Intervenors seek is entirely disproportionate to the inconvenience they may have undergone.

Intervenors' Joint Motion is ***DENIED*.**

Dated July 5, 2006, at Sacramento, California.

Original signed by:
JAMES D. BOYD
Commissioner and Presiding Member
San Francisco Electric Reliability Project AFC Committee

Original signed by:
JOHN L. GEESMAN
Commissioner and Associate Member
San Francisco Electric Reliability Project AFC Committee