

CITY AND COUNTY OF SAN FRANCISCO



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June 27, 2006

<b>DOCKET</b>
<b>04-AFC-1</b>
DATE JUN 27 2006
F.E.C.D. JUL 6 2006

Mr. James D. Boyd, Presiding Member  
Mr. John L. Geesman, Associate Member  
Committee for the San Francisco Electric Reliability Project  
1516 9<sup>th</sup> Street  
Sacramento, California 95814

Re: In the Matter of Application for Certification for the San Francisco Electric Reliability Project, Docket No. 04-AFC-01

Dear Commissioners:

Enclosed please find 12 copies and one original of 1) the RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO TO THE JOINT MOTION OF CARE AND INTERVENOR SARVEY TO STRIKE THE OPENING BRIEF OF APPELANT and 2) the Table of Authorities for the City's Opening Brief filed yesterday on June 26, 2006. The Table of Authorities was included in the paper copies of the brief filed and served on the service list but was inadvertently left off the document that was emailed. The City notes that there is no requirement to file a table of authorities and in fact no other party has done so. Nonetheless, the City supplies the Table of Authorities for the convenience of the Commission and other Parties.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

*Jeanne M. Solé*  
Jeanne M. Solé  
Deputy City Attorney

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 THE JOINT  
MOTION OF CARE AND INTERVENOR SARVEY TO STRIKE THE OPENING  
BRIEF OF APPELLANT

The City and County of San Francisco (City or CCSF) respectfully responds to the motion to strike of CARE and Intervenor Sarvey filed yesterday, June 26, 2006, at 8:57 PM. The motion to strike is unwarranted and certainly seeks an unduly draconian remedy for a minor delay on the part of the City. As the intervenor motion lays out, opening briefs in this matter were due at close of business yesterday, 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. The City apologizes for this slight delay.

However, the delay clearly did not prejudice other parties since they had time last night to prepare and file a motion to strike. The City has not complained about far more significant delays on the part of intervenors. For example, testimony on contamination was due on May 1. CARE's "testimony" was filed at 11:13 PM on that date. Moreover, CARE filed additional "testimony" which, it then failed to have a witness sponsor at the evidentiary hearings, on May 11, eleven days later. Again, the City did not complain. In fact, because of an error in the email address for City counsel Solé, attorneys for the City still have not officially received the opening briefs of CARE or Intervenor Sarvey and

only obtained the briefs this morning after calling counsel for Staff to determine whether briefs had been filed by the intervenors.

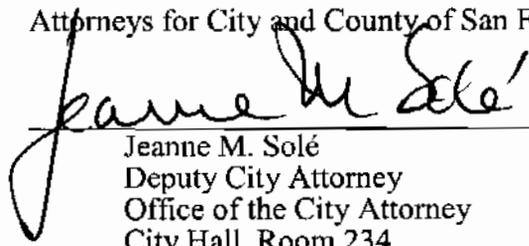
Finally, the remedy sought by CARE and Intervenor Sarvey is completely disproportional to the delay on the part of the City. The City would be happy to afford CARE and Intervenor Sarvey an additional hour beyond close of business on July 10 to respond to the City's opening brief.

Dated: June 27, 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

A handwritten signature in black ink, reading "Jeanne M. Solé", is written over a horizontal line. The signature is cursive and fluid.

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**State Cases**

*Concerned Citizens of South Central Los Angeles et. al. v. Los Angeles Unified School District*, (1994) 24 Cal.App. 4<sup>th</sup> 826.....11

*Defend the Bay v. City of Irvine* (2004) 119 Cal. App. 4th 1261.....85

*Endangered Habitats League, Inc. v. County of Orange* (2005)  
131 Cal. App. 4th 777.....84,85,86

*Leonoff v. Monterey County Bd. of Supervisors* (1990)  
222 Cal.App. 3d 1337.....81, 109, 119

*Rio Vista Farm Bureau Ctr. v. County of Solano* (1992)  
5 Cal. App. 4th 351.....85

*Sacramento Old City Assn. v. City Council* (1991)  
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*San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10 Cal.App.4<sup>th</sup> 908.....11

*Sierra Club v. County of Napa* (2004) 121 Cal.App.4<sup>th</sup> 1490.....8, 11

*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.  
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**State Statutes**

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**Other Authorities**

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BAAQMD Rule 2-2-301.....47

BAAQMD Rule 2-2-406.....40

Energy Resources Conservation  
and Development Commission

Application for Certification for the )  
SAN FRANCISCO ELECTRIC RELIABILITY )  
PROJECT (SFERP) )  
\_\_\_\_\_ )

Docket No. 04-AFC-1

**PROOF OF SERVICE**

I, Kiana Davis, declare that on June 27, 2006, I deposited copies of the attached

**1. RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO  
TO THE JOINT MOTION OF CARE AND INTERVENOR SARVEY TO STRIKE  
THE OPENING BRIEF OF APPELLANT; and**

**2. TABLE OF AUTHORITIES**

in the United States mail in San Francisco, California, with first-class postage  
thereon fully prepaid and addressed to all parties on the attached service list.

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

*Kiana Davis*

\_\_\_\_\_  
Kiana Davis

SERVICE LIST

<p>Barbara Hale, Power Policy Manager  San Francisco Public Utilities Commission  1155 Market Street, 4th Floor  San Francisco, CA 94102</p>	<p>Applicant Project Manager  Karen Kubick  SF Public Utilities Commission  1155 Market St., 8th Floor  San Francisco, CA 94103</p>
<p>Steve De Young  De Young Environmental Consulting  4155 Arbolado Drive  Walnut Creek, CA 94598</p>	<p>John Carrier  CH2MHill  2485 Natomas Park Drive, Suite 600  Sacramento, CA 95833-2943</p>
<p>Lynne Brown - Member, CARE  Resident, Bayview Hunters Point  24 Harbor Road  San Francisco, California 94124</p>	<p>Emilio Varanini III  Special Counsel  California Power Authority  717 K Street, Suite 217  Sacramento, CA 95814</p>
<p>Electricity Oversight Board  770 L Street, Suite 1250  Sacramento, CA 95814</p>	<p>Independent System Operator  Donna Jordan  151 Blue Ravine Road  Folsom, CA 95630</p>
<p>Department of Water Resources  SERS  Dave Alexander  3301 El Camino Avenue, Ste. 120  Sacramento, CA 95821-9001</p>	<p>Jeffrey S. Russell  Vice President, West Region Operations  Mirant California, LLC  P.O. Box 192  Pittsburg, CA 94565</p>
<p>Michael J. Carroll  Latham &amp; Watkins LLP  650 Town Center Drive, Suite 2000  Costa Mesa, CA 92626</p>	<p>Potrero Boosters Neighborhood  Association  Dogpatch Neighborhood Association  Joseph Boss  934 Minnesota Street  San Francisco, CA 94107</p>
<p>Robert Sarvey  501 West Grantline Road  Tracy, CA 95376</p>	<p>San Francisco Community Power  c/o Steven Moss  2325 Third Street # 344  San Francisco, CA 94107</p>
<p>Californians for Renewable Energy, Inc.  (CARE)  Michael E. Boyd, President  5439 Soquel Drive  Soquel, California 95073</p>	<p>Mark Osterholt  Mirant California, LLC  P.O. Box 192  Pittsburg, CA 94565</p>