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04-AFC-1		
DATE	MAY 2	2006
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**BEFORE THE
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Application for Certification
For the San Francisco
Electric Reliability Project

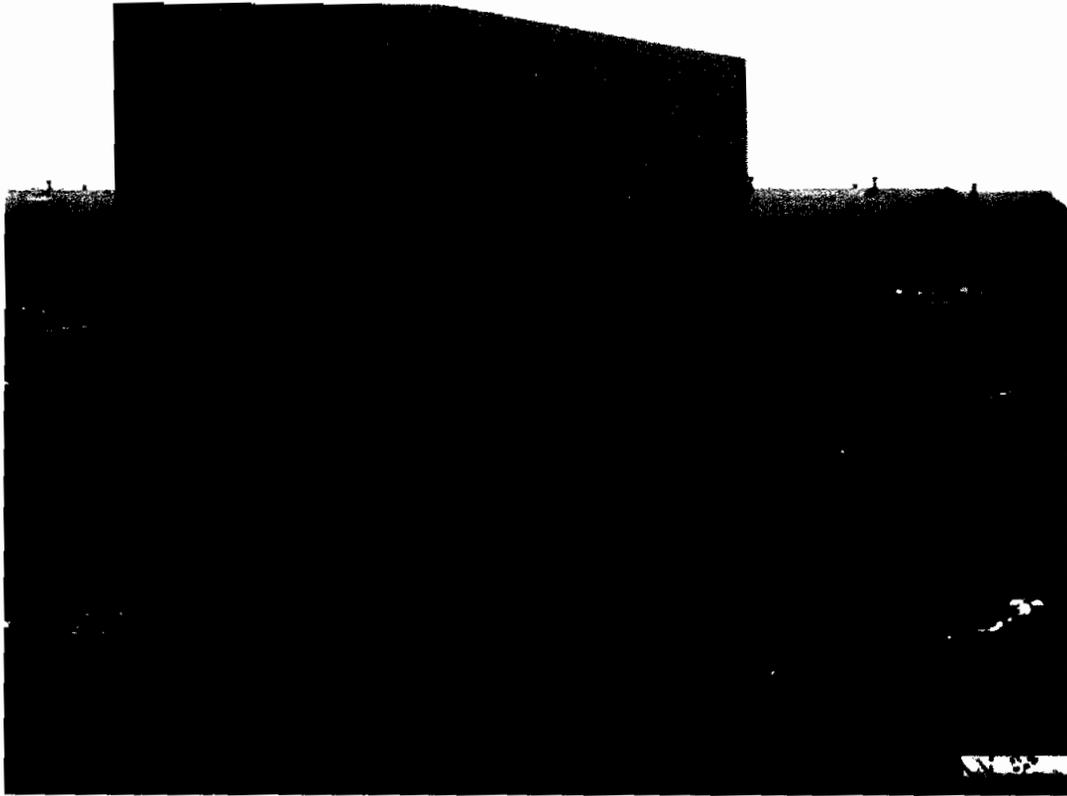
Docket No. 04-AFC-1

**Motion for leave to file additional testimony on May 11, 2006 and Opening
Testimony of CARE on Topics under Site Contamination of
Soil and Water, and Waste Management**

In behalf of CALifornians for Renewable Energy, Inc. (CARE) we provided a request, Pursuant to Title 20, California Code of Regulations, Section 1716.5, that the Commission grant CARE leave to file additional testimony on May 11, 2006 for the topics under site contamination of soil and water, and waste management for the May 22, 2006 evidentiary hearing items. CARE filed Opening Testimony of Clifton Smith REA, along with his resume on April 17, 2006 along with CARE pre-filed testimony and resumes. CARE needs this additional time for the expert we have retained to evaluate the Applicant's forty seven page "Supplemental Testimony" on soil and water, and waste management.

**Opening Testimony on Topics under Site Contamination of
Soil and Water, and Waste Management**

It has come to our attention that the local community has christened the project site including the adjacent MUNI Metro East project currently under development by the Applicant, the name "Toxic Park". The whole area around Illinois Street from Cesar Chavez to 20th Street has many hot spots and the area in particular where now the MUNI Metroeast Facility is being built sits stark naked in the middle of Toxic Park. The area was used by Santa Fe and others to dump all sort of toxic material. No meaningful clean up of this area has been done.



MUNI Project funded by Prop K funds.

Huge piles of toxic dirt once lay uncovered and when Mr. Francisco DaCosta¹ brought this to the attention of the Department of Toxic and Substances Control (DTSC) then some piles of dirt were covered. Today and for the past 6 months piles and piles of dirt remain uncovered at the site where the MUNI Metroeast Facility is being built.

Further this project which is being built with Proposition K Funds exposes hundreds of workers to very toxic soils which can be found all over the place. Further the workers are exposed to particulates from the two power plants that are operating not far way from the project. The Mirant power plant and the Hunters Point power plant both spew very toxic particulates into the air. Add to this the dangerous particulates from the heavy traffic on Illinois Street by the project.

¹ Francisco DaCosta provided the attached pictures taken in 2005.



Toxic dirt all over the place.



Toxic conditions surround workers.



The project within sight of Mirant power plant.



Piles of toxic dirt uncovered.

Does the Applicant have a permit from the Regional Water Quality Control board for the disturbance of soil as pictured herein? (Please provide a copy for the evidentiary record.) If in fact the City did this work without such a permit it is reasonably foreseeable that the Applicant is in violation of other LORS², and the Applicant has a practice of violating LORS.

CARE contends that it is improper for the Applicant to defer its Proposed Remedial actions to clean up the site until after the permit is issued for the project by the CEC. To do so violates the city's own ordinances, and the California Environmental Quality Act (CEQA) which requires all feasible mitigation be adopted or that the project be denied for inducing significant unmitigated adverse impacts on the environment. CEQA is primarily a public disclosure statutory scheme allowing the affected community to be informed and members of the public to voice their opinion, and to have input, about projects that may affect their environment. CEQA requires a review of the environmental impacts of overall activities (“the whole of an action” – 14 Cal. Code Regs. § 15378(a)) defined as “projects.” (Pub. Res. Code § 21065.) This strong, broad right of public participation under CEQA has a political component (i.e., CEQA allows the compilation of a record concerning the approval of development projects that can be used by the public to vote environmentally insensitive decision makers out of office come election day), the violation or deprivation of which has constitutional ramifications on an affected community as well as the public at large.

Additionally, in deferring the mitigation plan until after the project is approved the CEC as the lead agency under CEQA is “piecemealing” the overall activity. CEQA strongly forbids this kind of “chopping up [of] a proposed project into bite-size pieces which, individually considered, might be found to have no significance on the environment.” (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 716, citing Orinda Assn. v. Board of Supervisors (1986) 182 Cal.App.3d 1145, 1171, 1172; see also Bozung v. LAFCO (1975) 13 Cal.3d at 283-284; Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 309.)

² Laws Ordinances Regulations and Standards

CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but “cumulatively considerable.” (Pub. Res. Code § 21083(b); 13 Cal. Code Regs. § 15065. “‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (14 Cal. Code Regs. § 15065.) In addition to analyzing the direct impacts of a project, the CEQA Lead Agency must also consider a project’s potentially significant cumulative impacts.

Recent statutory law has invigorated CEQA’s role in ensuring “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies” (i.e., environmental justice).” (Emphasis added; see SB 115, Solis; Stats. 99, ch. 690, Gov. Code § 65040.12 and Pub. Res. Code §§ 72000-720001.) In conjunction with the regulatory provisions of the federal Clean Air Act and Division 26 of the Health and Safety Code,³ CEQA provides an ideal mechanism for ensuring that Environmental Justice will be addressed in all activities and projects that may have a significant effect on the environment.

CEQA requires that environmental documents (i.e., an environmental impact report (EIR) or equivalent) be prepared whenever a public agency proposes to undertake a discretionary activity (which is defined extremely broadly as the “whole of an action” being engaged in) that may have a significant effect on the environment. (See Pub. Res. Code §§ 21002.1, 21061, 21064, and 21080.1; see also 14 Cal. Code Regs. § 15002.)

“Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.” (Pub. Res. Code § 21000(e).)

³ This overlapping of statutory goals and requirements (see Pub. Res. Code § 21000(g), quoted above) is typical among statutory schemes aimed at protecting the public health.

The recent enactment of Public Resources Code sections 71110 through 71115, and Government Code section 65040.12, in conjunction with other statutory and regulatory requirements, such as the Bay Area Air Quality Management District State Implementation Plan, and EPA regulations, require the CCSF, CEC, as well as other agencies, to infuse Environmental Justice into every aspect of decisionmaking. This panoply of statutory authority supplements the general authority to “do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon [a public agency]...” (Health & Saf. Code § 39600.) Further, the rules, regulations, and standards that the CCSF, CEC, and other agencies adopt must be “consistent with the state goal of providing a decent home and suitable living environment for every Californian”⁴ (Id. § 39601 (c).)

Therefore the proposed project, and all associated activities constituting the “whole of an action” being carried out by the public agencies involved capable of having an adverse environmental impact (14 Cal. Code Regs. § 15378(a); see also Pub. Res. Code § 21065), and therefore the proposed San Francisco Energy Reliability Project and the MUNI Metroeast Facility considered together must be subjected to environmental review pursuant to CEQA to ensure that all the entire project’s adverse, potentially significant impacts on the Bayview Hunters Point community, as well as the entire region in which the project is located, are fully and fairly investigated, identified, analyzed, evaluated and, perhaps most importantly of all, mitigated – while also ensuring that project alternatives capable of avoiding or reducing the impacts are considered and, if feasible, adopted.

Respectfully submitted,



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Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on this 1st day of May 2006, at Soquel, California.

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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
PROOF OF SERVICE
**Revised 2/17/06*

DOCKET UNIT

Instructions: Send an original signed document plus 12 copies or an electronic copy plus one original paper copy to the address below:

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Attn: Docket No. 04-AFC-01
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Also send a printed or electronic copy of all documents to each of the following:

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DECLARATION OF SERVICE

I, **Dora Gomez**, declare that on **May 2, 2006**, I deposited copies of the attached **RE: Motion for leave to file additional testimony on May 11, 2006 and Opening Testimony of CARE o Topic under Site Contamination of Soil and Water, and Waste Management**, in the United States mail at Sacramento, California with first class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. I declare under penalty of perjury that the foregoing is true and correct.



[signature]

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