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SPECIAL BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:) PMPD Hearing
) San Francisco
Special Business Meeting) Electric Reliability
) 04-AFC-1
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 3, 2006

1:34 P.M.

Reported by:
Peter Petty
Contract Number: 150-04-001

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Chairperson

James D. Boyd

Arthur H. Rosenfeld

John L. Geesman

Jeffrey D. Byron

STAFF and CONTRACTORS PRESENT

B.B. Blevins, Executive Director

William Chamberlain, Chief Counsel

Gary Fay, Hearing Officer

Dick Ratliff, Staff Counsel

PUBLIC ADVISER

Nick Bartsch for Margret Kim

ALSO PRESENT

Jeanne Sol,, Deputy City Attorney
City and County of San Francisco

Robert Sarvey (via teleconference)

Michael Boyd (via teleconference)
Californians for Renewable Energy

Joe Boss
Dogpatch Neighborhood Association
Potrero Boosters

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P R O C E E D I N G S

1:34 p.m.

CHAIRPERSON PFANNENSTIEL: This is an Energy Commission meeting for the single purpose of considering one item that is on the agenda, the San Francisco Electric Reliability project.

Possible approval and adoption of the San Francisco Electric Reliability project Presiding Member's Proposed Decision; docket 04-AFC-01.

I think I will turn to the Committee. We'll begin with the Pledge of Allegiance; please join me. Thank you, Art.

(Whereupon, the Pledge of Allegiance was recited in unison.)

CHAIRPERSON PFANNENSTIEL: Thank you, Commissioner Rosenfeld. I get thrown off when it's not morning.

So we have before us a Presiding Member's Proposed Decision in this case. And, Mr. Fay.

HEARING OFFICER FAY: Thank you, Chairman Pfannenstiel. The Committee conducted four days of evidentiary hearings in April and May of this year. The hearings were held both in

Sacramento and in San Francisco. And following the close of the evidentiary hearings the parties submitted briefs on numerous issues in the case.

After reviewing the evidentiary record, all exhibits and the briefs, the Committee published the Presiding Member's Proposed Decision, or PMPD, on August 25, 2006.

This was followed by a 30-day comment period. The parties in the case filed their written comments on the PMPD on September 20th; and on September 25th the Committee held a conference to give all parties an additional opportunity to discuss the comments submitted by others, and to suggest any changes to the PMPD.

The Committee considered all written and oral comments in preparing the errata to the Presiding Member's Proposed Decision, which, along with the PMPD, the Committee recommends today to the full Commission for adoption. You've all been provided a copy of the PMPD, the adoption order and the errata.

Are there any questions of me?

HEARING OFFICER FAY: Thank you, Mr. Fay. Comments from staff?

MR. RATLIFF: The staff has provided

written comments at the original PMPD. And we've also contributed to the errata. We have nothing further to say, other than we think the decision is a good one.

HEARING OFFICER FAY: Thank you, Mr. Ratliff. Applicant?

MS. SOL : Good afternoon, Commissioners. I'm Jean Sol,; I'm representing the City and County of San Francisco here today. I'd like to make some brief comments. I have here with me Karen Kubick from the San Francisco Public Utilities Commission; and Gene Varanini, who has assisted me in this case; representatives of CH2M HILL and Sierra Research, who did much of the environmental work or oversaw that work; and a representative from PB Power, who's been our engineering consultant.

The City strongly supports the PMPD with the revisions contained in the errata. We think that the PMPD accurately summarizes the evidentiary record. And it concludes, we agree with the conclusions that the SFERP will comply with all applicable laws, ordinances, regulations and standards, and will not result in any significant adverse impacts.

The City, as we mentioned in our opening comments, disagrees with the rationale on the conclusion with regards to environmental justice. But we agree with the conclusion.

We would like to thank the Committee for hard work reviewing on extensive and complex record. We'd very much like to thank the staff, which we think worked very hard to help us work through the issues and keep us on schedule.

We're pleased that in the end we were able to amicably resolve all the issues that staff raised; and staff did raise some complex and complicated issues. But we believe that we've worked through those and we really appreciate their efforts to do that with us.

And we'd like to thank the intervenors and the public for their time and effort reviewing this proceeding, and for providing us their input.

Licensing of the SFERP is going to be a substantial step forward in the City's broad and ongoing effort to facilitate the closure of old and dirty inCity generation.

We've undertaken that effort in response to, and with the active participation of, the community. These efforts resulted in the adoption

in November of 2004 of the action plan by the California Independent System Operator Board of Governors. And that action plan laid out the steps that needed to be taken in order to close down the Hunter's Point and the Potrero Power Plants.

This year we achieved a significant milestone with energization of the Jefferson-Martin line. The Hunter's Point Power Plant has permanently ceased operations. And that was something that the community and the City have been working towards for many years. And it's something that we really all can celebrate.

We think that with the licensing of the SFERP we will be poised to do the same thing with the Potrero Power Plant. The San Francisco action plan is clear that in order to eliminate the reliability need for the Potrero Power Plant, generation is needed north of the Martin substation in the City. The SFERP was designed and configured to meet this need.

I'd like to say a few words about environmental justice. Environmental justice is very important to the City. The City has recognized that southeast San Francisco, which is

where this plant is going to be located, is a minority community that has been disproportionately impacted by industrial facilities, including electric power generation, and that it has high rates of childhood asthma and other serious respiratory diseases.

Notwithstanding that, environmental justice is the key rationale for the pursuit of the SFERP as part of the effort to close down the Potrero Power Plant. We agree with the PMPD, as I said, that the SFERP doesn't raise environmental justice concerns, but we think that that is because the SFERP is a significant component in the City's efforts to close down the Potrero Power Plant.

We encourage you to adopt the proposed decision because we know that our policymakers will continue to have these environmental justice considerations very much at the fore. But we would just like you to know that we would have very serious environmental justice concerns if there were an attempt to site a fossil fuel generating plant in southeast San Francisco that did not provide the reliability basis for closing down the Potrero Power Plant. That's been the

City's position in the past, and it will continue to be the City's position.

In this case, even though we can't guarantee the closure of the Potrero Power Plant at this time, we think that this plant nonetheless supports environmental justice for a number of important reasons.

The first of them is that the SFERP will provide the reliability need to replace the Potrero Power Plant. The second is that the SFERP is part of a broader plan to close down that power plant.

The third is that it is the City that's proposing the SFERP and our citizens, we're accountable to our citizens. The City doesn't intend to rest until it achieves the closure of the Potrero Power Plant. And I have no doubt that our citizens won't let us rest in any event, if we wanted to, unless we do what it takes to close down the Potrero Power Plant.

Intervenors have argued that environmental justice will not be served because there isn't a guarantee that the Potrero Plant will shut down. However, we have to take the steps that are necessary to achieve that goal. If

we cannot replace the reliability need for the Potrero Power Plant, then we won't be able to shut it down.

So this is an important and key step along the way, and I would argue probably the most challenging, because siting generation within the City is always going to be something very controversial. So we've taken on that challenge, and we very much appreciate your efforts on our behalf. And I would strongly encourage you to go ahead and adopt the PMPD.

And, again, I want to thank the Energy Commission for a tremendous amount of work helping us through this process.

CHAIRPERSON PFANNENSTIEL: Thank you very much. We have two intervenors on the phone, and we'll invite their comments. First, Michael Boyd, Californians for Renewable Energy. Mr. Boyd.

MR. BOYD: A demand to correct or cure a violation to the Bagley-Keene Open Meeting Act in which the cause of that notice was because the Commission did not properly post the agenda ten days in advance of the meeting on the normal business meeting website.

And as a result of that -- we filed that on the 27th of September; and on the 28th the Committee issued a ruling denying it; citing their filing on the Siting Committee's site of the notice, which the public would have no way of knowing about unless they were a party to this proceeding.

And we filed an appeal to the full Commission yesterday, asking a full Commission review of the ruling denying our demand to correct or cure this violation.

As a result we have checked the meeting today and we believe that it is not properly noticed, and therefore illegal.

So, first I'd like to deal with that issue. And then if you want to go further, then I would like to have an opportunity to comment on the decision today.

CHAIRPERSON PFANNENSTIEL: Mr. Boyd, we'll have Mr. Chamberlain respond to your first comment.

MR. CHAMBERLAIN: Thank you, Madam Chairman. With respect to the demand for correction, the Open Meetings Act does require that a notice of this meeting have been posted on

the internet ten days in advance of this meeting.

It does not specifically state where on our website that notice is to be posted. The notice was posted on August 29th, well before the ten-day time period, by the Committee in the place where people who are interested in this particular proceeding would have looked; that is, in the specific place where all the files with respect to this case are kept.

It was very clear that today, at this time, was to be the time for this meeting. And I think that very clearly complies with section 11125 of the Government Code.

I don't think it's necessary for the Commission to take up this appeal. It would be denied under our regulations as a matter of law within 30 days. If Mr. Boyd has no objection to the Commission taking it up, even though there hasn't been notice that his appeal filed yesterday would be taken up, then the Commission could specifically take action.

But otherwise, I would recommend that you take no action at all on the appeal.

CHAIRPERSON PFANNENSTIEL: Any comments from the Commissioners?

Mr. Boyd, why don't you continue with your next point.

MR. BOYD: Okay, first to respond to what Dick (sic) said, I don't believe I can waive the notice requirements. I don't think I have the authority to waive the notice requirement, as do you, unless there's some emergency reason why the requirements would be waived.

And that's part of the problem with the notice that you did before, is that when I filed the complaint, very soon after I filed the demand, the person in charge of the Commission's website did place the agenda on the Commission's normal site where the agendas are posted.

And that agenda included this number that I'm calling into today. That number was never posted on the Committee's website. And therefore, the public, if they viewed and had gone by that website, would have had no way of knowing how to participate over the phone.

And I could find no other case, no other siting case where the business meeting agenda was not noticed also ten days in advance.

So I think this is a unique case here, and you're bending the rules to hear this today.

So my objections still stand.

On the issue of the PMPD, my understanding is that the PMPD, not the final staff assessment, is the CEQA-equivalent document to an environmental impact report. I also understand that at the PMPD Conference that there were four members of the public who spoke at the PMPD Conference and provided comments on the PMPD.

Yet CEQA requires that you provide a written response to the public comments that were presented. To date there has been nothing in writing that specifically respond to members of the public's comments on the PMPD as is required by CEQA. And therefore, I object to the fact that this PMPD has not directly responded to comments.

I also object to the errata on the basis that I don't know what specifically the errata is responding to, to whose comments, the applicant's, the intervenors or the members of the public.

And finally, I object to the fact that the transcript to the PMPD Conference was not made available prior to this meeting today.

I believe this all demonstrates the intent by the Commission to railroad this process through before the public and the intervenors have

had their opportunity to exercise their due process rights, their equal protection rights, and their rights to meaningful and informed public participation.

That's basically my take.

CHAIRPERSON PFANNENSTIEL: Thank you. Mr. Ratliff and Mr. Chamberlain, would you like to speak to the public's comments being responded to?

MR. RATLIFF: Well, I think the first thing that perhaps should be said is that the requirement for response to comments under CEQA applies to substantive comments, that is comments that are to the substance of environmental impacts. You must respond to significant comments on significant impacts.

And the nature of the comments, the public comment, that we had at the last hearing did not fall into that category. They were very general comments about who spoke for the City of San Francisco, and did not raise specific environmental issues that have not been addressed already in this proceeding.

MR. BOYD: So why are you changing -- why the errata, then?

MR. RATLIFF: I think the question that

I am answering is the question of whether or not the Commission has a duty to answer very general comments which do not address specific environmental issues.

The errata is, I think, to fine tune the Presiding Member's Proposed Decision so that it is correct in all respects. They were very minor changes to the existing decision, not of a very substantial nature at all.

I think that those minor changes reflect the comments that were received from all parties, including Mr. Sarvey.

CHAIRPERSON PFANNENSTIEL: Other response, --

(Parties speaking simultaneously.)

CHAIRPERSON PFANNENSTIEL: -- Mr. Chamberlain?

MR. CHAMBERLAIN: Yes. Madam Chairman, I think it's also important to note that the Commission's siting program is a certified regulatory program in which the procedures that are laid out in our regulations take the place of the very detailed procedural requirements of CEQA.

We are still required to abide by all the substantive requirements of CEQA, and we do

so, as the Commission is well aware. But we are not required to abide by every procedural requirement in CEQA. That's the whole reason we have a certified regulatory program.

CHAIRPERSON PFANNENSTIEL: Thank you. I would like to ask Mr. Sarvey, who is also on the phone, for comments.

MR. SARVEY: -- the compliance which was filed with the Bay Area Air Quality Management District -- the response to my comments, the project's PM2.5 emissions were reduced from three pounds per hour to 2.5 pounds per hour per turbine by the District.

I spent over 700 hours participating in the Energy Commission process for this project. As I look at this project's mitigation package the only meaningful reduction that I see was granted by the Air District. I'm very disappointed that the Energy Commission's values of public input put very little weight on my argument.

The mitigation for this project consists of 47 tons of 1985 ERCs from the Potrero Power Plant. The Potrero Power Plant is the very plant that this project is meant to shut down, according to the applicant. So I think that's pretty

ironic.

How this will help the community that all parties agree is over-burdened by industrial pollution now, still remains a mystery to me and most of the participants.

The project's street-sweeping program estimates that there'll be 26 tons of PM10 reductions from daily street sweeping on streets that are already being swept. The ARB formula for street sweeping calculated that this project's PM reductions are about 172 pounds per year, not 26 tons.

Still, all that being said, there's hope that you, the Commissioners, will properly fund AQS-11 with the $800,000, as Mr. Ngo, the staff air quality witness has proposed. In that event, at least the project's seasonal PM2.5 contribution could be mitigated.

At our PMPD Conference, we finally heard from four members of the affected community. The environmental justice principles of the State of California require that these concerns be addressed. This decision does not even mention these people who are most affected by this project.

The PMPD's failure to address their concerns and failure to provide adequate air quality mitigation for the project's air quality impacts leaves this decision in violation of Title 6 of the Civil Rights Act, and -- environmental justice guidelines.

I participated in many Commission proceedings, as you Commissioners know. I have never been in any proceeding where not one member of the affected public spoke in support of this project.

Your vote today to approve this project will not shut down the Potrero 3 Unit. As the decision clearly says on page 303, the applicant contends that the SFERP will benefit the local community by facilitating the shutdown of the existing Potrero Unit, or at least assist in creating the opportunity for such a shutdown.

Overall, as noted by intervenor Sarvey, the evidence in the record simply does not persuade us that generation at the Potrero site will necessarily cease as the result of the SFERP.

Your approval today of this project today basically replaces the Hunter's Point project with a new emission source, and continues

the pattern of environmental (inaudible) that the City of San Francisco has perpetrated on the Bay View/Hunter's Point community for the last 50 years.

Thank you, Commissioners.

CHAIRPERSON PFANNENSTIEL: Thank you, Mr. Sarvey. May I ask whether there are other who intend to comment?

MR. BOSS: Good afternoon, Commissioners. My name is Joe Boss; I am the intervenor for two communities that are nestled right next to the current Mirant Power Plant, and the closest communities to the proposed San Francisco Reliability project. That's Dogpatch and Potrero Hill.

I did speak at the previous hearing, and I do believe Mr. Sarvey knows I was there speaking for our community.

This whole process has been lengthy. It has been probably, in many ways, more thorough than what I went through as an intervenor for Unit 7, the Mirant project.

The City and County of San Francisco sponsoring something that they fight so hard to make sure that there is environmental justice,

that we are cleaning the environment and so forth. It's kind of ironic that the claim would be that this is the City and County of San Francisco pushing something down on a community.

Personally, I really do look forward to having the ability of Cal-ISO to remove a reliability-must run contract that is probably the only rational way that Mirant would ever be in favor of shuttering their plant.

This goes back, the whole issue goes back, actually, to about 2002 when the district supervisor from district 10, which is where all three power plants, one proposed and two that have been in existence, Sophie Maxwell, introduced an ordinance. And part of that ordinance, and probably to me the most critical part, was demanding that the City, through the SFPUC and the Department of Environment, create an energy plan that would allow the City to move into renewables, distributed generation and also work on conservation.

That plan, which was, included a lot of community input, the basic bottomline was the only way we're going to be able to get from here to there is to have some intown generation that's

probably fossil fuel-based, but that gives reliability to fill in the peaks and valleys that whether we go to tidal or wind or whatever, would allow San Francisco and the Peninsula to keep that reliability.

From there, I was part of a stakeholder group that met with Cal-ISO. Cal-ISO came up with the first action plan in the state, where they took a look, and it's a fairly new organization, PG&E and Edison and so forth, used to do all of the long-range planning.

So, Cal-ISO comes up with a plan that says if you do this, that and the other thing, you include a transmission, it included new generation, that it would be possible to remove the RMR contract from the Mirant site. That is a huge gain, should we be able to pull that off.

I have a sneaky hunch that as we move down, and there are other issues, you have to approve this; it has to be financed; it has to be approved by several other regulatory agencies, both in the City and the state, that once that's done we'll have a much clearer path as to whether or not Mirant will be able to see the light and decide that the land is probably worth more than

continuing to operate a merchant plant that loses money every time they turn the switch on.

At that point in time we will all sit together and say, fine, go ahead with the CTs because it will result in Mirant being -- shuttering their plant.

I'm certainly available for any questions. And I do encourage you to believe that there's a huge segment of society that believes in environmental justice, that sits right next to these power plants, but thinks this is one of the best pieces of a solution. Thank you.

CHAIRPERSON PFANNENSTIEL: Thank you, sir. Thank you for participating.

Other comments?

May I ask the Committee, comments?

COMMISSIONER BOYD: I have a question of, I guess, staff on the reference to the $800,000 for street sweeping that we heard a little earlier. Can somebody clear that up for me?

MR. RATLIFF: The referenced $800,000 for street sweeping is a reference to a comment made by the staff air quality witness in what has been described as a settlement conference with

intervenors and the applicant to try to see if there was a possibility of agreeing to what the mitigation should be for the project's PM10 contribution.

The staff has had some rather unfortunate experience --

(Fire drill.)

SPEAKER: This is a Commission fire drill. What I need to have you do is go out the --

(Off the record.)

CHAIRPERSON PFANNENSTIEL: We are all back in place. When we were so rudely interrupted I believe Mr. Ratliff was answering a question of Commissioner Boyd's.

MR. RATLIFF: Yes. And I think Commissioner Boyd had asked whether the staff-proposed $800,000 of wood stove mitigation --

COMMISSIONER BOYD: The reference, I believe by Mr. Sarvey, was to $800,000 for street sweeping. Unless I heard it wrong.

MR. RATLIFF: No, I think you heard it wrong, because the -- I think the suggestion is that staff had proposed $800,000 of wood stove mitigation, which is favored by Mr. Sarvey.

And the reference to the $800,000 arose in this settlement effort, this meeting we had with Mr. Sarvey, where the staff was actually quite reluctant to abandon the mitigation proposal that it actually has made in this case --

COMMISSIONER BOYD: I don't mean to interrupt you, but if it's truly for wood stoves, I remember all of that.

MR. RATLIFF: Okay.

COMMISSIONER BOYD: And if I misunderstood it, I shouldn't have asked the question in the first place.

MR. RATLIFF: Well, actually I would just like to say that staff has never proposed $800,000 of wood stove mitigation. The term in the workshop came up, because staff has had some problems with other wood stove proposals in the Bay Area getting adequate subscription to get the kind of mitigation tonnage that it expects, it was reluctant to rely on wood stoves for that kind of mitigation.

And in the context of our discussion I think the staff member said he would not accept less than $800,000 to get the sufficient tonnage as an alternative mitigation.

I don't think it was actually -- I think it's an incorrect characterization to say that staff proposed $800,000 of wood stoves.

CHAIRPERSON PFANNENSTIEL: Thank you. Further discussion or questions, Commissioners?

COMMISSIONER BOYD: Seeing none --

CHAIRPERSON PFANNENSTIEL: Is there a motion?

COMMISSIONER BOYD: Seeing none, I was going to say, Madam Chair, I will move the Commission adopt as its decision in this case the Presiding Member's Proposed Decision for the San Francisco Electric Reliability project, including the errata that was issued by the Committee.

CHAIRPERSON PFANNENSTIEL: Commissioner Geesman.

COMMISSIONER GEESMAN: I will second the motion, and I'd like to make a few additional remarks, as well.

I'll defer to our former colleague, Mr. Varanini, as to the precise count on the number of siting cases that we have had within the jurisdiction of the City and County of San Francisco, but suffice it to be said we've been here perhaps not literally at this point in the

process, but we have been engaged in these cases many many many many many times. There is no more difficult locale for siting a power plant in the state than the City and County of San Francisco.

I think everybody that has participated in this process is painfully well aware of that.

We have benefitted greatly by the elected leadership within the City and County of San Francisco of smoothing out a number of problems in the southeastern portion of the City that have made our siting case relatively easy. I think that the Mayor, certainly the Board of Supervisors, have spent a lot of effort listening to the affected community. And I think that our process has very much been the beneficiary of that.

The easy part ends today. There is still a great deal that the City needs to do to make good on the opportunities that this license will present. Most obviously you need to proceed to construction. But you also need, I think, to make good use of the bonding authorization the electorate of San Francisco has provided for solar energy.

You need to, I think, aggressively

pursue opportunities for distributed generation. And as this Commission has heard several times in the last six months, it is inadvertent aspects of state policy that in many instances create the roadblocks to greater reliance on distributed generation.

And I think you need to address the particular challenge of a greater reliance on energy efficiency in a community, most of whose housing stock is rental housing. And there is nobody in the United States that has figured out how to penetrate that market sector very effectively. And I think that challenge is squarely in front of the City.

But it's important that we start here with this license. And I want to congratulate my colleague, Commissioner Boyd, for the steady hand on the tiller he has had throughout what I suggest is a relatively easy siting case, but one which has had its fair share, and then some, of very perplexing procedural challenges.

I'm a friend of the intervenors generically. I think they contribute a great deal to our process. Most of the time what we expect from them is a contribution to the evidentiary

record. In this instance we had a lot of contribution to the outer dimensions of our procedural requirements.

I know that they tried the patience of the Committee and the Hearing Officer and the staff on many occasions; but I think that they did put us through our paces. We've been extremely well advised by our General Counsel's Office and by our Hearing Officer.

I'm satisfied that we have done ourselves well, and done the intervenors well, n the procedural rulings that we have made. But that credit primarily goes to Commissioner Boyd for the way in which he's conducted the case.

So, I second the motion, Madam Chair.

COMMISSIONER BOYD: Thank you, Commissioner Geesman.

CHAIRPERSON PFANNENSTIEL: Thank you, Commissioner Geesman.

I want to thank the Committee in this case. I didn't have to sit through all of the long hearings on this proceeding. But I did wade through the PMPD. And found that it was both clear and compelling in terms of how the evidence was sorted and presented.

And so I feel very good about the decision that we have before us.

So, with that, further comments from the Commission?

COMMISSIONER BOYD: Well, I just want to make sure the Hearing Officer Fay gets some of that credit, because he's done a very commendable job; as has the staff. Unlike on prior cases, I don't think I've ever had disagreement or serious question of proposals from the staff.

So, it's been a long course, but we've accomplished it, and everyone's done a good job. And I thank Commissioner Geesman for his comments and share them with the staff and particularly with Mr. Fay.

CHAIRPERSON PFANNENSTIEL: With that, all in favor?

(Ayes.)

CHAIRPERSON PFANNENSTIEL: So the PMPD with errata for the San Francisco Electric Reliability project is approved.

Now, I'm going to call a hopefully short executive session to discuss personnel matters with the Commissioners and the Executive Director, in my office.

Otherwise, we'll be adjourned.

(Whereupon, at 2:29 p.m., the special business meeting hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Special Business Meeting and Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting and hearing, nor in any way interested in outcome of said meeting and hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of October, 2006.