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State of California
Energy Resources Conservation
and Development Commission

In the matter of	)	Docket No. 04-AFC-1
	)	
	)	
San Francisco Electric Reliability Project	**)**	
Power Plant Licensing Case	**)**	**Opening Brief**
	)	

6-24-06

_____ _____

DATE

Introduction

On March 25, 2005, Supplement A, an amendment to the Application for Certification for the San Francisco Electrical Reliability Project (SFERP) was filed with the California Energy Commission. The amendment changed the location of the project to a 4-acre site owned by CCSF that lies approximately south of 25th Street and approximately 700 feet east of Illinois Street. The new site is approximately 1/4 mile south of the Potrero site originally proposed. The new site is centered in the middle of a variety of new development which includes several new concrete facilities, two asphalt batch plants, a fly ash storage facility, the Illinois Street Bridge, and several other projects covered in single document the Southern Waterfront SEIR. The population around the project is characterized by the applicant as overburdened by industrial pollution and electrical generating plants. Despite this the applicant CCSF has chosen to site yet another electrical plant the SFERP in the minority community under the guise of shutting down the existing Potrero 3 unit as part of an "energy action plan". The projects stated purpose is to facilitate the shutdown of older more polluting in city generation, minimize the local impacts of electrical generation, and maintain the City of San Francisco's electrical reliability. The project fails to accomplish all three goals. The Potrero 3 unit which the project purports to shut down has recently been retrofitted and is now a cleaner facility than the SFERP on a per Megawatt basis. The project does not minimize the impacts of local generation because the applicant has no control over the closure of the Potrero 3 unit which is a merchant plant owned by Mirant. The project as a component of the Energy Action Plan would eliminate 385 MW of in city generation further isolating the City and County San Francisco an island in the Northern California Electrical Grid.

Air Quality

Cumulative Impact Analysis

Neither applicant nor staff has completed a cumulative impact analysis that includes all reasonably foreseeable projects near the proposed SFERP. The applicant the City and County of San Francisco through the Port Commission Resolution 01-44 has approved the Bode Gravel and Mission Valley Rock lease at Pier 92, the RMC Lonestar plant, the British Pacific Aggregates/Hanson Aggregate facility, ISG Resources a fly ash facility, Coach USA a bus terminal, Waste Management Inc., the proposed waste recycling facility, the Muni Bus parking and repair facility, the Mission Bay Development project, the City Department of Parking and Traffic Impound facility, the expansion of the wastewater treatment plant , and the Illinois street bridge project. Despite all this development by the applicant the applicant fails to analyze the air quality impacts and public health impacts of the massive Southern Waterfront Project in

conjunction with the SFERP. . It's ironic that the applicant chooses to exclude these projects and then adopt the risk management plan and the Site management plan of the adjacent Muni Site which is covered by the Southern Waterfront EIR Applicants witness has testified that his cumulative analysis does not include these significant projects. (RT 5-30-06 p. 283) Staff's witness has testified that he relied on the applicants Air quality cumulative impact analysis and did not prepare one himself. (RT 5-24-06p. 317,318) Exhibit 92C The Southern Waterfront SEIR page 166 under significant unavoidable effects States " The project would also contribute to a potentially significant impact on air quality because daily and annual volumes of criteria pollutants would exceed Bay Area Air Quality Management District (and SEIR) project specific significance thresholds as described above. Locally cumulative carbon monoxide concentrations would be less than significant. However cumulative concentrations of PM-10 and diesel particulate cannot be quantified because of the multitude of existing sources. **Therefore to be conservative these emissions are deemed cumulatively significant** although the project itself would not have a significant effect with regard to local concentrations of PM-10 and diesel particulate. Further in the addendum to the Southern waterfront SEIR on page 21 the Illinois Street Bridge another project in the SEIR it states "Emissions form other local sources off Port property are not quantified, and thus it is not possible to determine whether there would be a significant cumulative air quality impact locally in the southeast area of the city. In light of the inadequate data necessary to determine whether there would be significant cumulative air quality impacts, the SEIR takes the conservative approach and deems cumulative PM-10 and diesel particulate air quality impacts would be significant." Both the Southern waterfront SEIR and its accompanying project the Illinois Street Bridge determine that these projects will have a significant air quality impact both regionally and locally that remains unmitigated and approved the projects with overriding considerations to air quality. The applicant has testified throughout the Application that the people of Southeast San Francisco have incurred a disproportionate impact from industrial pollution. Applicant's air Quality witness admits in his testimony that there will be PM-10 impacts in the Bayview and the Potrero neighborhoods. "Although the modeling shows that the SFERP is not expected to contribute significantly to cumulative regional or localized air quality impacts of any pollutants, including NO2 and PM10, the City recognizes that there will be PM10 impacts from the SFERP in both Potrero and Bayview/Hunters Point." (Exhibit 15 p. 8.1-1) The applicant admits in his testimony on environmental justice on page 4.1 of exhibit 15, "All of the major electrical generating units in San Francisco are located in Southeast San Francisco, which includes the Bayview, Hunters Point, Potrero Hill, and Dogpatch neighborhoods, Southeast San Francisco has a disproportionate number of industrial and polluting facilities, and Southeast San Francisco has an extraordinarily high rate of childhood asthma and other serious respiratory diseases." (Exhibit 15 p. 4.1)

It is clear that the project has a significant cumulative local air quality impact when combined with other projects in the area which the applicant failed to

include in any modeling analysis. The applicant admits that the Southeast San Francisco community is already disproportionably burdened by existing industrial sources which is the definition of a cumulative impact. The cumulative impacts analysis is inadequate as the record demonstrates.

. 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. Resources Code, §21083(b); Cal. Code Regs., tit. 14, §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." (Cal. Code Regs., tit. 14, §15065, emphasis added.) The analysis must include other past, present and probable future projects causing related cumulative impacts regardless of whether such projects are within the control of the lead agency. (Cal. Code Regs., tit. 14, §15130, subds. (a)(1) & (b)(1). In the instant case of the Southern Waterfront and Illinois Street Bridge projects are in the applicant's control through its agent the Port. The focus of a cumulative impact is on other projects "causing related impacts", not necessarily on projects identical to that proposed. California courts have repeatedly emphasized that the rationale for the cumulative impact analysis is to provide the decision maker a broad perspective on the overall impact of a project. (See Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263; Citizens Association v. County of Inyo (1985) 172 Cal.App.3d 151.) In Bozung, the State Supreme Court termed the CEQA cumulative impact requirement a "vital provision" which "directs reference to projects, existent and planned, in the region so that the cumulative impact of all projects in the region can be assessed." (Bozung v. Local Agency Formation Com., supra, 13 Cal.3d 263, 283, emphasis added.) As noted by the courts, "a cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval." (Citizens to Preserve the Ojai v. County of Ventura(1985) 176 Cal.App.3d 421, 431)

Background PM 2.5 and ozone levels

The applicant and staff use the Arkansas Street monitoring station as the representative background for impact assessment. Exhibit 68 demonstrates that The Hunters Point Monitoring station has PM 2.5 levels that are 5 to 10% higher than the Arkansas Street Monitoring station on the average and should be used to analyze impacts to the minority community form the projects emissions and the from the projects cumulative impacts contribution. In addition the highest Ozone level in the last ten years in the project area was recorded on October 12, 2004 at the Bayview monitoring station. (RT 10-24-06 p. 259,260) The Bayview

station which monitored air quality data for only one year has shown that the Bayview Hunters Point area experiences higher pollutant levels than have been assessed by applicant and staff who have utilized the Arkansas Street Station.

Applicant's PM-10 and PM 2.5 mitigation

The applicants proposed mitigation is a street sweeping program which the applicant claims will produce 24 tons of PM-10 reduction of which 3 tons will be PM 2.5. The applicant fails to account for the fact that when there is rain or high moisture conditions in the project area which would be in the months of November through February (PM Season) the street seeping program would be ineffective. According to the world climate website the County of San Francisco receives 21.8 inches of rainfall a year with 75% of that occurring between November and February the PM season. (http://www.worldclimate.com/cgi-bin/data.pl?ref=N37W122+2300+047767C) The applicants testimony states that during the months of October through May the project area experiences and annual rainfall of 21 inches. (Exhibit 14 8.4-11). During the months of January through February it rains on the average of 39 days. (http://www.weatherreports.com/United_States/CA/San_Francisco/averages.htm)

This rainfall is a dust suppressant and also washes PM-10 and PM 2.5 into the sewer which reduces or virtually eliminates most of the PM-10 and PM 2.5 that is embedded on the street. The street seeping program is ineffective when it is needed the most during the PM season. Even the applicant admits that,

11 Q Well, what value is the street sweeping
12 during the PM season, i.e., foggy winter months?
13 A Well, at anytime that you're going to
14 have high dust levels for road traffic it's going
15 to provide a benefit. And the impacts of rainfall
16 in terms of dampening streets are maybe three or
17 four days. Consequently, you know, in between
18 rainstorms the program is going to be effective.
RT 5-30-06 p. 251,252

ASCQ-12 will not be effective

The applicant proposes to supply SO2 credits to offset any of the PM 2.5 emissions that are not offset by the ineffective street sweeping program or by the woodstove program in ASQC-11. Unlike other siting cases before the Commission this siting case is unusual because the applicant already admits that there is a cumulative impact to the minority community. Special consideration should be given to the one impact that all parties agree is significant and that is the PM 2.5 impacts of this project. The applicant is proposing regional SO2 ERC's to mitigate the remaining PM 2.5 impacts to the minority community after

"a good faith effort" to mitigage the project through ASQC-11. The applicant will not confirm what amount it proposes to utilize in ASQC-11. The Emission reduction credits proposed in AQSC-12 are a programmatic effort to reduce regional emissions and are not designed to mitigate local impacts. The BAAQMD witness Mr. Brian Bateman confirmed this in the record.

5 Q In your response to my comment number
6 five on the PDOC you state that the District's
7 offset requirements are not intended to mitigate
8 local impacts such as NO2 and nitrogen deposition
9 impacts, is that correct?
10 MR. BATEMAN: Correct. RT 5-24-06 p. 312

The BAAQMD ERC programs are a balancing method required of the air district to demonstrate a no new net increase of criteria air pollutants in the region they are not intended to mitigate local air quality impacts such as PM 2.5 on the admitted overburdened minority community in Southeast San Francisco. In fact in a recent siting case less that a half mile away the applicant CCSF stated that SO2 credits would not mitigate local Particulate Matter impacts.

CCSF-3H, 3I: *The proposed emission reduction credits are not satisfied, localized PM10 is not mitigated by SO2 emission reduction credits.*
Response: Staff agrees; therefore, staff recommends additional localized PM10 emission reductions be obtained to mitigate the project's impacts.
Final Staff Assessment for Potrero Power Plant Unit 7 Project
http://www.energy.ca.gov/sitingcases/potrero/documents/2002-02-13_POTRERO_FSA.PDF page 5.1-32

To mitigate these local impacts the committee should adopt Exhibit 93 as the condition of certification for mitigating local PM 2.5 impacts. The mitigation measure offers $800,000 which gives the applicant a reasonable chance to achieve the necessary PM 2.5 emission reductions in the local community. Exhibit 93 offers the applicant more programs in which to achieve the necessary PM 2.5 reductions and does not require them to strictly use the woodstove program which the applicant has objected to as overly restrictive. ASQC-11 requires the approval of the Commission Compliance Staff and will allow a monitoring of progress of the PM 2.5 emission reduction program. The applicant has committed over $1,000,000 to community benefits programs so the funds are available.

Local Air Quality impacts to the minority community

The applicant proposes that the SFERP will replace the Potrero 3 unit in conjunction with the fourth turbine at the airport. Under the applicants testimony in the environmental justice section page 3-7 its demonstrates that the projects

PM 2.5 impacts will be twice the impacts per megawatt hour for the SFERP over the Potrero 3 unit and that analysis does not consider the impacts of the fourth turbine at the airport. The applicants expert attempts to downplay this statistic by stating PM 2.5 emissions for the SFERP are a permit limit for the project and not an average emission rate but offers **no credible evidence in the record** for his speculative assumption. In fact the same air quality expert attempted to raise the PM 2.5 emission limit for the exact same turbine in the Los Esteros Project. The SFERP has greater local impacts than the existing Potrero 3 unit since it is in closer proximity to the Bayview Hunters Point area. The Applicant demonstrates in his impacts analysis in appendix B of exhibit 15 pages B-19 and B-21 that the Potrero 3 unit has almost the identical PM 2.5 impacts as the SFERP both being under 2 ug/m3 although the applicant mysteriously fails to provide a definite location where the impacts will occur for the Potrero 3 unit. The applicant also fails to analyze and project the projects true impacts because the project was analyzed with just four hours of startup and shutdown and not the five hours that are allowed in the FDOC. (RT 5-24-06 290) Pollution control devices are not fully operational during startup and shutdowns (RT 5-24-06 p. 288,289) and air dispersion for PM 2.5 is less during startups and shutdowns. In addition the projects operation is limited by its fuel consumption and the project may be able to operate more than 12,000 hours because less fuel is consumed during startups and shutdowns. (RT 5-24-06 p. 289)

Biology

Nitrogen Deposition

The applicant proposes 1985 NOx Emission Reduction Credits for the mitigation of nitrogen deposition on San Bruno Mountain. The BAAQMD has clearly stated that its ERC program is not indented to mitigate nitrogen deposition.

5 Q In your response to my comment number
6 five on the PDOC you state that the District's
7 offset requirements are not intended to mitigate
8 local impacts such as NO2 and nitrogen deposition
9 impacts, is that correct?
10 MR. BATEMAN: Correct.
RT 5-24-06 p. 312

Besides the ineffectiveness of the 1985 NOx ERC's in mitigating the projects nitrogen deposition staff and applicant ignore the fact that ammonia emissions are actually the larger contributor to nitrogen deposition on San Bruno Mountain. The applicant in its response to CARES data request Exhibit 25 page 9 demonstrates that the ammonia emissions are responsible for 73% of the nitrogen deposition on San Bruno Mountain from the project. There is no

mitigation for these ammonia emissions which contribute 73% of the nitrogen deposition on San Bruno Mountain. The applicant and Staff's testimony is that nitrogen deposition is a significant impact. (Exhibit 46 p. 4.21) (RT 5-31-06 p. 124) There is no mitigation for the potentially significant nitrogen impacts on San Bruno Mountain. CEQA requires that all potential significant impacts be mitigated. The Warren Alquist Act requires mitigation of potentially significant impacts or and override by the Commission.

Public Health

Cumulative Impacts

Both applicant and staff have failed to look at the cumulative public health effects from this project. Exhibit 92A submitted by the applicant demonstrates on page D-8 that the Southern Waterfront SEIR a project that surrounds the SFERP predicts additional cumulative cancer risks occurring from the SEIR of 7.48 in a million in 2003 and 8.96 in a million in 2015 with the maximum impact at the Youngblood Coleman Playground. The Illinois Street Bridge which is also analyzed in the Southern Waterfront SEIR (Exhibit 92b Addendum page 7) states that the proposed bridge will have an impact of 4.5 in a million as an incremental cancer risk also located at the Youngblood Coleman Playground. These significant cumulative cancer risks should be assessed in conjunction with the SFERP in a community that the applicant admits is already overburdened with industrial pollution.

Environmental Justice

The applicant admits throughout the application that the Southeast San Francisco community has a disproportionate impact from industrial pollution. The applicant tries to justify the siting of the SFERP stating that its construction will close the Hunters Point Power Plant. As the record reflects the Hunters Point Power Plant has already been closed well before this project is even approved. (RT 5-1-06 p. 22) The applicant then tries top justify that the project will provide for the closure of the Potrero 3 unit. The evidence in the record is neither the applicant or CAL-ISO can bring about the closure of the Potrero 3 unit. (RT 5-1-06 p. 24) It is very possible that both units will continue to run even if the Potrero 3 unit is released from its RMR contract. Despite testimony that City policymakers purportedly are determined to avoid siting any new City-sponsored generation in the Hunter's Point area for Environmental Justice considerations all of the alternatives that the applicant proposes will impact the Bayview and Potrero Communities.. (Exhibit 15 p. 9.3) The projects PM impacts are located in the Hunters Point area and Potrero communities. (Exhibit 15 p. B-17) The

applicant admits that the project will have pm-10 impacts in both the Bayview and the Potrero communities. (Exhibit 15 p. 8.1-1)

The Applicant on page 4-1 of his testimony identifies that Southeast San Francisco has a disproportionate number of industrial and polluting facilities. The Applicant also recognizes that the minority community in Southeast San Francisco has an extraordinarily high rate of childhood asthma and other serious respiratory diseases. Even though the city has admitted these facts they now want to site the SFERP in the Community. Not only does the City want to site the SFERP in Southeast San Francisco they are also adding and expanding many more industrial polluting facilities in close proximity to the SFERP. The Bode Gravel and Mission Valley Rock facilities are expanding. The Hanson Aggregate facility is also expanding. The Nor Cal recycling facility is expanding. The Muni Bus parking and repair facility has yet to be completed and the Illinois Street Bridge project is still under construction. Many other facilities are currently being developed under the San Francisco Southern Waterfront EIR. The applicant's environmental justice expert Ann Eng filed previous comments on the Southern Waterfront EIR. She provided comments stating

1) The Southern Waterfront SEIR underestimated the severity of the impacts.

Based on documents received by ELJC from the Bay Area Air Quality Management District ("BAAQMD"), RMC's concrete mixer at its Third Street facility had a throughput of 396,800 tons in 1997 (equivalent to 198,400 cubic yards). Thus, the Draft SEIR indicates that RMC is planning to increase its 1997 concrete production levels by 125,000 to 225,000 cubic yards. However, the impact analysis of the Draft SEIR fails to take into account this predicted increase in production and omits any information about the RMC plant doubling its current output (see p. 15-16). Also, Table A-1 in Appendix A identifies RMC Pacific's annual production level for concrete at 200,000 cubic yards and does not reveal the planned increases. This inconsistency is confusing and does not provide the clear and accurate information required by CEQA for informed decision making.

Exhibit 92 b p. C&R 87

2) The southern Waterfront SEIR is legally deficient because it does not provide a stable and finite description.

Furthermore, the Draft SEIR is legally deficient because it does not provide a stable and finite description. It states that British Pacific Aggregates (BPA) is proposing to build a concrete and/or asphalt plant, which is supposedly covered by the Draft SEIR. The SEIR

Exhibit 92b p. C&R 87

3) Much like the present case here were the applicant fails to model cumulative impacts of the Southern Waterfront SEIR Ms. Eng states that the SEIR for the Southern Waterfront fails to provide a description of the physical conditions that exist at the time of the notice of preparation. This is ironic since the applicant

refuses to consider the effects of the SFERP in Conjunction with the projects in the Waterfront SEIR.

III. DRAFT SEIR FAILS TO ACCURATELY DESCRIBE THE PROJECT'S ENVIRONMENTAL SETTING

Section 15125 of the CEQA Guidelines provides, "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time of the notice of preparation is published, or if no notice is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an environmental impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives."

(Exhibit 92b p. C&R 89)

4) The applicant's environmental justice expert states that the Waterfront SEIR fails to analyze the projects significant adverse impacts.

IV. DRAFT SEIR FAILS TO ACCURATELY AND COMPLETELY ANALYZE THE PROJECT'S SIGNIFICANT ADVERSE IMPACTS

The Draft SEIR does not clearly reveal what assumptions were used to calculate PM-10 emissions from stationary and mobile sources. The draft SEIR states that the maximum daily emissions of reactive organic gases (ROG), nitrogen dioxide (NOx) and respirable particles (PM-10) from all project components combined would exceed the significance threshold of 80 pounds per day, and that the significance threshold for annual emissions would be exceeded for ROG and NOx, but not for PM-10 emissions. Pp .S-15; 84 (Table 11). This assumes that the Bode and RMC projects do not increase their production levels. However, there is already evidence in the record that there may be significant increases in production – in the immediate future as well as long term.

Also, the new asphalt facilities proposed by Mission Valley Rock and BPA most likely will generate significant PM-10 emissions. Two years ago, ELJC was involved in the CEQA environmental review process for the expansion and modernization of Berkeley Asphalt Company's facility, located at 699 Virginia Street, Berkeley, CA, which increased its production capacity of "hot mix" asphalt concrete from 145,000 tons per year to 250,000 tons per year. The Berkeley Asphalt Company facility submitted permit applications to BAAQMD for various components, including a new baghouse and modified dryer, new low-Nox burner for dryer, new pug mill and ancillaries, new cyclone and two condensers, and new asphalt tank. BAAQMD determined that Berkeley Asphalt Company's increases in PM-10 emissions for the various facility components totaled more than 5 tons per year.

In comparison, Mission Valley Rock is proposing to build an asphalt plant at Pier 92, with production levels at 400,000 tons per year in the near term and 550,000 tons by 2015. Draft SEIR, p. 11. Mission Valley Rock's new asphalt facility is expected to produce 4 to 5 times the net increase of asphalt production that will be generated by Berkeley Asphalt Company's plant modernization and expansion efforts, but the Draft SEIR Appendix D (Table D-4) claims that the PM-10 emissions at Mission Valley Rock's plant will be 0.00 for PM-10 comb. and 1.12 tons/year of PM-10 dust. The SEIR does not reveal its net emissions calculations in Appendix D. We question their reasonableness and require additional information in order to fully evaluate this analysis.

(Exhibit 92b p. C&R 91)

5) The applicant's Environmental Justice expert testified that local impacts will be greater that the Waterfront SEIR predicts.

B. Local Impacts of Air Pollutants Will Be Greater

The Draft SEIR underestimates the local impacts of the Project's emissions. For trucks traveling north, the local emissions calculations are based on traffic within the project vicinity, using a maximum trip length of 3 miles (the average distance of the relocated concrete plants from Third Street at 16th Street and Mariposa Street to Third Street at Islais Creek). For trucks traveling south, no local emissions were added because it was assumed that this traffic was already in the immediate neighborhood of the project area. Draft SEIR p. 81.

(Exhibit 92b p. C&R 90)

6) The applicant's environmental witness also states that he cumulative impacts of the waterfront SEIR will be greater because just like in the SFERP application major projects are not included in the cumulative analysis.

C. Draft SEIR's analysis of the Project's Cumulative Impacts is Incomplete

The Draft SEIR fails to recognize that the Bayview-Hunters Point community, a predominantly African-American neighborhood, has been disproportionately burdened by pollution and its residents have repeatedly raised environmental justice and public health concerns to the Port and San Francisco Planning Department. The Draft SEIR does not adequately describe the major emitting facilities already existing in or near the Project area; this deficiency is found in the Draft SEIR's discussion on land uses in the vicinity (p. 27); air quality impacts (p. 77), and cumulative air quality impacts (pp. 96-98).

This discussion does not adequately describe the numerous major pollution sources in the Bayview-Hunters Point community. We have previously informed the Planning Department of the neighborhood pollution sources and public health concerns. In ELJC's earlier comment letter, dated July 12, 1999, submitted for the scoping process for the Southern Waterfront Supplemental EIR, we described the project setting, outlined the environmental justice and public health concerns, and included a list of toxic emission sources (Exhibit B attached thereto).

(Exhibit 92 b p. C&R 93)

7) Finally the applicant's environmental justice witness who was employed by Golden Gate University at the time states that the Southern Waterfront SEIR fails to carefully examine the projects cumulative impacts that would burden the surrounding community and the SEIR's failure to do so undermines the purpose and policies of CEQA and implicates Title VI of the Civil right act.

We believe that the Draft SEIR is misleading in its omissions regarding the environmental and public health concerns of the local neighborhood. Without accurately describing the immediate neighborhood of the Project, the Draft SEIR fails to recognize the context and significance of the Project's effects. The SEIR recognizes that the Project will cause significant impacts in traffic and air pollution, and these impacts are not minimized or eliminated by the proposed mitigation measures. The Project will clearly contribute to the disproportionate impacts burdening the Hunters Point community and this implicates Title VI of the Civil Rights Act. The Draft SEIR should carefully analyze the Project's cumulative impacts that would burden the surrounding community and the SEIR's failure to do so undermines the purpose and policies of the CEQA review process. "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." CEQA Guideline §15003(g); Bozung v. LAFCO, 13 Cal. 3d 263 (1975).

(Exhibit 92b p. C&R 93)

8) Now that the applicant's air quality witness is employed by the applicant the witness attempts to downplay the Southern Waterfront SEIR's impacts on the community. The Southern Waterfront SEIR admits there are significant unmitigated impacts. The Waterfront SEIR answers the witness's previous assertions in the Waterfront SEIR by agreeing with her that the project would

have significant local and regional air quality impacts and yet the applicant refuses to analyze the Southern Waterfront SEIR projects in conjunction with the SFERP.

future particulate emissions from certain key non-project sources, such as increased vehicle and truck traffic and the planned expansion of Southern Energy's Potrero Power Plant, the SEIR did conclude that "cumulative concentrations of PM-10 and diesel particulate experienced locally, while unknown because of the wide array of sources in the existing environment, could exceed significance thresholds . . . [and that, because] the project would add some increment to existing local PM-10 and diesel emissions, . . . these emissions are deemed cumulatively significant, although the project itself would not have a significant effect with regard to local concentrations of PM-10 or diesel particulate" (SEIR pp. 97-98).

(Exhibit 92b page C&R 102)

The Waterfront EIR also states that "The SEIR concludes that these criteria would be exceeded on a daily basis in both 2003 and 2005 and that the annual criteria would also be exceeded for ROG and NO, in each analysis year and that the project impact would therefore be significant. (Exhibit 92b C&R p. 102) So the southern waterfront SEIR agrees with Ms. Eng by stating that both local and regional emissions would be a significant cumulative unmitigated impact.

Now Ms. Eng as an employee of the applicant tries to refute her own comments that the Waterfront SEIR agrees with. The SFERP is located in the middle of the southern Waterfront EIR as depicted by Exhibit 92c.

The southern waterfront SEIR is not included in the applicant's air quality impact analysis or the staffs. The AFC for the SFERP should consider the projects cumulative impacts that would burden the already overburdened minority community and the AFC's failure to do so undermines the purposes and policies of CEQA review process. CEQA requires a full disclosure of the projects individual and cumulative impacts to inform the public and the decision makers of all potential environmental impacts. The cities proposal to site the SFERP in conjunction with the projects in the Southern Waterfront SEIR without an adequate cumulative impacts analysis is a violation of CEQA and Title VI of the civil rights act. The analysis also fails to examine the potential for shifting environmental pollution to another minority community most probably in the Pittsburg area.

Southeast San Francisco has a disproportionate burden of toxic and hazardous waste facilities and sites in San Francisco. The Bayview Hunters Point area and Potrero area have 52% of the active underground storage tanks, 33% of the wastewater treatment plants, and both of the power plants in San Francisco. Of the five facilities that store enough ammonia to require a risk management plan four are located in Southeast San Francisco. Environmental justice considerations require a cumulative hazardous materials transportation risk assessment. The Potrero Project has recently upgraded its pollution control system with SCR necessitating the largest ammonia storage facility in San Francisco less that a half mile from the proposed SFERP. The applicant's expert in the Potrero 7 Project testified "The CEC should consider the

environmental justice implications of transporting and storing large quantities of hazardous materials in Southeast San Francisco an area with a significant minority and low income population." (Exhibit 83 Testimony of Richard Lee page 4) Despite that testimony the applicant has not done an assessment to evaluate the implications of the transportation and storage of large quantities of hazardous materials in Southeast San Francisco even with the SCR Retrofit of Potrero 3 and the proposed addition of the SFERP. The staff has done no study to determine the cumulative risk of the transportation of hazardous materials in the minority Southeast San Francisco Community. (RT 4-27-06 p. 202) The applicant only considers environmental justice when someone else is transporting hazardous materials through the minority community not when they are.

The project will not support affordable electric bills and will cause an additional burden of a DWR charge on minority residents of Southeast San Francisco

The applicants internal documents provided under data requests by Community Power show that DWR has estimated that the price per Megawatt for the SFERP will be $115. (Exhibit 81) Average peak energy prices for the City of San Francisco from the applicant's internal documents are expected to be around $60.00 a megawatt. (Exhibit 82) The average cost of the SFERP will be twice the cost of the average energy price for the City and three times the average for all PGE customers. (Exhibit 82) The ratepayers will also be required to subsidize the cost of the four LM-6000 units from the Williams settlement estimated at a value of 25 to 50 million. The ratepayer must also carry the cost of the 13.9 millions dollars the applicant was provided to site the combustion turbines. The exorbitant costs of this generation will be passed on to the ratepayers through DWR charges on their utility bills. Should the applicant lose money on the production of electricity after the first ten years of operation the taxpayers of San Francisco will have to subsidize the operation of the SFERP through the general fund. The elimination of 385 MW of in city generation will increase costs to minority ratepayers because of increased transmission line losses. (RT 5-1-06 p. 41)

Reliability

The action plan proposes to eliminate 385MW of in city generation. By eliminating this much in city generation the action plan exposes the City to increased imported generation. (RT 4-27-06 p. 46) The over reliance on imported energy will decrease the reliability of the San Francisco electrical system. The reality of all generation is that at one point or another the units will trip offline or break down. Again, without having more local generation immediately available, dependency on imports is increased. (RT 4-27-06 p. 88)

The majority of outages in San Francisco occur from transmission line failures. The applicants witnesses could not identify a single failure due to the outage of an in city power plant (RT 4-27-06 p. 40) In the event of an emergency The energy action plan cannot even ensure a 100 MW of in city generation as required by the action plan. (RT 5-1-06 p. 64) Elimination of the Potrero peaking plants according to the action plan eliminates the fuel diversity of in city generation and in the case of a natural disaster like an earthquake limits reliability. (RT 5-27-06p. 84)

Hazardous Materials

The applicant using the slab model has determined in his offsite consequence analysis that the complete failure of the aqueous ammonia tank would result in ammonia concentrations as high as 2000 ppm approximately 35 feet on to the Muni Maintenance Facility property. Workers there will be exposed to lethal concentrations of ammonia. (Exhibit 15 p. 8.9-4) The San Francisco Department of Public Health, Hazardous Materials Unified Program Agency (HMUPA) has issued a Regulated Substance Program Guidance that assists sources in Compliance with the State and Federal risk management programs. This guidance "strongly encourages stationary sources to use RMP*Comp for the worst case release scenario". Using the RMP Comp model the offsite consequence from a release of 10,000 gallons of 29 percent aqueous Ammonia assuming an initial ammonia temperature of 77 °F, and a diked area of 665 square feet, the resulting distance to the toxic end point of 200 ppm is 161 meters or 528 feet. This would subject members of the public to ammonia concentrations of 200ppm. (Exhibit 16 p. 8-9-4) This would be in violation of the HUMPA guidelines using either method. The HUMPA guidelines require that ammonia concentrations not exceed 35ppm at the fence line for public or worker exposure.

CEC staff has used a different method and concluded that the offsite risk is much lower. The biggest difference in the applicant's modeling and the CEC modeling is that the applicant's analysis assumes the complete failure of the tank and the formation of an evaporating pool of aqueous ammonia within the secondary containment structure approximately 665 square feet as the area for evaporation of the ammonia pool. . (Exhibit 16 p. 8-9-2) The CEC Staff on the other hand uses the 2 foot drain to the underground storage tank as the area to be modeled. (FSA 4-4-46) CEC staff does not use the worst case scenario for its offsite consequence analysis and therefore underestimates the magnitude of the ammonia concentrations that workers at the Muni Site would be exposed to. The applicant's analysis is more conservative and demonstrates that the project should adopt a weaker solution of aqueous ammonia or use a urea on demand system that CEC staff says is feasible and cost effective. (FSA p. 4.4-14,15)

Neither the Staff nor the applicant has analyzed the transportation of other hazardous materials like sodium hypochlorite or sulfuric acid. The majority of hazardous materials sites in San Francisco are located in the Bayview

neighborhood and environmental justice considerations require that a cumulative transportation risk analysis be performed. (Exhibit 83 Testimony of Richard Lee page 4)

Conclusion

The SFERP is another pollution source in the already overburdened Bayview and Potrero communities. The projects stated purpose is to facilitate the shutdown of older more polluting in city generation, minimize the local impacts of electrical generation, and maintain the City of San Francisco's electrical reliability. The project fails to accomplish all three goals. The analysis conducted fails to include the cumulative impacts of other projects surrounding the SFERP. The most important mitigation measure AQSC-11 is inadequate in its present form because it does not commit the applicant to a reasonable monetary amount to offset PM 2.5 impacts in the community which would mintage the projects significant local air quality impacts. The energy Action Plan has severe reliability issues for the San Francisco Peninsula that are not analyzed. The complete financial and health impacts of the energy action plan are not analyzed by any agency and as currently proposed threaten the reliability of the San Francisco Peninsula.

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

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DECLARATION OF SERVICE

I, **Raquel Rodriguez**, declare that on June 26, 06, deposited copies of the attached **RE: The Opening Brief for 04-AFC-1/SFERP**, 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.

Raquel Rodriguez
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