CITY AND COUNTY OF SAN FRANCISCO

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October 26, 2007

Mr. B.B. Blevins, Executive Director
California Energy Commission
1516 Ninth Street
MS-39
Sacramento, California 95814

Re: SFERP Power Plant Licensing Case, CEC Docket No. 04-AFC-1 – Request By Brightline Defense Project for Reconsideration of the Commission Decision of October 3, 2006

Dear Mr. Blevins:

The City and County of San Francisco (the "City"), the sponsor of the San Francisco Electric Reliability Project ("SFERP"), opposes the request by Brightline Defense Project ("Brightline") that the California Energy Commission ("CEC" or "Commission") reconsider "its certification of the SFERP power plant." (Brightline letter dated October 4, 2007 to Mr. Blevins, CEC Executive Director). Brightline alleges that there are "substantial changes and new information of substantial importance that illustrate that ... the proper alternative is the "No Project alternative." There is no such "new information" and Brightline's request should be summarily rejected.

1. **Background**

The City has spent over four years developing the SFERP project. The SFERP is an important component of the City's efforts to improve human health and the environment in Southeast San Francisco and improve and modernize the energy infrastructure in the City. After extensive joint work between the California Independent System Operator ("CAISO"), the City and representatives of local community groups, the CAISO Governing Board in November of 2004 approved an action plan for San Francisco that identified the elements needed to eliminate the reliability need for two old and dirty in-City power plants, the Hunters Point Power Plant and the Potrero Power Plant. Consistent with the action plan, the Reliability Must Run ("RMR") agreement for the Hunters Point Power Plant was terminated last year and the plant ceased operations. In accordance with the action plan, the ISO will terminate the RMR agreement for the Potrero Power Plant when the SFERP is operational, thus eliminating an important source of revenue from the plant for the plant's owner, Mirant-Potrero, LCC ("Mirant"), and allowing Mirant to close down the plant.

2. **Procedural Status of the SFERP Power Plant Licensing Case, CEC Docket No. 04-AFC-1**

In March 2004, the City filed the Application For Certification ("AFC") of the SFERP with the CEC. On March 25, 2005, the City filed an amendment to the AFC in which the City proposed relocating the SFERP to a 4-acre parcel owned by the City that is approximately 1/4-mile from the original site. In October 2006, the CEC issued its Final Decision approving the AFC.

In the Final Decision, the CEC found that the SFERP would result in no significant environmental impacts, approved the project and granted the license. CEC Order No. 06-1003-01. In approving the project, the CEC found, among other things, that the project will "provide a degree of economic benefits and electricity reliability to the local area" and that the required conditions of certification will: (1) "ensure that the project will be designed, sited, and operated in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards;" and (2) further "ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. . . [without] result[ing] in, [ ] or contribut[ing] substantially to, any significant direct, indirect, or cumulative adverse environmental impacts." (CEC Order at 1-2.) Thus the CEC found that implementation of the Conditions of Certification will avoid or reduce the severity of all significant environmental effects to less than significant levels, as required by CEQA Guidelines § 15091.

Lynne Brown and Michael Boyd, two of the signatories to the Brightline letter dated October 4, 2007, along with other persons sought judicial review of the CEC's Order with the California Supreme Court. The California Supreme Court denied the petition for a writ of mandate on February 28, 2007.

3. **The CEC Does Not Have Jurisdiction To Reconsider Its Decision**

The CEC has issued its Final Decision. The California Supreme Court has denied the petition for a writ of mandate filed by two of the parties to the SFERP proceeding. The Commission's work, as the lead CEQA agency, is complete. Under Section 25530 of the California Public Resources Code and Title 14, Section 15162 of the California Code of Regulations, the Commission has no authority or jurisdiction to consider Brightline's request for reconsideration.

Section 25530 of the California Public Resources Code provides that the CEC may order a reconsideration of all or part of a decision or order on its own motion or on petition of any *party*[1] *only if* such petition is filed within 30 days after adoption by the CEC of a decision or order. *[Emphasis added].* Further review is also not warranted based on the CEC's role as lead agency for environmental review of the SFERP. Title 14, Section 15162 of the California Code

[1] Brightline was not a party to the SFERP proceeding and does not have standing to request reconsideration of the decision. *See,* Sections 1207 and 1712 of the CEC Rules of Practice and Procedure, which provide for intervention in CEC proceedings and participation by intervenors. Brightline never sought to intervene in the SFERP proceeding.

of Regulations[2] provides that "once a project has been approved, the lead agency's role in project approval is completed." ... "Information appearing after an approval does not require reopening of that approval. If after the project is approved, ... [certain conditions occur], a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any."

Therefore, the Commission has no authority or jurisdiction to consider Brightline's request for reconsideration.

4. **Standard for Requiring Subsequent EIRs and the Need for Finality**

Brightline claims at page 3 of its letter that there are recent developments and information to support the No Project Alternative and urges the Commission to require additional analysis. Even accepting Brightline's claims as true, they do not meet the standard for the CEC to require that a subsequent EIR be undertaken.

The standard for determining when a subsequent EIR is required is set forth in Title 14, Section 15162(a) of the California Code of Regulations. Section 15162(a) provides that:

> (a) When an EIR has been certified, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
>
> . . . .
>
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
>
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
>
> . . . .
>
> (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative. . . .

In *Bowman v. Petaluma* (1986) 185 Cal. App. 3d 1065, the court distinguished the requirements for a subsequent EIR from the threshold required for initial EIR preparation, saying "whereas § 15064 (§ 21151 Public Resources Code) requires an EIR if the initial project may have a significant effect on the environment, § 15162 (§ 21166 Public Resources Code) indicates a quite different intent, namely, to restrict the powers of agencies by prohibiting them from

[2] Guidelines for Implementation of the California Environmental Quality Act, Title 14, Section 15162 of the California Code of Regulation.

requiring a subsequent or supplemental EIR unless "substantial changes" in the project or its circumstances will require major revisions to the EIR." Section 15162 (§21166 Public Resources Code), therefore, comes into play precisely because in-depth environmental review has already occurred and the time for challenging the sufficiency of the original EIR has long since expired. The question then becomes whether circumstances have changed enough to justify repeating a substantial portion of the process. As discussed below, the purported "recent developments and information" do not meet the standard set forth in § 15162(a).

5. There Are No Substantial Changes or New Information of Substantial Importance that Demonstrate the Proper Alternative Is the "No Project Alternative."

The "recent developments and information" Brightline cites in support of its argument that the Commission should reconsider the No Project Alternative consist of the Trans Bay Cable project ("TBC") and various renewable proposals, including solar, wind and tidal power. These claims are not new, significant, substantial, or supported by any credible evidence or data.

The CEC already considered the TBC project, and there have been no recent developments or information related to the TBC for the Commission to reconsider at this time. The Commission stated in its Final Decision at pages 21-22: "The Trans Bay Cable Project . . . would fail to make closing aging in-City generation potentially possible. Because these alternatives would not result in generation within CCSF, they would not meet CAISO requirements for generation north of the Martin substation." In a letter dated July 12, 2007 to San Francisco Supervisor Maxwell, a copy of which is attached hereto as Attachment 1, CAISO reiterated support for the San Francisco action plan and the need for the SFERP in order for the San Francisco area to close the Potrero Power Plant and still meet national reliability standards beginning in 2010. CAISO's letter also makes it clear that alternatives, such as "demand response initiatives, energy conservation programs and renewable energy projects" "fail to contain the engineering and implementation details essential to retiring generation while meeting necessary reliability requirements." In addition, as recently as Friday, October 19, 2007, Gregg Fishman, spokesman for the CAISO, again stated CAISO's longstanding position that, "[e]ven if you could significantly add to the transmission system to bring power into San Francisco, you'd still want to have some generation in San Francisco." (*See, San Francisco Chronicle,*"Vote Near on new S.F. Power Generating Plant," Friday, October 19, 2007, a copy of which is attached hereto as Attachment 2).

Similarly, alternative energy sources will be inadequate to terminate the RMR agreement for the Potrero Power Plant. San Francisco is a leader in reducing our nation's dependence on fossil fuels and protecting our environment. The City currently owns and operates one of the nation's largest city-owned solar projects atop the Moscone Convention Center. Additional solar facilities are completed or currently planned in the City for the Southeast Wastewater Treatment Plant, the North Point Wet Weather Treatment Plant, San Francisco International Airport, the Norcal Recycling Center at Pier 96 and several San Francisco public schools and libraries. The City also has numerous energy efficiency projects to reduce demand at City facilities, is conducting a feasibility study to generate tidal power at the Golden Gate Bridge and has launched a biofuel program to convert waste grease and oil into fuel for City vehicles and MUNI buses.

None of these projects will generate sufficient firm, reliable electricity to enable the closure of aging in-City generation.

Brightline offers no support for its unsubstantiated conclusions that wind, solar and tidal proposals could produce sufficient electricity and are viable alternatives to the SFERP.

6. **Conclusion**

The City respectfully urges that the CEC to deny Brightline's request for reconsideration. The Commission has completed its statutory duty and the Supreme Court has denied the petition for a writ of mandate filed by two of the signatories to the Brightline request. There is no new information supporting reconsideration by the Commission.

Respectfully submitted,

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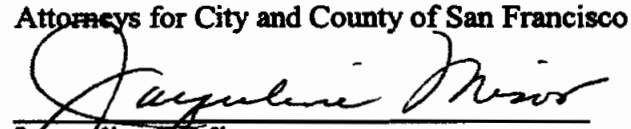

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cc: Service List
Joshua Arce, Executive Director
Brightline Defense Project

ATTACHMENT 1

California ISO
Your Link to Power

California Independent
System Operator Corporation

July 12, 2007

Honorable Supervisor Sophenia Maxwell
City and County of San Francisco
City Hall
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4641

Dear Supervisor Maxwell:

Thank you for your continuing interest in the San Francisco Action Plan ("Plan") and the Trans Bay Cable Project. We appreciate your commitment to a public process that ensures full and informed engagement of the community and interested parties.

The California Independent System Operator ("California ISO") is the reliability authority for most of the state and is obligated to ensure that electricity service within its control area meets national reliability standards. As you know, current studies indicate that the San Francisco area will not meet these standards beginning in 2010 – less than three years from now. This is a very short period of time in the world of project development, which typically requires five to seven years for study, design, permitting, development, and implementation.

The California ISO continues to support the Plan as the best mechanism for achieving the City's goals and maintaining electric system reliability. As you know, the ISO Board of Governor's adopted the Plan in 2004 with the understanding that it called for three key components:

(1) Removal of our Reliability Must-Run designation for the Hunters Point power plant once the Jefferson-Martin transmission line is placed into service,
(2) Shifting our reliability designation from the Potrero power plant to the City's combustion turbines once they are placed in service, and
(3) Development of the Trans Bay Cable Project to increase power deliveries into the area.

These firm, specific proposals, all of which are identified in the Plan and referenced in other related documents, are essential to meeting federal reliability standards in the San Francisco area. Once in place, these facilities will provide the City with the flexibility to move beyond reliability considerations and focus on developing demand response initiatives, energy conservation programs, and renewable energy projects. Unlike the proposals identified in the plan, recently introduced alternatives fail to contain the engineering and implementation details essential to retiring existing generation while meeting necessary reliability requirements.

The California ISO is proud of its work with the City and Pacific Gas & Electric Company, leading to the approval and construction of the Jefferson-Martin line and the retirement of the Hunters Point power plant, consistent with the Plan, and looks forward to the success of the remaining components of the Plan. Again, thank you for your interest and leadership in the critical deliberations. If you have questions or would like additional information, please contact Gary DeShazo (916-608-5880) or Julie Gill (916-351-2221) of my staff.

Sincerely yours,

Armando J. Perez
Vice President of Planning and Infrastructure Development

cc: Mayor Gavin Newsom
Members, San Francisco Board of Supervisors
Dennis Herrera, City of Attorney
Susan Leal, SFPUC
Members, Potrero Task Force
William Morrow, P&GE
Jeffrey Russell, Mirant
David Parquet, Babcock & Brown

ATTACHMENT 2

Vote near on new S.F. power generating plant

David R. Baker, Chronicle Staff Writer
Friday, October 19, 2007

After years of debate, San Francisco may soon build a fossil-fuel power plant in a controversial gambit to replace an older one.

City officials Fridaywill discuss a proposed contract with a Japanese company to build the plant in the Dogpatch neighborhood, near Potrero Hill, along with a much smaller generator at the city's airport.

If members of the San Francisco Public Utilities Commission approve, they could vote as early as Friday to sign the contract with J-Power, a wholesale electricity provider in Japan. Commission staff, however, say a vote is more likely on Tuesday. The contract also would need approval from the city's Board of Supervisors before the plant could be built.

The project has a convoluted history, deeply entwined with the city's long-running battles over public power and environmental justice.

The plant would use three turbines given to the city in a legal settlement by Williams Energy, one of the companies accused of gouging California during the energy crisis of 2000-2001. The plant, near the corner of 25th and Illinois streets, would generate enough power to light more than 108,000 homes. But it is supposed to be used as a "peaker," a plant that supplies electricity only when demand is high, such as on hot summer days.

Supporters see the project as a necessary step to ensure that an older Potrero Hill power plant, owned by Atlanta's Mirant Corp., finally shuts down.

Neighbors have long complained about the Mirant facility's pollution and have stepped up efforts to close it ever since another southeastern San Francisco power plant, in the Hunters Point neighborhood, shut down last year. The new plant would spew 776 fewer tons of pollution than the Mirant plant produces each year, according to the utilities' commission staff.

"While we are naturally against any new fossil fuel generation, this is a necessary evil, if you will," said Joe Boss, a Dogpatch resident and member of a community task force that studied the project.

Managers of California's power grid have pushed hard to have San Francisco build a plant within city limits before the Mirant plant can close. San Francisco already receives the vast majority of its power from plants located elsewhere, and the transmission lines bringing that electricity into the city could be damaged in an earthquake or other emergency.

"Even if you could significantly add to the transmission system to bring power into San Francisco, you'd still want to have some generation in San Francisco," said Gregg Fishman, spokesman for the California Independent System Operator, which manages the state's electricity grid.

Some backers also see the project as a steppingstone toward public power. It would strengthen the city's electricity supply if the city ever created its own public utility to replace Pacific Gas and Electric. PG&E, they note, opposes the project and released a study this summer saying it isn't necessary.

But opponents, including some public power fans, hate the thought of replacing one fossil-fuel plant with another, especially at a time when California is trying to cut its emissions of greenhouse gases. And Mirant has never agreed to close its power plant, even if California's grid managers decide it's no longer needed.

"If we're stuck with two plants, then this is a disaster," said Joshua Arce, executive director of the Brightline Defense Project, a non-profit group that has filed a lawsuit against the plant.

Critics also say the plant would run far more often than originally advertised. The California Energy Commission approval for the project said it would run every day, although each of the three turbines was limited to running 4,000 hours per year. The utilities commission said each will run 3,000 hours or less.

"The peakers are no longer peakers," said Aaron Israel, with the local Sierra Club chapter. "We're not talking about emergency power."

Then there's the question of cost.

The complicated contract to be discussed today by the utilities commission will have J-Power pay $222 million to $230 million to design and build the plant, according to the commission's staff. The company then will recoup its investment - plus a profit estimated at 11.5 percent - in three ways.

First, the utilities commission will pay $57 million when the plant starts operation.

Second, the California Department of Water Resources will sign an agreement to use the plant's power, with the agreement running through 2015. Money for the water resources department contracts will be paid by utility customers throughout the state.

Finally, the city utilities commission, which supplies power to San Francisco government buildings and the airport, will sign an agreement for the plant's power from 2016 through 2021. At the end of that time ownership of the plant will pass to the city.

A memo written by utilities Commissioner Richard Sklar and obtained by The Chronicle speculated that the true cost could be much higher, roughly $452 million.

In the memo Sklar arrives at that figure by calculating money spent on the plant's contracts with the Department of Water Resources and the Public Utilities Commission over the life of the contracts.

Sklar declined to comment for this story, saying he would wait until today's meeting.

E-mail David R. Baker at dbaker@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/10/19/BUBOSSF48.DTL
This article appeared on page B - 1 of the San Francisco Chronicle

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-01C **Proof of Service**

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DECLARATION OF SERVICE

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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

Dated: October 26, 2007.

PAULA FERNANDEZ