

Date: March 24, 2009

Item No. 4

File No. 09006

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Joshua Arce and Eric Brooks against PUC**
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Completed by: Chris Rustom

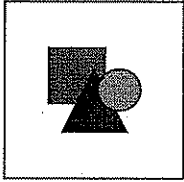
Date: March 19, 2009

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

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DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

February 17, 2009

JOSHUA ARCE AND ERIC BROOKS v. SAN FRANCISCO PUBLIC UTILITIES COMMISSION (09006)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainants represent environmental and social justice organizations which have spent the past several years seeking closure of the Potrero Power Plant in Southeast San Francisco without the construction of new power plants to replace it. Complainant Joshua Arce represents the Brightline Defense Project and Complainant Eric Brooks represents the San Francisco Green Party, Sustainability Working Group.

On May 14, 2008, Joshua Arce as Executive Director/Staff Attorney for the Brightline Defense Project made a Public Records Request for all communications between the San Francisco Public Utilities Commission ("SFPUC") staff and the California System Operator ("Cal-ISO") state regulatory body during the period of March 1, 2008 through May 13, 2008. To this request, the SFPUC provided 8 e-mails. Joshua Arce and Eric Brooks believed that there should be more e-mails since what was provided alluded to other communications that were ongoing between the SFPUC and Cal-ISO. From May 16 through June 11, 2008, complainants communicated with the SFPUC in their effort to obtain other e-mails that the Complainants believed were being withheld by the SFPUC. The SFPUC responded that they did not have any further records. The Complainants made an identical Public Records Request with Cal-ISO and received 20 e-mails.

COMPLAINANT FILES COMPLAINT:

On January 26, 2009, Joshua Arce and Eric Brooks filed complaint against the SFPUC for its alleged failure to disclose e-mails under Section 67.21 and/ or its willful failure to maintain and preserve correspondence and records under Section 67.29-7. The complainant further allege that

Memorandum

the willful failure to maintain correspondence was official misconduct as defined in Section 67.34.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

Director Tony Winnicker, Director of Communications for the SFPUC stated in his June 13, 2008 e-mail that it has provided the records that it had in its files and will not create a new record solely to accommodate the Public Records Request.

APPLICABLE STATUTORY SECTION:

1. Sunshine Ordinance § 67.21 addresses general requests for public documents.
2. Sunshine Ordinance § 67.25 addresses Immediate Disclosure Requests.
3. Sunshine Ordinance § 67.26 deals with redaction of records.
4. Sunshine Ordinance § 67.27 addresses legal justification for withholding of records.
5. Sunshine Ordinance § 67.29-7 requires a Department Head to maintain and preserve documents and correspondence.
6. Sunshine Ordinance § 67.34 deals with willful failure to comply with the requirements of the Sunshine Ordinance and the comparable state statutes to be Official Misconduct.
7. State Government Code § 6253 addresses requests for public records.
8. State Government Code § 6255 addresses legal justification for withholding of records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- Complainant Joshua Arce made a public records request for certain e-mail communications between the SFPUC staff and the Cal-ISO.

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- To this request, the SFPUC provided 8 e-mails.
- Joshua Arce made the same request from the Cal-ISO and was provided with 20 e-mails.
- Joshua Arce made repeated requests to the SFPUC for more e-mails.
- To these requests, the SFPUC stated that it did not have any further e-mails and would not create new documents in order to answer the requests.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

- Whether the SFPUC provided all its e-mails relevant to the public records request?
- Whether the SFPUC willfully deleted its e-mails in order to thwart the effort of the complainants to obtain those records?

i. Relevant facts in dispute:

- Did the SFPUC comply with its own records retention policy in the handling of its e-mails?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED**

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

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Section 67.21 addresses general requests for public documents.

This section provides:

- (a) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A custodian of a public record shall as soon as possible and within ten days (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

Section 67.29-7 provides:

The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

Section 67.34 addresses willful failure as official misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

THE CALIFORNIA PUBLIC RECORDS ACT IS LOCATED IN THE STATE GOVERNMENT CODE SECTIONS 6250 ET SEQ. ALL STATUTORY REFERENCES, UNLESS STATED OTHERWISE, ARE TO THE GOVERNMENT CODE.

Section 6253 provides.

- a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon

Memorandum

payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

d.) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

Section 6255 provides:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2009 JAN 26 PM 1:54
BY OKS

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission San Francisco Public Utilities Commission

Name of individual contacted at Department or Commission various, please see attached

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.21 and 67.29-7
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

_____ please see attached _____

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
Name Joshua Arce and Eric Brooks Address c/o 240 Golden Gate Ave.
P.O. Box 420250
San Francisco, CA 94142

Telephone No. 415-837-0600 E-Mail Address _____

Date January 26, 2009 _____
Signature 

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

**Sunshine Ordinance
Complaint Against
Members of the Staff of the
San Francisco Public Utilities
Commission**

January 26, 2009

Frank Darby, Jr.
Administrator of the Sunshine Ordinance Task Force
City Hall, Room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4683

Re: *Sunshine Ordinance Complaint Against Members of the Staff of the
San Francisco Public Utilities Commission*

Dear Mr. Darby and Members of the Sunshine Ordinance Task Force:

Upon review of the attached documents we ask you to determine whether there is evidence of willful failure to comply with the duty to permit inspection and copying of public records under Section 67.21 of the Sunshine Ordinance and/or willful failure to maintain and preserve correspondence and records under Section 67.29-7.

We represent environmental and social justice organizations which have spent the past several years seeking closure of the Potrero Power Plant in Southeast San Francisco without the construction of new power plants to replace it. The San Francisco Public Utilities Commission and its Assistant General Manager for Power, Barbara Hale, were central to this issue and a herculean community and advocacy effort was required to push the SFPUC to finally reject the \$273 million contract to build new power plants in July 2008.

During the course of our work we noticed a very disturbing pattern of behavior and public testimony on the part of members of the SFPUC staff which suggested that staff were operating well outside of their purview, acting as advocates of a very specific subjective outcome rather than serving appropriately as unbiased analysts and advisers. Even worse, to promote this subjective outcome, SFPUC staff appeared to directly misguide the legislative process and misrepresent the position of the Cal-ISO state regulatory body with respect to the need to build new power plants as the only means of shutting the Potrero Plant.

As citizens and advocates we experienced serious problems in presenting our position that these new power plants were not required, that Cal-ISO in fact welcomed the City's presentation of a clean alternative to continued reliance on fossil fuels. Our difficulty was caused by the fact that an activist SFPUC staff disputed this contention, claiming that statements attributed by Cal-ISO in the press were contrary to the SFPUC's own private communications with ISO in which, according to the PUC, ISO was insistent on the need for replacement power plants in order to close the Potrero Plant.

Our concern as to the veracity of the SFPUC's representations led us to invoke our rights under the Sunshine Ordinance beginning in May 2008 to obtain and review all communications between the SFPUC staff and the Cal-ISO regarding the subject of the Potrero Plant and the proposed replacement combustion turbines.

On June 13, 2008 we filed a formal complaint for willful failure to comply with the Sunshine Ordinance with the SFPUC. This complaint is preceded by over 40 days following the filing of our complaint before the SFPUC, and neither the General Manager of the SFPUC nor any city or state official has taken action to cure the alleged violations.

Moreover, our complaint comes at time when the SFPUC will soon be tasked once again by the San Francisco Board of Supervisors with completing a study of closing the Potrero Power Plant without building new combustion turbines to replace it, and this process is likely to lack transparency, accuracy and accountability if the Sunshine Ordinance Task Force does not take very timely corrective action.

Exhibit 1 of the attached documents includes our request for all communications between the SFPUC staff and Cal-ISO state regulatory body during the period of March 1, 2008 through May 13, 2008. This was a critical period when approval of the controversial power plant proposal was subject to a pending vote by the Board of Supervisors. Exhibit 2 is the SFPUC's response, which comprised a total of only 5 emails between the SFPUC and Cal-ISO.

Of initial concern was not only the limited number of communications produced, but the fact that the SFPUC's Barbara Hale was seemingly involved in drafting a letter purported to come independently from Cal-ISO Vice-President Armando Perez that was later held up as proof by SFPUC staff of Cal-ISO's insistence that San Francisco build new power plants, during a May 5, 2008 hearing before the Board of Supervisors' Government Audits and Oversight Committee.

The correspondence attached as Exhibit 3 comprises our May 16 through June 11, 2008 effort to resolve our concern that documents had been withheld, based on both the limited breadth of produced emails and the fact that while ISO wrote that it would not sign its April 7 letter until Ms. Hale finished writing it, no such completed letter had yet been produced by Ms. Hale.

We received neither a satisfactory explanation nor further documents, and we therefore filed a formal Sunshine Ordinance Complaint with the SFPUC staff on June 13. The complaint is included in Exhibit 4, as is the SFPUC's same-day response that it was in compliance with the Ordinance.

On June 25, 2008 we made the identical request for records of communications with the SFPUC staff, this time through a request lodged with the Cal-ISO state agency that is attached as Exhibit 5.

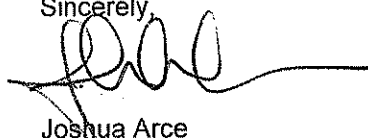
We were startled to receive Cal-ISO's response on July 23, 2008, which consisted of 20 email communications with SFPUC staff, attached as Exhibit 6. Most noteworthy of documents produced by the Cal-ISO but not the SFPUC staff are an April 29 email from Ms. Hale that appears to request that Cal-ISO retract press quotes such as an April 11 statement that suggested that the City possessed alternative means of closing the Potrero Plant (see Exhibit 7) and a May 1 email between Cal-ISO and Ms. Hale alerting the SFPUC to an anti-power plant rally that we organized on the steps of City Hall that was attended by representatives of the Sierra Club, Greenaction, the Ella Baker Center for Human Rights, Rainforest Action Network, and over 100 environmentalists and community members.

There is also a draft copy of legislation contemplated by the Board of Supervisors that Ms. Hale sent to Cal-ISO for purposes unknown and several emails referring to setting up lobbying sessions of "key members of the Board of Supervisors." On May 11, 2008 the President of the Cal-ISO confirmed in the San Francisco Chronicle that there were no less than three alternatives to building new power plants to replace the Potrero Plant (see Exhibit 8).

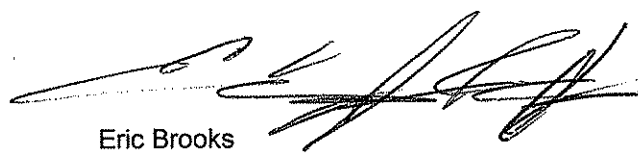
Apart from the fact that the Cal-ISO production necessarily means that the SFPUC staff either improperly withheld documents that it should have produced and/or selectively destroyed documents that would raise further ethical questions, our Sunshine requests to the SFPUC were also met with unreasonable delays in responses from SFPUC staff.

Once again, upon review of the attached documents we ask you to determine whether there is evidence of willful failure to comply with the duty to permit inspection and copying of public records under Section 67.21 of the Sunshine Ordinance and/or willful failure to maintain and preserve correspondence and records under Section 67.29-7. If the Task Force does find violation, please implement the appropriate corrective action and/or sanctions, and order re-training of staff to ensure that in the future, the public will have fully transparent and responsive access to the activities of the SFPUC.

Sincerely,



Joshua Arce
Brightline Defense Project



Eric Brooks
San Francisco Green Party,
Sustainability Working Group

1

May 14, 2008
SFPUC Sunshine Ordinance Request
All Communications Between
SFPUC Staff and Cal-ISO

2

May 15, 2008
SFPUC Public Records Office Response
5 Email Communications Between
SFPUC Staff and Cal-ISO

3

May 16-June 11, 2008
SFPUC Public Records Office Discussions
Regarding Allegation That Emails Have
Been Withheld And/Or Destroyed

4

June 13-17, 2008
Formal Sunshine Ordinance Complaint
Against the SFPUC and SFPUC Response

5

June 25, 2008
Cal-ISO Information Availability Policy
(Public Records) Request
All Communications Between Cal-ISO
Staff and SFPUC

6

July 23, 2008
Cal-ISO Response
20 Email Communications Between Cal-
ISO and SFPUC Staff (Disclosed To Date)

7

April 11, 2008
SF Examiner Article
"The City Has Not Formally Proposed Any Plans
Other Than The New Gas-Burning Plant..."
- Cal-ISO Spokesperson Stephanie McCorkle

8

May 21, 2008
SF Chronicle Op-Ed
"There Are Alternatives To The Peakers..."
- Cal-ISO President Yakout Mansour

MAY 14, 2008

**SFPUC SUNSHINE
ORDINANCE REQUEST**

**ALL COMMUNICATIONS
BETWEEN SFPUC STAFF
AND CAL-ISO**

EXHIBIT 1

Joshua Arce

From: Joshua Arce
Sent: Wednesday, May 14, 2008 10:20 AM
To: publicrecords@sfgwater.org
Subject: Sunshine Request - IMMEDIATE DISCLOSURE REQUEST
Attachments: Sierra Research Memo.pdf

Greetings SFPUC staff:

Please consider this email an official Sunshine request. This request is simple, routine, and otherwise readily answerable as those terms are used in Section 67.25 of the Sunshine Ordinance pertaining to Immediate Responses. Therefore I am requesting the following information for immediate disclosure:

1. All emails both sent and received between all members of SFPUC staff and any staff member, employee, or other representative of the California Independent System Operator between March 1, 2008 and May 13, 2008, inclusive.
2. All emails both sent from and received by SFPUC staff that contain reference to the SFPUC staff's request that Sierra Research prepare an assesment of the City's proposed combustion turbine projects that was delivered to Karen Kubick and Michael Martin on April 15, 2008 (the Sierra Research assessment is attached to this email for reference).
3. All documents that contain reference to any and all cost components of the Sierra Research assessment of the City's proposed combustion turbine projects that was delivered to Karen Kubick and Michael Martin on April 15, 2008, including, but not limited to, the cost of preparation of the assessment and the cost of Sierra Research's time in presenting its assessment to members of the public on April 29, May 5, and any other day for which Sierra Research billed the SFPUC and/or the City and County of San Francisco for its time.

In order to help expedite Request No. 1 I suggest that you use the keyword "caiso.com" to search the "From:" field of SFPUC staff 'Inbox' folders and the "Sent To:" field of staff 'Sent Items' folders.

In order to help expedite Request No. 2 I suggest that you determine the date that SFPUC initiated its request for the Sierra Research assessment and use the keyword "sierraresearch.com" to search the "From:" field of 'Inbox' folders and the "Sent To:" field of 'Sent Items' folders to locate responsive emails from the assessment initiation date through April 15, 2008.

Request No. 3 should be a straightforward request of the Accounting Department or the combustion turbine project manager.

Thank you very much in advance. Please do not hesitate to contact me if you have any questions.

Joshua Arce

Joshua Arce
Executive Director / Staff Attorney
Brightline Defense Project
240 Golden Gate Avenue, Ste. 102
San Francisco, CA 94102
415-837-0600 (phone)
415-837-0660 (fax)

MAY 15, 2008

**SFPUC PUBLIC RECORDS
OFFICE RESPONSE**

**5 EMAIL COMMUNICATIONS
BETWEEN SFPUC STAFF
AND CAL-ISO**

EXHIBIT 2

Hale, Barbara

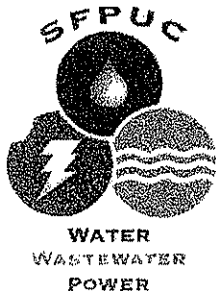
From: Edson, Karen [KEdson@caiso.com]
Sent: Friday, March 28, 2008 3:28 PM
To: Hale, Barbara
Cc: DeShazo, Gary; Perez, Armando; Saracino, Nancy
Subject: SF CTs

Barbara,

Glad to hear you are making progress on the CT project. Gary DeShazo is the right point of contact here. We've spoken, and he is prepared to work with you on correspondence that reiterates our previously described position. Please feel free to call at any time.

Karen

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435



SAN FRANCISCO PUBLIC UTILITIES COMMISSION

1155 Market St., 11th Floor, San Francisco, CA 94103 • Tel. (415) 554-3155 • Fax (415) 554-3161 • TTY (415) 554.3488



April 2, 2008

GAVIN NEWSOM
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Ξ DENNIS NORMANDY
VICE PRESIDENT

RICHARD SKLAR
DAVID HOCHSCHILD
F.X. CROWLEY

ED HARRINGTON
GENERAL MANAGER

Armando Perez, Vice President
Planning and Infrastructure Development
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630

Dear Mr. Perez:

The City and County of San Francisco (the "City"), acting through its Public Utilities Commission (the "SFPUC"), has negotiated agreements and other arrangements relating to its proposed construction and operation of four simple cycle combustion turbine peaking power generation units (collectively, the "Project"). Three of these units are planned to be sited within the City along its eastern waterfront (the "In-City Project") and the fourth is planned to be sited at San Francisco International Airport (the "Airport Project").

The SFPUC anticipates submitting the Project and the related legal documents to the City's Board of Supervisors for their consideration in the near future. The key consideration for the City in pursuing the Project is ensuring that CAISO will remove the Reliability/Must Run designation from Potrero Power Plant Units 3, 4, 5 and 6 (collectively, the "Potrero Units") as described in the San Francisco Action Plan (the "Plan").

As a related matter, the SFPUC is also interested in limiting the City's costs associated with the Project to the extent it can do so while still achieving the removal of the RMR designation from the Potrero Units. With significant progress being made on the Trans-Bay Cable it has been suggested that certain resources proposed to be devoted to the Project could be repurposed for other uses that would also help address the City's energy challenges while reducing the financial, environmental and/or opportunity costs associated with the Project in its current form.

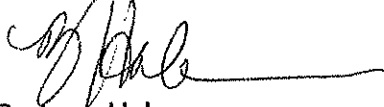
By way of this letter we ask that you provide us with your current understanding of whether the successful commercial operation of the full Project is required in order to remove the RMR designation from the Potrero Units while still satisfying federal reliability standards as described in the Plan. Specifically, we seek a statement from you as to the following questions:

1. Whether construction and operation of the Airport Project is required to achieve removal of the Potrero Units' RMR designation, or alternatively if such removal can be achieved through the construction and operation of the In-City Project alone.

2. Whether in the absence of one or both components of the Project the reasonably foreseeable development of the SFPUC's in-City renewable energy generation portfolio would nevertheless allow for the removal of the Potrero Units' RMR designation in the near future. (For your information, current SFPUC plans for developing in-City generation are comprised of photovoltaic generation facilities of various operating capacities.)

In view of our intention to move this forward in the approval process in the near future, we would greatly appreciate a response as soon as you are able.

Sincerely,



Barbara Hale
Assistant General Manager
SFPUC Power Enterprise

c: Karen Edson, CAISO
Gary DeShazo, CAISO

Hale, Barbara

From: DeShazo, Gary [GDeShazo@caiso.com]
Sent: Friday, April 04, 2008 5:49 PM
To: Scott, Rosie; Hale, Barbara
Cc: Perez, Armando
Subject: FW: Barbara Hale draft letter
Importance: High
Attachments: Barbara Hale Ltr (3).doc

Please pass on to Barbara. This letter is not final as Armie has indicated. We are waiting for input from Barbara.

Gary

From: Perez, Armando
Sent: Friday, April 04, 2008 5:15 PM
To: DeShazo, Gary
Subject: FW: Barbara Hale draft letter
Importance: High

Gary: Please follow up with Barbara that I am waiting for her comments on this letter before I finalize it. It is not clear to me, from this email, that that is taking place.

From: Allotey, Carol
Sent: Friday, April 04, 2008 4:44 PM
To:
Cc: DeShazo, Gary; Perez, Armando
Subject: Barbara Hale draft letter
Importance: High

Rosie,

Please see attached draft letter to Barbara Hale; will mail a final sign copy on Monday, April 7, 2008. If you have any questions or concerns please contact Mr. Gary DeShazo at 916.351.5880

Warm Regards,

5/15/2008

Carol Allotey

Executive Assistant

ph. 916.351.2209

fax.916.351.2350

DRAFT

April 4, 2008

Ms. Barbara Hale
Assistant General Manager
San Francisco Public Utilities Commission Power Enterprise
1155 Market St., 11th Floor
San Francisco, CA 94103

Dear Ms. Hale,

The California Independent System Operator ("California ISO") is pleased to hear that the City and County of San Francisco (the "City") is nearing completion of its process to successfully site the four simple cycle combustion turbine peaking power generation units (the "Project") within the City and the San Francisco International Airport

Regarding your letter of April 2, 2008 asking for our "current understanding" of the need for the Project to meet Federal reliability standards as described in the San Francisco Action Plan ("Action Plan"), the California ISO continues its support for the Plan as the best mechanism for achieving the City's goals and maintaining electric system reliability within San Francisco. As such, the California ISO provides the following responses to your questions.

Question 1

"Whether construction and operation of the Airport Project is required to achieve removal of the Potrero Units' RMR designation, or alternatively if such removal can be achieved through the construction and operation of the In-City Project alone?"

Answer 1

Per the Action Plan, the Project, as defined in your April 2, 2008 letter, is required to achieve removal of the Potrero Units' RMR designation.

Question 2

"Whether in the absence of one or both components of the Project the reasonably foreseeable development of the SFPUC's in-City renewable energy generation portfolio would nevertheless allow for the removal of the Potrero Units' RMR designation in the near future. (For your information, current SFPUC plans for developing in-City generation are comprised of photovoltaic generation facilities of various operating capacities.)"

Answer 2

The California ISO's ability to remove the RMR designation from the Potrero Units is based on the ability of the Project to provide the same characteristics and generating capacity as is currently provided by the existing Potrero Units, including "around the clock" availability. However, it should be noted that around the clock availability is a characteristic that is not provided by photovoltaic generation.

If you have any questions, please do not hesitate in contacting Mr. Gary DeShazo at (916-608-5880).

Sincerely yours,

Armando J. Perez
Vice President of Planning & Infrastructure Development

cc: Karen Edson
Gary DeShazo



Armando J. Perez
Vice President
Planning & Infrastructure Development

April 7, 2008

Ms. Barbara Hale
Assistant General Manager
San Francisco Public Utilities Commission Power Enterprise
1155 Market St., 11th Floor
San Francisco, CA 94103

Dear Ms. Hale,

The California Independent System Operator ("California ISO") is pleased to hear that the City and County of San Francisco (the "City") is nearing completion of its process to successfully site the four simple cycle combustion turbine peaking power generation units (the "Project") within the City and the San Francisco International Airport

Regarding your letter of April 2, 2008 asking for our "current understanding" of the need for the Project to meet Federal reliability standards as described in the San Francisco Action Plan ("Action Plan"), the California ISO continues its support for the Plan as the best mechanism for achieving the City's goals and maintaining electric system reliability within San Francisco. As such, the California ISO provides the following responses to your questions.

Question 1

"Whether construction and operation of the Airport Project is required to achieve removal of the Potrero Units' RMR designation, or alternatively if such removal can be achieved through the construction and operation of the In-City Project alone?"

Answer 1

Per the Action Plan, the "In-City Project" and the "Airport Project", as defined in your April 2, 2008 letter, are required to achieve removal of the Potrero Units' RMR designation.

Question 2

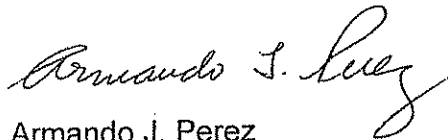
"Whether in the absence of one or both components of the Project the reasonably foreseeable development of the SFPUC's in-City renewable energy generation portfolio would nevertheless allow for the removal of the Potrero Units' RMR designation in the near future. (For your information, current SFPUC plans for developing in-City generation are comprised of photovoltaic generation facilities of various operating capacities.)"

Answer 2

The California ISO's ability to remove the RMR designation from the Potrero Units is based on the ability of the Project to provide the same characteristics and generating capacity as is currently provided by the existing Potrero Units, including "around the clock" availability. However, it should be noted that around the clock availability is a characteristic that is not provided by photovoltaic generation.

If you have any questions, please do not hesitate in contacting Mr. Gary DeShazo at (916-608-5880).

Sincerely yours,



Armando J. Perez
Vice President of Planning & Infrastructure Development

cc: Karen Edson
Gary DeShazo

Hale, Barbara

From: Edson, Karen [KEdson@caiso.com]
Sent: Thursday, April 24, 2008 2:19 PM
To: Hale, Barbara
Cc: DeShazo, Gary; Allotey, Carol
Subject: Meetings re SF Peaker Project

Barbara,

Gary DeShazo and I are available to meet with Board members on Tuesday, May 6th. Please let us know who, when, etc. I'd also like to schedule a pre-meeting or conference call to make sure we understand the exact status of the project. Thanks!

Karen

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435

Hale, Barbara

From: Hale, Barbara
Sent: Thursday, April 24, 2008 5:44 PM
To: Edson, Karen; Spanjian, Laura
Cc: DeShazo, Gary; Allotey, Carol
Subject: RE: Meetings re SF Peaker Project

Thanks so much, Karen. Laura Spanjian, SFPUC Assistant GM for External Affairs, will be working with key members of the Board of Supervisors to set these meetings up. And yes, we should also schedule a meeting or conference call to prep the morning of the 6th or afternoon of the 5th. Availability for that? Barb

From: Edson, Karen [mailto:KEdson@caiso.com]
Sent: Thursday, April 24, 2008 2:19 PM
To: Hale, Barbara
Cc: DeShazo, Gary; Allotey, Carol
Subject: Meetings re SF Peaker Project

Barbara,

Gary DeShazo and I are available to meet with Board members on Tuesday, May 6th. Please let us know who, when, etc. I'd also like to schedule a pre-meeting or conference call to make sure we understand the exact status of the project. Thanks!

Karen

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435



Armando J. Perez
Vice President
Planning & Infrastructure Development

May 1, 2008

Mr. Edward Harrington, General Manager
San Francisco Public Utilities Commission
San Francisco, CA 94102-4689
1155 Market Street
San Francisco, CA 94103

Dear Mr. Harrington:

The California Independent System Operator ("California ISO") appreciates the City and County of San Francisco's ("City") continuing attention to the electric reliability challenges facing the City. These issues arise in the context of a proposal under consideration by the Board of Supervisors to approve the agreements for development of the San Francisco combustion turbine projects.

The California ISO is a public benefit, non-profit organization that has a significant interest in these matters as the entity responsible for ensuring that most of the state meets applicable reliability standards. Our analyses indicate that the San Francisco area will not meet these standards as soon as 2009 if the Potrero power plant is retired and the City's combustion turbine projects are cancelled. The area will remain out of compliance even with Trans Bay Cable in service beginning in 2010. This leaves very little time given that the world of project development typically requires five to seven years for study, design, permitting, development and implementation.

The California ISO is aware of recent news stories and correspondence directed to the Mayor and Board of Supervisors that imply that the California ISO no longer believes that the combustion turbine projects are needed and that the ISO wants to examine other alternatives. I want to reaffirm the California ISO's support for the San Francisco Action Plan as the best mechanism for achieving the City's goals and maintaining the area's reliability. I trust that you will rely on our direct communications with you rather than these second-hand reports – especially those provided by parties with a particular interest.

Again, I appreciate your concern about the area's reliability needs and look forward to continuing to work with the City on these important issues.

Sincerely yours,

Armie Perez
Vice-President of Planning and Infrastructure Development

cc: Mayor Gavin Newsom
Members of the San Francisco Board of Supervisors
Dennis Herrera, City Attorney
Phillip DeAndrade, Chair, Power Plant Task Force

Hale, Barbara

From: Hale, Barbara
Sent: Monday, May 12, 2008 8:50 AM
To: Karen Edson (kedson@caiso.com); DeShazo, Gary
Subject: Chron Editorial Says No to CTs

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/12/EDFJ10JUPG.DTL>

Barbara Hale
Assistant General Manager, Power
San Francisco Public Utilities Commission
1155 Market Street
San Francisco, CA 94103
ph: 415-554-2483
fax: 415-554-3280

MAY 16-JUNE 11, 2008

**SFPUC PUBLIC RECORDS
OFFICE DISCUSSIONS
REGARDING ALLEGATION
THAT EMAILS HAVE BEEN
WITHHELD AND/OR
DESTROYED**

EXHIBIT 3

Joshua Arce

From: Joshua Arce
Sent: Friday, May 16, 2008 1:09 PM
To: Public Records
Subject: RE: Sunshine Request - IMMEDIATE DISCLOSURE REQUEST

Cathy,

In regard to Request #1 (see below for reference), the SFPUC's Sunshine Disclosure appears to be woefully incomplete. First, the emails that have been produced only come from Barbara Hale, but I understand that other members of staff have interacted with the California Independent System Operator (Cal-ISO) since March 1. The request seeks disclosure of emails from all members of staff and, at a minimum, Laura Spanjian has indicated to me that she has interacted with Cal-ISO since March 1.

In addition, Ms. Hale's disclosure is incomplete. There are only 5 emails attached and each seems to be just a single part of a broader conversation.

The first email concerns something called "Barbara Hale draft letter" that Cal-ISO seems ready to send out on April 7, that Cal-ISO has emailed to Ms. Hale for her comments and revisions. The disclosure excludes what Ms. Hale's revisions were to the letter and emails giving context to Cal-ISO sending Ms. Hale this letter.

The second email references May 6th meetings that Barbara Hale is organizing between Cal-ISO and the Board of Supervisors. Ms. Hale's disclosure omits emails giving context to the purpose of these meetings, who is to be present during these meetings, how the meetings were initiated, and discussions following these meetings.

The third email is from March 28 in which Cal-ISO indicates that it is willing to work with Ms. Hale in drafting correspondence about the CT project. Again, the disclosure omits emails giving context to Ms. Hale's request that Cal-ISO work with her to draft correspondence, and communications that led to the request for correspondence, as well as what correspondence Ms. Hale and Cal-ISO eventually drafted, if any.

The fourth email is a May 12 email to Cal-ISO employees with a link to a San Francisco Chronicle editorial opposing the proposed CT power plants. But Cal-ISO's response has been omitted from the disclosure; judging by the level of familiarity between Ms. Hale and the staff at Cal-ISO that she interacts with I presume that there was a response from either Karen Edson or Gary DeShazo, or both.

The fifth email is another about setting up meetings with members of the Board of Supervisors for May 5 and May 6 to discuss a project, presumably the combustion turbines. Again, there are no emails to supply a context for the purpose of these meetings, whether the meetings actually occurred and what communications came afterward.

In addition, the email indicates that Laura Spanjian is "working with key members of the Board of Supervisors to set these meetings up." This once again suggests that we need Ms. Spanjian's Sunshine disclosure of all Cal-ISO communications to find out the purpose of these meetings and the context of these meetings with key members.

There are also other communications missing: Barbara Hale has indicated at the Local Agency Formation Commission and Government Audits and Oversight Commission that the SFPUC had worked very hard to engage the Cal-ISO to determine whether the new combustion turbine power plants would be necessary under a 2008 Action Plan.

Yet we see no such discussion in the 5 emails that Ms. Hale has produced.

I would like to find out if those items actually exist and if they do they too should be disclosed.

Finally, there is a letter on the SFPUC website from Mr. Perez of the Cal-ISO to Ms. Hale dated May 1 and there seems to be no reference to that letter in the emails that have been disclosed. I understand that, like the April 7 "Barbara Hale draft letter" Ms. Hale drafted the May 1 letter for Mr. Perez, or that Cal-ISO sent a draft to Ms. Hale for her comments and revisions.

I would like to make sure that emails before, after, and during the time that this May 1 letter was created are disclosed under the Sunshine Ordinance.

A lot of feedback, I know, but as I mentioned, Request #1 has not been fully complied with.

Thanks,

Joshua Arce

From: Public Records [mailto:PublicRecords@sfgov.org]
Sent: Wed 5/14/2008 1:40 PM
To: Joshua Arce
Subject: RE: Sunshine Request - IMMEDIATE DISCLOSURE REQUEST

Thank you for your request for public information. Your request has been forwarded to the appropriate staff that will be in touch with you shortly.

Please know that we take our obligations under the Sunshine Ordinance very seriously, and SFPUC staff members make every effort to honor all requests within what's allowable by law and what is necessary to protect the public health and safety.

SFPUC Public Records
publicrecords@sfgov.org

Joshua Arce

From: Public Records [PublicRecords@sfwater.org]
Sent: Monday, May 19, 2008 3:15 PM
To: Joshua Arce
Subject: RE: Sunshine Request - IMMEDIATE DISCLOSURE REQUEST
Attachments: DOC KK 3.28.08 2 20080519145136.pdf; DOC KK 3.28.08 20080519144756.pdf; DOC KK 3.31.08 20080519144657.pdf

Dear Mr. Arce:

Thank you for your request for public information.

As permitted under the Sunshine Ordinance, the SFPUC needed longer than 24 hours to comply with your immediate disclosure request because it required a search of voluminous information and documents.

Please refer to the attached documents (3) from Karen Kubick.

Additionally, Public Records has been informed that there are no further responsive documents from either Barbara Hale or Laura Spanjian.

Please know that we take our obligations under the Sunshine Ordinance very seriously, and SFPUC staff members make every effort to honor all requests within what's allowable by law and what is necessary to protect the public health and safety.

SFPUC Public Records
publicrecords@sfwater.org
415/934-5753

Joshua Arce

From: Joshua Arce
Sent: Monday, May 19, 2008 3:57 PM
To: PublicRecords@sfgwater.org
Subject: FW: Sunshine Request - IMMEDIATE DISCLOSURE REQUEST

Dear Cathy,

Thank you for Karen Kubick's disclosure under the Sunshine Act. I must, however, challenge the assertion that the 5 emails Ms. Hale has produced are the only remaining emails responsive to my Sunshine Request for "all emails" between "all SFPUC staff" and "all Cal-ISO" staff since March 1, 2008.

At a minimum, all communications surrounding a May 1 letter from Cal-ISO to the SFPUC (from the same Cal-ISO staff member involved in Ms. Hale's April 4 editing of a letter that Cal-ISO was to send the City on April 7) have been omitted.

In addition, there must necessarily be contextual emails surrounding Ms. Hale's March/April 2008 request for a letter from Cal-ISO which she subsequently edited, and contextual emails for the power plant lobbying briefings that Ms. Hale seems to be scheduling for May 5 and May 6.

In regard to Ms. Spanjian, she is referenced and cc'ed in Ms. Hale's April 24 email as setting up these meetings with "key members of the Board of Supervisors." At a minimum, this email and follow-ups between Ms. Spanjian and ISO must be produced.

I must once again ask you in your capacity of custodian of public records to determine the existence of the requested records, expanding, if need be, the scope of Request #1 from "All emails" to "All written communications" if required to achieve the requested disclosure of records.

The 5 emails produced, Ms. Hale's own statements before the Board of Supervisors and its various committees, the context of Ms. Hale's communications with Cal-ISO, and the fact that Ms. Spanjian must produce at least the April 24 email that she received, indicate that the SFPUC has incompletely complied with my Sunshine Request.

Thank you,

Josh

Joshua Arce
Executive Director / Staff Attorney
Brightline Defense Project
240 Golden Gate Avenue, Ste. 102
San Francisco, CA 94102
415-837-0600 (phone)
415-837-0660 (fax)

Joshua Arce

From: Public Records [PublicRecords@sfwater.org]
Sent: Tuesday, May 20, 2008 2:18 PM
To: Joshua Arce
Subject: FW: Sunshine Request - IMMEDIATE DISCLOSURE REQUEST

Dear Mr. Arce:

Thank you for your request for public information.

Upon further review, Ms. Hale has responded as follows:

"I was not in the office on Thursday when the records were produced by Ms. Scott. I have reviewed my files again given Mr. Arce's concerns of the completeness of the response. I have no further written communications. Ms. Scott's review and production on my behalf in my absence was comprehensive. Thank you."

Additionally, upon further review Ms. Spanjian has responded as follows: "I have no additional emails".

Please know that we take our obligations under the Sunshine Ordinance very seriously, and SFPUC staff members make every effort to honor all requests within what's allowable by law and what is necessary to protect the public health and safety.

SFPUC Public Records
publicrecords@sfwater.org
415/934-5753

Joshua Arce

From: Joshua Arce
Sent: Thursday, May 29, 2008 9:58 AM
To: Public Records
Subject: RE: Sunshine Request of 5/20/08

Hi Cathy,

I'm following up on the attached Sunshine Request, which appears to have been processed last Wednesday May 21.

Josh

Joshua Arce
Executive Director / Staff Attorney
Brightline Defense Project
240 Golden Gate Avenue, Ste. 102
San Francisco, CA 94102
415-837-0600 (phone)
415-837-0660 (fax)

Joshua Arce

From: Public Records [PublicRecords@sfwater.org]
Sent: Tuesday, June 03, 2008 1:11 PM
To: Joshua Arce
Subject: Sunshine Request

Dear Mr. Arce:

Thank you for your request for public information.

In response to your request please be advised of the following: Public Records has twice requested the information you have asked for from various SFPUC staff. The responsive documents have been provided and Public Records has been informed that there are no other obtainable responsive documents at this time.

I am not aware of any e-mails that would be responsive to your request that have been deleted. However, it is my understanding that if the department has no records responsive to the specific request, the department has no duty to create or recreate one. This would be a burdensome and unreasonable costly endeavor.

Please know that we take our obligations under the Sunshine Ordinance very seriously, and SFPUC staff members make every effort to honor all requests within what's allowable by law and what is necessary to protect the public health and safety.

SFPUC Public Records
publicrecords@sfwater.org
415/934-5753

Joshua Arce

From: Joshua Arce
Sent: Friday, June 06, 2008 1:39 PM
To: Public Records
Subject: RE: Sunshine Request

Dear Public Records:

So let me see if I have this correct. It took 13 days for the SFPUC to respond to my May 21, 2008 Sunshine request for all post-March 1, 2008 phone logs, deleted and undeleted emails, letters, faxes, and other written communications between SFPUC staff and the California Independent System Operator with the statement that, quote, "there are no other obtainable responsive documents at this time."

Regarding your contention that "recreating" emails that may have been deleted "would be a burdensome and unreasonable costly endeavor," Section 67.29-7 of the Sunshine Ordinance mandates that such records may not be destroyed or deleted. In fact, those records may be recovered from the Department's Exchange server, or forensically, in order to give life to the provisions of the Sunshine Ordinance.

Unless you instruct me otherwise, this is the SFPUC's position at this stage of Sunshine Act Enforcement:

- There are no records of phone calls between any member of the SFPUC staff and any employee of the California Independent System Operator between March 1, 2008 and May 21, 2008. The inference, therefore, is that it is the SFPUC's position that such telephonic communications did not occur.
- There exist no letters, faxes, or other written communications between any member of the SFPUC staff and any employee of the California Independent System Operator between March 1, 2008 and May 21, 2008.
- The only emails between SFPUC staff and Cal-ISO staff between March 1, 2008 and May 21, 2008 are the 8 that have been produced:
 - A March 28, 2008 email from Cal-ISO's Karen Edson to the SFPUC's Barbara Hale re: Ms. Hale's request for certain unspecified correspondence from ISO
 - A March 28, 2008 email from Cal-ISO's Larry Tobias to the SFPUC's Karen Kubick re: an Old Thermal Generation Phase 1 Report
 - A March 28, 2008 email from Larry Tobias to Karen Kubick seemingly re: the same Phase 1 Report
 - A March 31, 2008 email from Larry Tobias to Karen Kubick re: Cal-ISO grid planning standards
 - An April 4, 2008 email from Cal-ISO's Gary DeShazo to Barbara Hale with an attachment called "Barbara Hale Ltr (3).doc" that Ms. Hale is apparently to revise before ISO is to sign and send back to her
 - An April 24, 2008 email from Karen Edson to Barbara Hale about power plant meetings that Ms. Hale is apparently setting up with members of the Board of Supervisors
 - An April 24, 2008 email from Barbara Hale to Karen Edson and the SFPUC's Laura Spanjian in which Ms. Hale indicates that Ms. Spanjian is coordinating power plant meetings with "key members of the Board of Supervisors"
 - An May 12, 2008 email from Barbara Hale to Karen Edson and Gary DeShazo with subject line "Chron Editorial Says No to CTs" that includes a link to a SF Chronicle editorial article
- The custodian is "not aware" of any emails that have been deleted, but if emails were deleted, their recovery would be such a "burdensome and unreasonably costly endeavor" as to be rendered impossible.

If I have incorrectly outlined any of the SFPUC's positions going forward, please correct me immediately. In addition, your response leaves open the possibility that, while "obtainable responsive documents" are not available, there may exist what you might deem "unobtainable" documents that have either been deleted, lost, destroyed, or somehow protected and thus, in your view, unavailable. Please inform me if that is the case.

Very truly yours,

Joshua Arce

Joshua Arce

From: Public Records [PublicRecords@sfwater.org]
Sent: Wednesday, June 11, 2008 12:24 PM
To: Joshua Arce
Subject: RE: Sunshine Request

Dear Mr. Arce:

To the best of our knowledge, all SFPUC staff who may have interacted with CAISO staff or officers have conducted a thorough review of email, notes, documents and files. You have received all materials responsive to your multiple requests.

Please know that we take our obligations under the Sunshine Ordinance very seriously, and SFPUC staff members make every effort to honor all requests within what's allowable by law and what is necessary to protect the public health and safety.

SFPUC Public Records
publicrecords@sfwater.org
415/934-5753

JUNE 13-17, 2008

**FORMAL SUNSHINE
ORDINANCE COMPLAINT
AGAINST THE SFPUC AND
SFPUC RESPONSE**

EXHIBIT 4

Joshua Arce

From: Joshua Arce
Sent: Friday, June 13, 2008 1:20 PM
To: Public Records
Subject: Complaint Under the Sunshine Ordinance

Dear SFPUC Public Records:

Having received your final response to my series of Sunshine requests that began May 14, 2008 I hereby allege willful failure to comply with the terms of the Sunshine Ordinance by members of the SFPUC staff. Such willful failure to discharge duties imposed under the Sunshine Ordinance, such as the duty to permit inspection and copying of public records under Section 67.21 of the Ordinance and to maintain and preserve correspondence and records under Section 67.29-7, constitutes official misconduct under Section 67.34.

At this time I am left to the enforcement provisions of Section 67.35 as the only means of compelling SFPUC staff compliance with the Sunshine Ordinance.

Very truly yours,

Joshua Arce

Joshua Arce

From: Winnicker, Tony [TWinnicker@sfwater.org]
Sent: Friday, June 13, 2008 4:36 PM
To: Joshua Arce
Cc: Public Records
Subject: FW: Complaint Under the Sunshine Ordinance

Mr. Arce –

You have been provided every responsive document, note, email and record of whose existence SFPUC staff members have awareness. It is unclear what further compliance you believe should be compelled when there is nothing more to provide.

Certainly, I acknowledge your right under the Sunshine Ordinance to continue spending your time and that of SFPUC-ratepayer funded staff requesting searches for items that do not exist and will likely not be created solely for your benefit. I absolutely respect and support your rights to organize in opposition to SFPUC projects and readily access public information in support of your efforts. However, continuing to repeat statements and allegations that you may prefer to be true but which are not does not make them factual. I would be glad to discuss your concerns further if you believe it would help identify additional responsive documents or information beyond what has been provided through our exhaustive records requests from numerous SFPUC staff.

Best,

Tony

*Tony Winnicker
Director of Communications
San Francisco Public Utilities Commission (SFPUC)*

Joshua Arce

From: Joshua Arce
Sent: Tuesday, June 17, 2008 1:40 PM
To: Winnicker, Tony
Cc: Public Records
Subject: RE: Complaint Under the Sunshine Ordinance

Tony,

Thank you for your email. You should be aware of the extensive time and effort that many residents and members of the environmental and social justice communities have invested in closing the Potrero Power Plant without the construction of new fossil fuel-burning power plants in Southeast San Francisco.

We have long felt that the biggest barrier to accomplishing our goal has been the SFPUC staff.

Our greatest fears were realized when we learned from the eight emails that the SFPUC produced last month that Barbara Hale initiated and co-authored at least one letter from Cal-ISO that she later used as justification for her argument that the City had no alternative but to build the new power plants in order to shut Potrero. Of additional concern was the fact that Ms. Hale, aided by Laura Spanjian, apparently set up power plant lobbying sessions with "key members of the Board of Supervisors" to promote the new power plants in early May of this year.

Both of these actions are highly unethical and indicate a bias in favor of the proposed new power plants that continues to this day. Even worse, the suggestion that these emails exist in a vacuum, that no other phone calls, emails, letters, faxes or other communications took place between Ms. Hale, Ms. Spanjian, and Cal-ISO staff since March 1, 2008, is an affront to common sense.

Therefore, what you see in my follow-up efforts that you characterize as a strain upon "SFPUC-ratepayer funded staff" is better viewed as due diligence in covering every possible loophole that SFPUC staff might be relying upon in refusing to produce records that logic indicates must exist, or else have been destroyed. The SFPUC's final response, which came following unreasonable delay in violation of Section 67.21(b) of the Sunshine Ordinance, makes clear the Commission's position going forward: but for the eight emails that have been produced, neither Barbara Hale, nor Laura Spanjian, nor any other member of SFPUC staff have had any communication with Cal-ISO staff since March 1, 2008.

.If I have not accurately articulated the SFPUC's position as of my June 13 complaint, please let me know as soon as possible.

Very truly yours,

Josh

JUNE 25, 2008

**CAL-ISO INFORMATION
AVAILABILITY POLICY (PUBLIC
RECORDS) REQUEST**

**ALL COMMUNICATIONS
BETWEEN CAL-ISO STAFF AND
SFPUC**

EXHIBIT 5

CALIFORNIA PUBLIC RECORDS ACT/
CALIFORNIA ISO INFORMATION AVAILABILITY POLICY
REQUEST FOR RECORDS

June 25, 2008

VIA OVERNIGHT MAIL, EMAIL AND FACSIMILE 916-351-4436

Records Coordinator
California Independent System Operator
P.O. Box 639014
Folsom, California 95763-9014

Re: Public Records Act/California ISO Information
Availability Policy Request

Dear Records Coordinator:

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), California Public Utilities Code section 345.5, and the California ISO Information Availability Policy (adopted 11/98), I ask to inspect the following, which I understand to be held by your agency:

All written communications, including, but not limited to, emails both deleted and undeleted, letters, facsimiles, and memoranda, as well as all records of telephone communications, including, but not limited to, call logs, phone records, and messages taken by staff, between all members of California Independent System Operator staff and any staff member, employee, or other representative of the San Francisco Public Utilities Commission between March 1, 2008 and June 20, 2008, inclusive.

In order to expedite this request I would like to direct the Records Coordinator to the following Cal-ISO employees who appear to have had the most extensive communications with the San Francisco Public Utilities Commission during the designated time period: Karen Edson, Nancy Saracino, Armando Perez, Gary DeShazo, and Carol Allotey.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question.

If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act and under Cal-ISO's Information Availability Policy, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested.

In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 415-837-0600. I ask that you notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua Arce', with a horizontal line extending to the right.

Joshua Arce
Executive Director/Staff Attorney
Brightline Defense Project
240 Golden Gate Ave., Ste. 102
San Francisco, CA 94102

JULY 23, 2008

CAL-ISO RESPONSE

**20 EMAIL COMMUNICATIONS
BETWEEN CAL-ISO
AND SFPUC STAFF
(DISCLOSED TO DATE)**

EXHIBIT 6



July 23, 2008

VIA FEDERAL EXPRESS

Joshua Arce, Esq.
Brightline Defense Project
240 Golden Gate Ave., Ste. 102
San Francisco, CA 94102

Re: Public Records Act/California ISO Information
Availability Policy Request

Dear Mr. Arce:

Please find enclosed the response of the California Independent System Operator Corporation ("CAISO") to your request dated June 25, 2008 for "all written communications, including, but not limited to, emails both deleted and undeleted, letters, facsimiles, and memoranda, as well as all records of telephone communications, including, but not limited to, call logs, phone records, and messages taken by staff, between all members of the California Independent System Operator staff and any staff member, employee, or other representative of the San Francisco Public Utilities Commission between March 1, 2008 and June 20, 2008, inclusive."

The CAISO is a private non-profit public benefit corporation. It is not a California state agency and is not subject to the terms of the California Public Records Act. Cal. Gov't Code Sections 6250, *et seq.*

The CAISO, nonetheless, is committed to a policy of providing information to the public, and follows a broad Information Availability Policy, which meets the requirements of California Public Utilities Code, Section 345.5. The CAISO is providing this response to your request for records, pursuant to the CAISO's Information Availability Policy, Section 5.2.

Sincerely,

Stacie L. Ford
Counsel

CAISO
151 Blue Ravine Road
Folsom, California 95630
(916) 351-4400

From: Edson, Karen
Sent: Friday, March 28, 2008 3:28 PM
To: 'bhale@sflower.org'
Cc: DeShazo, Gary; Perez, Armando; Saracino, Nancy
Subject: SF CTs

Barbara,

Glad to hear you are making progress on the CT project. Gary DeShazo is the right point of contact here. We've spoken, and he is prepared to work with you on correspondence that reiterates our previously described position. Please feel free to call at any time.

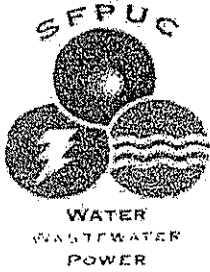
Karen

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435

From: Scott, Rosie [RScott@sfwater.org]
Sent: Thursday, April 03, 2008 10:14 AM
To: Perez, Armando
Cc: Edson, Karen; DeShazo, Gary
Subject: Ltr from Barbara Hale, SFPUC re: CT Peaker Units & other.
Attachments: CAISO ltr Armando Perez re CT.pdf

Rosie L. Scott, Exec. Assistant to
Barbara Hale, AGM, SFPUC Power Enterprise
1155 Market Street, 4th Floor
San Francisco, CA 94103
(415) 551-4620; (415) 554-3280 (fax)
SFPUC Notary Public
rscott@sfwater.org

<<CAISO ltr Armando Perez re CT.pdf>>



SAN FRANCISCO PUBLIC UTILITIES COMMISSION

1155 Market St., 11th Floor, San Francisco, CA 94103 • Tel. (415) 554-3155 • Fax (415) 554-3161 • TTY (415) 554.3488



April 2, 2008

Armando Perez, Vice President
Planning and Infrastructure Development
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630

GAVIN NEWSOM
MAYOR

ANN MOLLER CAEN
PRESIDENT

E. DENNIS NORMANDY
VICE PRESIDENT

RICHARD SKLAR
DAVID HOCHSCHILD
F.X. CROWLEY

ED HARRINGTON
GENERAL MANAGER

Dear Mr. Perez:

The City and County of San Francisco (the "City"), acting through its Public Utilities Commission (the "SFPUC"), has negotiated agreements and other arrangements relating to its proposed construction and operation of four simple cycle combustion turbine peaking power generation units (collectively, the "Project"). Three of these units are planned to be sited within the City along its eastern waterfront (the "In-City Project") and the fourth is planned to be sited at San Francisco International Airport (the "Airport Project").

The SFPUC anticipates submitting the Project and the related legal documents to the City's Board of Supervisors for their consideration in the near future. The key consideration for the City in pursuing the Project is ensuring that CAISO will remove the Reliability/Must Run designation from Potrero Power Plant Units 3, 4, 5 and 6 (collectively, the "Potrero Units") as described in the San Francisco Action Plan (the "Plan").

As a related matter, the SFPUC is also interested in limiting the City's costs associated with the Project to the extent it can do so while still achieving the removal of the RMR designation from the Potrero Units. With significant progress being made on the Trans-Bay Cable it has been suggested that certain resources proposed to be devoted to the Project could be repurposed for other uses that would also help address the City's energy challenges while reducing the financial, environmental and/or opportunity costs associated with the Project in its current form.

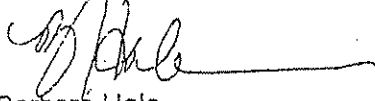
By way of this letter we ask that you provide us with your current understanding of whether the successful commercial operation of the full Project is required in order to remove the RMR designation from the Potrero Units while still satisfying federal reliability standards as described in the Plan. Specifically, we seek a statement from you as to the following questions:

1. Whether construction and operation of the Airport Project is required to achieve removal of the Potrero Units' RMR designation, or alternatively if such removal can be achieved through the construction and operation of the In-City Project alone.

2. Whether in the absence of one or both components of the Project the reasonably foreseeable development of the SFPUC's in-City renewable energy generation portfolio would nevertheless allow for the removal of the Potrero Units' RMR designation in the near future. (For your information, current SFPUC plans for developing in-City generation are comprised of photovoltaic generation facilities of various operating capacities.)

In view of our intention to move this forward in the approval process in the near future, we would greatly appreciate a response as soon as you are able.

Sincerely,



Barbara Hale
Assistant General Manager
SFPUC Power Enterprise

c: Karen Edson, CAISO
Gary DeShazo, CAISO





Armando J. Perez
Vice President
Planning & Infrastructure Development

April 7, 2008

Ms. Barbara Hale
Assistant General Manager
San Francisco Public Utilities Commission Power Enterprise
1155 Market St., 11th Floor
San Francisco, CA 94103

Dear Ms. Hale,

The California Independent System Operator ("California ISO") is pleased to hear that the City and County of San Francisco (the "City") is nearing completion of its process to successfully site the four simple cycle combustion turbine peaking power generation units (the "Project") within the City and the San Francisco International Airport

Regarding your letter of April 2, 2008 asking for our "current understanding" of the need for the Project to meet Federal reliability standards as described in the San Francisco Action Plan ("Action Plan"), the California ISO continues its support for the Plan as the best mechanism for achieving the City's goals and maintaining electric system reliability within San Francisco. As such, the California ISO provides the following responses to your questions.

Question 1

"Whether construction and operation of the Airport Project is required to achieve removal of the Potrero Units' RMR designation, or alternatively if such removal can be achieved through the construction and operation of the In-City Project alone?"

Answer 1

Per the Action Plan, the "In-City Project" and the "Airport Project", as defined in your April 2, 2008 letter, are required to achieve removal of the Potrero Units' RMR designation.

Question 2

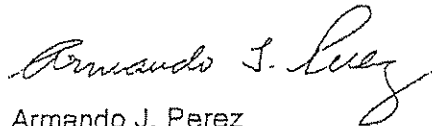
"Whether in the absence of one or both components of the Project the reasonably foreseeable development of the SFPUC's in-City renewable energy generation portfolio would nevertheless allow for the removal of the Potrero Units' RMR designation in the near future. (For your information, current SFPUC plans for developing in-City generation are comprised of photovoltaic generation facilities of various operating capacities.)"

Answer 2

The California ISO's ability to remove the RMR designation from the Potrero Units is based on the ability of the Project to provide the same characteristics and generating capacity as is currently provided by the existing Potrero Units, including "around the clock" availability. However, it should be noted that around the clock availability is a characteristic that is not provided by photovoltaic generation.

If you have any questions, please do not hesitate in contacting Mr. Gary DeShazo at (916-608-5880).

Sincerely yours,



Armando J. Perez
Vice President of Planning & Infrastructure Development

cc: Karen Edson
Gary DeShazo

From: Edson, Karen
Sent: Thursday, April 24, 2008 2:19 PM
To: 'bhale@sfgwater.org'
Cc: DeShazo, Gary; Allotey, Carol
Subject: Meetings re SF Peaker Project

Barbara,

Gary DeShazo and I are available to meet with Board members on Tuesday, May 6th. Please let us know who, when, etc. I'd also like to schedule a pre-meeting or conference call to make sure we understand the exact status of the project. Thanks!

Karen

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435

From: Hale, Barbara [BHale@swater.org]
Sent: Thursday, April 24, 2008 5:44 PM
To: Edson, Karen; Spanjian, Laura
Cc: DeShazo, Gary; Allotey, Carol
Subject: RE: Meetings re SF Peaker Project

Thanks so much, Karen. Laura Spanjian, SFPUC Assistant GM for External Affairs, will be working with key members of the Board of Supervisors to set these meetings up. And yes, we should also schedule a meeting or conference call to prep the morning of the 6th or afternoon of the 5th. Availability for that? Barb

From: Edson, Karen [mailto:KEdson@caiso.com]
Sent: Thursday, April 24, 2008 2:19 PM
To: Hale, Barbara
Cc: DeShazo, Gary; Allotey, Carol
Subject: Meetings re SF Peaker Project

Barbara,

Gary DeShazo and I are available to meet with Board members on Tuesday, May 6th. Please let us know who, when, etc. I'd also like to schedule a pre-meeting or conference call to make sure we understand the exact status of the project. Thanks!

Karen

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435

From: Scott, Rosie [RScott@sewater.org]
Sent: Monday, April 28, 2008 2:21 PM
To: Allotey, Carol
Subject: FW: PUC Staff Report 4-16.pdf - Adobe Reader
Attachments: PUC Staff Report 4-16.pdf

Please find attached below a pdf file -PUC Staff Report- re CTs that has been presented to the BOS. This is a relatively large document. Barbara Hale asked that you may want to print the document and provide to Karen, Gary and Armando.

I will be in touch with you as soon as I receive specifics for the May 6th meeting with SF Board of Supervisors.

Rosie

Rosie L. Scott, Executive Assistant to
Barbara Hale, AGM, SFPUC Power Enterprise
1155 Market Street, 4th Floor
San Francisco, CA 94103
(415) 551-4620; (415) 554-3280 (fax)
SFPUC Notary Public
rscott@sewater.org

From: Hale, Barbara
Sent: Monday, April 28, 2008 2:02 PM
To: Scott, Rosie
Subject: PUC Staff Report 4-16.pdf - Adobe Reader

<<PUC Staff Report 4-16.pdf>>

From: Scott, Rosie [RScott@sfwater.org]
Sent: Tuesday, April 29, 2008 3:36 PM
To: Allotey, Carol
Subject: Meeting Scheduled with SF Board of Supervisors

According to Laura Spanjian, SFPUC Assistant General Manager, Governmental Affairs, the scheduled times are confirmed with SF Board Members as listed below:

Tuesday, May 6, 2008 - San Francisco City Hall

10:30am Supervisor Aaron Peskin, Board President

1:30pm Supervisor Sophie Maxwell

Lets talk after reviewing these schedules with your boss.

Rosie L. Scott, Exec. Assistant to
Barbara Hale, AGM, SFPUC Power Enterprise
1155 Market Street, 4th Floor
San Francisco, CA 94103
(415) 551-4620; (415) 554-3280 (fax)
SFPUC Notary Public
rscott@sfwater.org

From: Hale, Barbara [BHale@sfwater.org]
Sent: Tuesday, April 29, 2008 4:34 PM
To: Edson, Karen
Subject: Follow up from our phone conversation

Karen - I hope you are well. As promised, please find attached cites to the press articles that SF CT project opponents are using that quote ISO staff. I've included the full link, and excerpted the relevant quotes. Also, I asked my assistant, Rosie, to provide your assistant (Carol?) with the briefing packet we provided members of the Board of Supervisors on the CT project, so I hope you have it. Finally, we have two mtgs set so far, and Rosie provided that info to Carol. Thanks. Barb

http://www.examiner.com/a-1333571~Potrero_power_plant_proposal_sparks_opposition_legislation.html
California ISO spokeswoman Stephanie McCorkle told The Examiner that The City has not formally proposed any plans other than the new gas-burning plant to shut down the Mirant plant.

<http://enr.construction.com/news/powerIndus/archives/071008a.asp>
Atlanta-based Mirant Corp.'s 362-MW Potrero Hill Power Station will be shut down once the Trans Bay Cable is commissioned. Currently it is operating under a "reliability must-run" contract with the California ISO to ensure reliability of the local grid, says Gregg Fishman, ISO spokesman. "The Trans Bay Cable project will eliminate at least some of the need for local generation. The ISO has been working with PG&E, the City and County of San Francisco, local community groups and other stakeholders to find ways to reduce the reliance on the existing in-city generation, enabling us to remove the RMR status from the Potrero powerplant," he says. "The City and County of San Francisco are in the process of also trying to site and install several small peaker plants, not necessarily in the city limits of San Francisco but electrically connected within the same constrained load pocket, which will help as well."

Barbara Hale
Assistant General Manager, Power
San Francisco Public Utilities Commission
1155 Market Street
San Francisco, CA 94103
ph: 415-554-2483
fax: 415-554-3280

From: Hale, Barbara [BHale@sflower.org]
Sent: Thursday, May 01, 2008 10:56 AM
To: Edson, Karen
Cc: Allotey, Carol; Scott, Rosie
Subject: Letter to San Francisco

Karen - Yesterday we discussed that ISO was preparing a letter addressed to Mayor Newsom and Board of Supervisors President Peskin. Here are good contact points for electronic copy (in addition to me as we discussed, please).

David Noyola -- David.Noyola@sfgov.org -- aide to President Peskin
Nancy Kirshner-Rodriguez -- Nancy.krodriguez@sfgov.org -- Mayor Newsom's Director of Government Affairs

Also, it would be helpful if you could include on your cc list:
Members of the Board of Supervisors
Edward Harrington, SFPUC General Manager
Dennis Herrera, City Attorney
Phillip DeAndrade, Chair, Power Plant Task Force

Thanks. Barb

Barbara Hale
Assistant General Manager, Power
San Francisco Public Utilities Commission
1155 Market Street
San Francisco, CA 94103
ph: 415-554-2483
fax: 415-554-3280

From: Edson, Karen
Sent: Thursday, May 01, 2008 11:16 AM
To: Hale, Barbara
Subject: RE: Letter to San Francisco
Attachments: Draft SF Letter.doc

Karen Edson

From: Hale, Barbara [mailto:BHale@sfgwater.org]
Sent: Thursday, May 01, 2008 10:56 AM
To: Edson, Karen
Cc: Allotey, Carol; Scott, Rosie
Subject: Letter to San Francisco

Karen - Yesterday we discussed that ISO was preparing a letter addressed to Mayor Newsom and Board of Supervisors President Peskin. Here are good contact points for electronic copy (in addition to me as we discussed, please).

David Noyola -- David.Noyola@sfgov.org -- aide to President Peskin
Nancy Kirshner-Rodriguez -- Nancy.krodriguez@sfgov.org -- Mayor Newsom's Director of Government Affairs

Also, it would be helpful if you could include on your cc list:
Members of the Board of Supervisors
Edward Harrington, SFPUC General Manager
Dennis Herrera, City Attorney
Phillip DeAndrade, Chair, Power Plant Task Force

Thanks, Barb

Barbara Hale
Assistant General Manager, Power
San Francisco Public Utilities Commission
1155 Market Street
San Francisco, CA 94103
ph: 415-554-2483
fax: 415-554-3280

From: Scott, Rosie [RScott@swater.org]
Sent: Thursday, May 01, 2008 2:58 PM
To: Allotey, Carol
Subject: RE: Letter - Edward Harrington

Thanks Carol.

Rosie

From: Allotey, Carol [mailto:CAllotey@caiso.com]
Sent: Thursday, May 01, 2008 2:07 PM
To: Hale, Barbara
Cc: Scott, Rosie; Edson, Karen; Perez, Armando
Subject: Letter - Edward Harrington
Importance: High

Barbara,

Please see attached final letter to Edward Harrington. Thank you.

Warm Regards,

Carol Allotey

Executive Assistant to Karen Edson

Ph: 916.351.2209

Fax: 916.351.2350

Cell: 916.673.7693



Armando J. Perez
Vice President
Planning & Infrastructure Development

May 1, 2008

Mr. Edward Harrington, General Manager
San Francisco Public Utilities Commission
San Francisco, CA 94102-4689
1155 Market Street
San Francisco, CA 94103

Dear Mr. Harrington:

The California Independent System Operator ("California ISO") appreciates the City and County of San Francisco's ("City") continuing attention to the electric reliability challenges facing the City. These issues arise in the context of a proposal under consideration by the Board of Supervisors to approve the agreements for development of the San Francisco combustion turbine projects.

The California ISO is a public benefit, non-profit organization that has a significant interest in these matters as the entity responsible for ensuring that most of the state meets applicable reliability standards. Our analyses indicate that the San Francisco area will not meet these standards as soon as 2009 if the Potrero power plant is retired and the City's combustion turbine projects are cancelled. The area will remain out of compliance even with Trans Bay Cable in service beginning in 2010. This leaves very little time given that the world of project development typically requires five to seven years for study, design, permitting, development and implementation.

The California ISO is aware of recent news stories and correspondence directed to the Mayor and Board of Supervisors that imply that the California ISO no longer believes that the combustion turbine projects are needed and that the ISO wants to examine other alternatives. I want to reaffirm the California ISO's support for the San Francisco Action Plan as the best mechanism for achieving the City's goals and maintaining the area's reliability. I trust that you will rely on our direct communications with you rather than these second-hand reports – especially those provided by parties with a particular interest.

Again, I appreciate your concern about the area's reliability needs and look forward to continuing to work with the City on these important issues.

Sincerely yours,

Armie Perez
Vice-President of Planning and Infrastructure Development

cc: Mayor Gavin Newsom
Members of the San Francisco Board of Supervisors
Dennis Herrera, City Attorney
Phillip DeAndrade, Chair, Power Plant Task Force

From: Edson, Karen
Sent: Thursday, May 01, 2008 4:14 PM
To: Hale, Barbara
Subject: Monday Rally
Importance: High

I assume you are aware of this. But just in case...

From: Brightline Defense - Front Desk [<mailto:frontdesk@brightlinedefense.org>]
Sent: Thursday, May 01, 2008 07:07 AM Pacific Standard Time
To: fyi@brightlinedefense.org
Subject: **POWER PLANT RALLY** Mon. May 5, San Francisco City Hall, 9:00 a.m.

A CALL TO ACTIVISTS, ENVIRONMENTALISTS, COMMUNITY LEADERS, PUBLIC INTEREST ATTORNEYS, ELECTED OFFICIALS, AND CONCERNED CITIZENS

Do you want to stop a power plant?

** SAN FRANCISCO CITY HALL RALLY **
** MONDAY, MAY 5 @ 9:00 A.M. **
** POLK STREET STEPS **

Let your voice be heard! The City's proposed new power plants will be debated in committee at 10:00 a.m. after the rally, where you can let our Supervisors know that we want to turn the page on fossil fuel generation in San Francisco. Speakers at the rally will include representatives from environmental and social justice groups urging the City to abandon its power plant proposal and elected officials leading the charge toward a green energy future on what will be a historic vote.

By now you know that there is a tremendous swell of momentum against San Francisco's proposed new power plants in and around Bayview-Hunters Point and Potrero.

ENVIRONMENTAL AND SOCIAL JUSTICE GROUPS OPPOSE

On Monday, Sierra Club, the Ella Baker Center for Human Rights, Van Jones and Green for All, the San Francisco Green Party, Environmental Defense Fund, Latino Issues Forum, Center on Race, Poverty & Environment, and local groups announced unanimous opposition to fossil fuel-burning power plants to be built among San Francisco's environmental justice communities.
(http://www.brightlinedefense.org/files/power_plant_opposition_letter.pdf)

Yesterday, the San Francisco Examiner discussed the growing opposition to these power plants, adding that "the three candidates vying to represent The City in the state senate (Carole Migden, Mark Leno, and Joe Nation) told The Examiner they would favor more environmentally friendly alternatives to shut down the current Potrero Hill plant." (http://www.examiner.com/a-1367337~Opposition_growing_against_proposed_Potrero_power_plant.html)

** SAN FRANCISCO CITY HALL RALLY **
** MONDAY, MAY 5 @ 9:00 A.M. **
** POLK STREET STEPS **

JOIN US IN STOPPING NEW POWER PLANTS IN SAN FRANCISCO AND MOVING THE CITY TOWARD A GREEN ENERGY FUTURE

Brightline Defense Project
www.brightlinedefense.org

Karen Edson
Vice-President of External Affairs
California Independent System Operator
916-351-4435

From: Hale, Barbara [BHale@swater.org]
Sent: Friday, May 09, 2008 12:09 PM
To: Edson, Karen
Cc: DeShazo, Gary; Spanjian, Laura
Subject: Checking in

Thank you both, again, for spending the say in SF Tuesday. It is very helpful to the decisionmaking process to hear from you directly.

Next week we expect the Board to hear the item. Could you attend the meeting if direct input from ISO appears to be needed?

Barb

Sent from my BlackBerry Wireless Handheld

From: Edson, Karen
Sent: Friday, May 09, 2008 12:16 PM
To: Hale, Barbara
Subject: RE: Checking in

Will the Board be deciding or just deliberating?

Karen Edson

From: Hale, Barbara [mailto:BHale@swater.org]
Sent: Friday, May 09, 2008 12:09 PM
To: Edson, Karen
Cc: DeShazo, Gary; Spanjian, Laura
Subject: Checking in

Thank you both, again, for spending the say in SF Tuesday. It is very helpful to the decisionmaking process to hear from you directly.

Next week we expect the Board to hear the item. Could you attend the meeting if direct input from ISO appears to be needed?

Barb

Sent from my BlackBerry Wireless Handheld

From: Hale, Barbara [BHale@sflower.org]
Sent: Monday, May 12, 2008 8:50 AM
To: Edson, Karen; DeShazo, Gary
Subject: Chron Editorial Says No to CTs

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/12/EDFJ10JUPG.DTL>

Barbara Hale
Assistant General Manager, Power
San Francisco Public Utilities Commission
1155 Market Street
San Francisco, CA 94103
ph: 415-554-2483
fax: 415-554-3280

From: Scott, Rosie [RScott@sewater.org]
Sent: Tuesday, May 20, 2008 3:41 PM
To: Allotey, Carol
Subject: FW: BOS Amendments- CT Due Diligence
Attachments: CT- Final Due Diligence-Supv Elsbernd.pdf

Carol, please make sure that Karen Edson and Gary DeShazo receive a copy of the attached material. Or should I send a copy directly to Gary?

Hope your day is going well. Thanks.

Rosie

From: Scott, Rosie
Sent: Tuesday, May 20, 2008 3:01 PM
To: Kubick, Karen; Martin, Michael
Cc: Hale, Barbara
Subject: BOS Amendments- CT Due Diligence

<<CT- Final Due Diligence-Supv Elsbernd.pdf>>
Rosie L. Scott, Exec. Assistant to
Barbara Hale, AGM, SFPUC Power Enterprise
1155 Market Street, 4th Floor
San Francisco, CA 94103
(415) 551-4620; (415) 554-3280 (fax)
SFPUC Notary Public
rscott@sewater.org

May 20, 2008
Elsbernd Amendments

1. File No. 080577, Resolution approving agreements ...

ADD to page 20, line 20:

(u) **Final Due Diligence Review.**

WHEREAS, concurrent with this resolution, an Ordinance in File No. 080523, has been submitted to the Board of Supervisors approving agreements for the development of the City CT Projects; and

WHEREAS, the Ordinance in File No. 080523 provides that final actions to implement the Projects, namely the execution and delivery of the certificates of participation and final issuance of the Phase 2, Notice to Proceed on the design-build contract with ICC shall proceed unless during the Final Due Diligence Period (as such term is defined in the that Ordinance) certain conditions are satisfied, all as described in that Ordinance; now, therefore, be it

2. File No. 080523, Ordinance approving agreements

ADD to page 10 (end of the ordinance):

Section 4. Final Due Diligence Review.

(a) The final actions to implement the City CT Projects, namely the final issuance of COPs and the Phase 2 Notice To Proceed on the design-build contract with ICC (the Final CT Actions) shall proceed unless the following condition is satisfied within 90 days (the Final Due Diligence Period) from the date on which the Board of Supervisors adopts the legislation in File Nos. 080523, 080524, 080577, and 080592 (the CT Approvals).

(1) If within the Final Due Diligence Period, the PUC General Manager, in his sole discretion, certifies in writing to the Mayor and Board of Supervisors that a project proposed to replace the City CT Projects (the Proposed Project) satisfies all of the criteria set forth below (the Criteria), then the PUC General Manager shall terminate the actions authorized in the CT Approvals.

A. Written assurance that the Proposed Project will result in the closure of Potrero Unit 3 by January 1, 2010, consisting of at least the following:

(i) A written statement from the CEO of the ISO that the Proposed Project will satisfy the ISO criteria set forth in the San Francisco Action Plan (including relevant updates to the Action Plan) to allow removal of the reliability designation from Potrero Unit 3 and ensure reliable electric service; and

(ii) An agreement of intent to enter into a binding, enforceable agreement with Mirant that Mirant will close Potrero Unit 3 when it is not needed for reliability, as determined by the ISO.

B. An agreement of intent to enter into binding, enforceable contracts with all relevant entities necessary for completion of the Proposed Project, subject to subsection (d), below.

C. Written evidence that the Proposed Project will improve environmental quality and public health and promote environmental justice, as evidenced by at least the following:

(i) Proof that the Proposed Project will result in no impacts to the Bay—i.e., no intake from or discharge into the Bay, use of recycled water, and compliance with the Port mitigation requirements for treatment of storm water.

D. Evidence that the Proposed Project will provide dispatchable, flexible generation that will complement the deployment of renewable resources.

E. The Proposed Project must improve electric reliability relative to outage rates of existing generation and ensure reliability equivalent to City CT Projects.

F. The Proposed Project must improve City control over energy supplies to promote reliability, public health, and environmental quality.

G. The Proposed Project will result in reasonable costs and value to ratepayers and City.

(i) The cost burden on the City and San Francisco ratepayers will be equal to or better than under the City CT Projects.

(ii) The Proposed Project will provide equivalent value to the City and San Francisco ratepayers relative to the City CT Projects.

H. The City will have a first option to purchase capacity from the Proposed Project to meet its resource adequacy needs at cost of service prices.

I. Reimburse the City for any unavoidable costs from termination of the City CT Projects.

(b) During the Final Due Diligence Period, other actions authorized by the CT Approvals shall proceed without interruption.

(c) If at any time within the Final Due Diligence Period, the PUC General Manager, in his sole discretion, determines either of the following, then he shall so certify in writing to the Mayor and Board of Supervisors. Upon delivery of any such certification, the Final Due Diligence Period shall terminate and the City shall proceed with the Final CT Actions:

1. The Criteria cannot be satisfied by another Proposed Project, or,

2. The continuation of the Final Due Diligence Period will impair the City's contract with the California Department of Water Resources for purchase of the output of the City Ct Projects.

(d) Neither this Board action nor any determination by the PUC General Manager under (a) (1), above commits the City or any City agent to a particular course of action with regard to any Proposed Project to replace the City CT Projects. The City is not in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over any Proposed Project. Any Proposed Project will be subject to the required environmental and other review and the exercise of any discretion available to any department, board or commission with respect to the Proposed Project, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the Proposed Project.

From: Scott, Rosie [RScott@sewater.org]
Sent: Tuesday, May 20, 2008 3:48 PM
To: Allotey, Carol
Subject: RE: BOS Amendments- CT Due Diligence

Thank you Carol.

From: Allotey, Carol [mailto:CAllotey@caiso.com]
Sent: Tuesday, May 20, 2008 3:42 PM
To: Scott, Rosie
Subject: RE: BOS Amendments- CT Due Diligence

Hi Rosie,

No problem, I'll make sure Gary gets a copy. Thanks.

Warm Regards,

Carol Allotey

Executive Assistant to Karen Edson
Ph: 916.351.2209
Fax: 916.351.2350
Cell: 916.673.7693

From: Scott, Rosie [mailto:RScott@sewater.org]
Sent: Tuesday, May 20, 2008 3:41 PM
To: Allotey, Carol
Subject: FW: BOS Amendments- CT Due Diligence

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Hope your day is going well. Thanks.

Rosie

From: Scott, Rosie
Sent: Tuesday, May 20, 2008 3:01 PM
To: Kubick, Karen; Martin, Michael
Cc: Hale, Barbara
Subject: BOS Amendments- CT Due Diligence

<<CT- Final Due Diligence-Supv Elsbernd.pdf>>
Rosie L. Scott, Exec. Assistant to
Barbara Hale, AGM, SFPUC Power Enterprise
1155 Market Street, 4th Floor

San Francisco, CA 94103
(415) 551-4620; (415) 554-3280 (fax)
SFPUC Notary Public
rscott@sfgwater.org

APRIL 11, 2008
SF EXAMINER ARTICLE

“THE CITY HAS NOT FORMALLY
PROPOSED ANY PLANS OTHER
THAN THE NEW GAS-BURNING
PLANT...” – CAL-ISO
SPOKESPERSON STEPHANIE
MCCORKLE

EXHIBIT 7



Local

Potrero power-plant proposal sparks opposition legislation

John Upton, The Examiner

2008-04-11 10:00:00.0

Current rank: # 1,674 of 8,405

SAN FRANCISCO -

A new contract to build power plants in The City to replace a more-polluting plant in Potrero Hill is expected to be introduced to the Board of Supervisors next week — but one city legislator has drafted legislation that could nix or further delay the project, which has been debated for more than seven years.

In October, a contract with another company set to build the power plant was approved 8-3 by the Board of Supervisors, after being told that Mayor Gavin Newsom's office had reached a deal with Mirant Corp., the owner of the older plant, to close it down after the new power source was up and running.

The San Francisco Public Utilities Commission recently announced it reached a new \$250 million deal with Ohio-based Industrial Construction Co. Inc. to build a 150-megawatt natural gas-burning plant north of the Islais Creek Channel in The City's southeast and a 48-megawatt natural gas-burning plant at the airport.

The California Department of Water Resources would funnel \$32.5 million a year from utility companies' rates toward the project until 2015, according to department official Richard Grix. If the plants start operating by 2010, that could provide 80 percent of the project's construction costs.

Supervisor Sophie Maxwell said she's "very glad" that the supervisors will finally be able to vote on a deal that could shut down the air-polluting Potrero Hill plant, which is in her district. "We'll be generating our own power and we'll be able to market it," she said.

Supervisor Michela Alioto-Pier, however, said she will introduce legislation that, if passed, would force The City to re-evaluate the need and fiscal impacts of the project.

The City should develop alternative energy sources, Alioto-Pier said, adding that a planned power project called the Transbay Cable, would offset the need for new plants.

The Transbay Cable will deliver enough electricity from Pittsburg to San Francisco to more than offset the lost capacity from the Mirant plant in the coming years, according to figures provided by project manager Sam Wehn.

SFPUC general manager for power Barbara Hale said the California Independent System Operator requires The City to build new in-city power plants before the Mirant plant can be shut down.

California ISO spokeswoman Stephanie McCorkle told The Examiner that The City has not formally proposed any plans other than the new gas-burning plant to shut down the Mirant plant.

"We're always willing to look at something," she said.

jupton@examiner.com

Examiner
INCLUDED

MAY 21, 2008
SF CHRONICLE OP-ED

“THERE ARE ALTERNATIVES
TO THE PEAKERS...” – CAL-ISO
PRESIDENT YAKOUT
MANSOUR

EXHIBIT 8

Greening the grid while keeping the lights on

Yakout Mansour
Wednesday, May 21, 2008

The San Francisco Board of Supervisors will soon decide how long the heavily polluting Potrero power plant will need to continue operating. Right now, the Potrero plant is required to keep the lights on in San Francisco. The supervisors will decide whether to approve replacing Potrero with several small power plants. These "peaker" plants, along with upgrades to the transmission grid, would allow all four existing Potrero generators to close. There are alternatives to the peakers, but the Potrero power plant cannot be closed until an equally reliable alternative is in place.

Basically, the supervisors must decide how to balance the urgent need to improve our environment with the need for reliable electricity.

The California Independent System Operator Corporation (California ISO) is the not-for-profit public-benefit corporation charged with operating the high-voltage transmission grid in the state. It is also responsible for maintaining electric reliability in California, and is actively involved in the power issues in San Francisco.

San Francisco is facing important and difficult choices. The supervisors' decision will dictate how long the aging, pollution spewing Potrero plant must stay in service. Time is critical because, each week, Potrero puts out almost 2 tons more pollution than the alternatives the supervisors must weigh.

The peaker plants, which already have the permits needed for construction, maintain the federally-required level of electric reliability in San Francisco and are much cleaner, but they do burn natural gas. The Trans-Bay Cable, due to come on line in 2010, will help meet San Francisco's growing power needs through 2020. However, it does not by itself replace the reliability OF the Potrero power plant. With that in mind, there are alternatives:

- 1) The owner of the Potrero plant, the Mirant Corp., would retrofit three small existing peaking units (Potrero Nos. 4, 5, and 6), to burn natural gas instead of diesel fuel and close the larger Potrero unit No. 3. This relatively new alternative is approximately as clean as installing new peakers.
- 2) Build new transmission lines to feed more power into San Francisco. It will take years to study, license, site and build these projects. Potrero, still spewing pollution, would have to continue to operate in the meantime.
- 3) Close the Potrero plant and bring on line a combination of solar power, energy efficiency and other conservation programs to make up for the loss of the Potrero-generated power. The California ISO strongly supports these alternatives and has major initiatives underway to help make them work. They do

not meet federal reliability criteria, however, because they cannot be turned on and off 24-hours-a-day. Some additional 24/7 generation would still be required.

4) Close Potrero unit No. 3 without adding power sources. San Francisco then would fail to meet federal reliability standards, greatly increasing the risk of rotating blackouts under some conditions. Rotating outages might also be needed when key parts of the system that feeds San Francisco are down for maintenance.

San Francisco is wrestling with this dilemma today, but it is worth noting that similar situations exist elsewhere in the state. As California seeks additional renewable energy resources, considers new water quality regulations for coastal power plants, and limits greenhouse-gas emissions, important issues must be addressed. It can be done, as the closure of the Hunters Point power plant in 2006 illustrates, but not without hard decisions that recognize the physical characteristics of the transmission grid that serves California.

The California ISO applauds San Francisco's commitment to these environmental goals and will continue to support the effort by providing impartial information and expertise to the decision-makers and the community. If we work together, we can "green the grid" and keep it reliable at the same time.

Another view

The Chronicle argues the Mirant plant should be closed and be replaced with ramped up solar, renewable and energy efficiency efforts. Go to www.sfgate.com/ZDKY for the full editorial.

Yakout Mansour is the president and CEO of the California Independent System Operator. To comment, e-mail forum@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/21/EDHC10PNET.DTL>

This article appeared on page **B - 9** of the San Francisco Chronicle

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"Winnicker, Tony"
<TWinnicker@sfgwater.org>
02/06/2009 04:51 PM

To "SOTF" <sotf@sfgov.org>
cc "Public Records" <PublicRecords@sfgwater.org>
bcc

Subject Sunshine Complaint #09006

To the Sunshine Ordinance Task Force:

The SFPUC does not dispute the Sunshine Task Force's jurisdiction to hear complaint #09006.

The SFPUC disputes the merit of Mr. Arce and Mr. Brooks' complaint. The SFPUC provided all existing documents responsive to the complaint. The fact that other agencies outside the SFPUC or City and County of San Francisco produced responsive documents is NOT evidence of a violation, willful or otherwise, of the Sunshine Ordinance, nor are Ms. Hale's deletions of drafts and routine inter-agency communications from her email inbox.

In fact, in response to repeated identical requests from Mr. Arce, the SFPUC performed multiple searches amongst numerous staffmembers documents and emails, in fulfillment of our obligations under the Sunshine Ordinance.

A representative of the SFPUC will attend the 2/24 Sunshine Task Force hearing to dispute the merit of Mr. Arce and Mr. Brooks' complaint.

Sincerely,

Tony Winnicker
Director of Communications
San Francisco Public Utilities Commission (SFPUC)

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