

FILED

APR 20 2006

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

In the Matter of the Appeal of)
)
CALIFORNIANS FOR RENEWABLE)
ENERGY (CARE))
)
on the City and County of San Francisco San)
Francisco Electrical Reliability Project FDOC)
Application 12344)
_____)

No. 3511

ORDER FOR DISMISSAL

The above entitled matter, being an Appeal from the Decision of the Air Pollution Control Officer (APCO) to issue a Final Determination of Compliance (FDOC) for the San Francisco Electric Reliability Project, Application Number 12344, having been filed on January 13, 2006; the Notice of Hearing having been filed on January 17, 2006; the Request for Continuance by the Appellant having been filed on January 23, 2006; the Petition For Intervention by the City and County of San Francisco having been filed on January 26, 2006; the Order Granting the City and County of San Francisco's Petition for Intervention having been filed on February 6, 2006; Intervener's Request to Continue the Hearing in this Matter to April 13, 2006 having been filed on February 14, 2006; Intervener's Withdrawal of the Request to Continue the Hearing in this Matter, having been filed on February 15, 2006; Appellant's Notice of Title VI Retaliation Complaint having been filed on February 27, 2006; the Petition for Intervention by Robert Sarvey having been filed on March 3, 2006; Intervenor's Motion to Dismiss for Lack of Jurisdiction having been filed on March 9, 2006; the Bay Area Air Quality Management District's (District) Opposition to the Appeal having been filed on March 15, 2006; and the District's Opposition to the Petition for Intervention by Robert Sarvey having been filed on March 15, 2006. The Appeal was heard on March 23, 2006, with all parties present.

Lynne Brown and Michael Boyd appeared for the Appellants, Californians for Renewable Energy, Inc., (CARE).

Alexander Crockett appeared as Counsel for the Respondent, APCO/District.

Jeanne M. Solé, appeared as Counsel for the Intervener, City and County of San Francisco (CCSF or City).

Robert Sarvey, appeared for himself.

Francisco Da Costa appeared as a member of the public, for himself.

ARB

1 Arlene L. Ichien appeared as Counsel for the California Energy Commission (CEC).

2 The Hearing Board received oral argument from all parties on CARE's Appeal and the
3 Motion to Dismiss for Lack of Jurisdiction filed by the Intervener, the City, and listened to testimony
4 from Steven Hill, Air Quality Engineering Manager, Engineering Division, for the District, and from
5 Lynne Brown and Michael Boyd for CARE. Arlene Ichien reported on the CEC certification
6 process and the status of the San Francisco Electrical Reliability Project (SFERP) CEC proceeding.
7 Francisco de Costa presented public testimony pursuant to Hearing Board Rule 9.3e.

8 THE HEARING BOARD STATES as reasons for its decision and FINDS as to those matters
9 before it for adjudication as follows:

10 I. BACKGROUND

11 The City has submitted an application for certification (AFC) for the SFERP to the CEC, and
12 is seeking certification from the CEC for the SFERP. In that context, the City submitted an
13 application for a Determination of Compliance and Authority to Construct the SFERP to the District.
14 The APCO issued a Preliminary Determination of Compliance (PDOC) for the SFERP in July, 2005.
15 The APCO issued a Final Determination of Compliance (FDOC) for the SFERP on
16 December 15, 2005. On January 13, 2006, CARE filed the Appeal.

17 CARE's Appeal notes (on Page 1) that "[t]he District is required to review all public
18 comments in preparation of the FDOC¹" and alleges that its comments were not considered by the
19 District. CARE's Appeal also contends that the FDOC fails to 1) require a dust control plan, 2)
20 address environmental justice issues raised by CARE, 3) limit startups and shutdown, and 4) identify
21 all possible control alternatives that would reduce environmental impacts as mitigation for PM2.5
22 impacts. CARE's Appeal seeks "re-issuance of the PDOC and an appropriate public comment period
23 where the District actually carries out its statutory duty to analyze and respond to all issues raised by
24 the public." On January 25, 2006, the APCO issued a revised FDOC. By letter dated February 1,
25 2006, the APCO responded to CARE's comments.

26 ¹ Regulation 2-3-404 Public Notice, Comment and Public Inspection: The preliminary decision made pursuant
27 to Section 2-3-403 shall be subject to the public notice, public comment and public inspection requirements contained in
28 Section 2-2-406 and 407 of Rule 2.

Regulation 2-2-407 Authority to Construct, Final Action: If the application is for a new major facility or a major
modification of an existing major facility, or requires a PSD analysis, or is subject to the MACT requirement, the APCO
shall within 180 days following the acceptance of the application as complete, or a longer time period agreed upon, take
final action on the application after considering all public comments.

1 Therefore, THE HEARING BOARD ORDERS that the Appeal be and is hereby
2 DISMISSED.

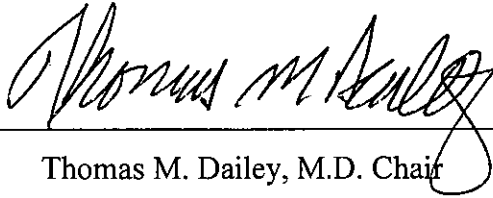
3 Moved by: Terry A. Trumbull, Esq.

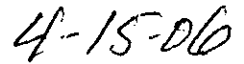
4 Seconded by: Rolf Lindenhayn, Esq.

5
6 AYES: Christian Colline, P.E., Rolf Lindenhayn, Esq., Julio Magalhães, Ph.D.,
7 Terry A. Trumbull, Esq., and Thomas M. Dailey, M.D.

8 NOES: None

9
10 NON-PARTICIPATING: None

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15 _____
16 Thomas M. Dailey, M.D. Chair

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Date