

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company)
PG&E Humboldt WaveConnect Project) Project No. 12779-000

**MOTION TO INTERVENE AND PROTEST OF
THE CITY AND COUNTY OF SAN FRANCISCO**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.211 and § 385.214, and the Commission's April 17, 2007 Notice of Filing, the City and County of San Francisco ("San Francisco" or "City") hereby respectfully files this Motion to Intervene and Protest in the above-referenced proceedings.

**I.
COMMUNICATIONS**

Communications with respect to this pleading should be directed to:

Stephen A. S. Morrison
Deputy City Attorney
Office of City Attorney
City Hall, Room 234
San Francisco, CA 94102
(415) 554-4637

Barbara Hale
Assistant General Manager for Power
San Francisco Public Utilities Commission
City and County of San Francisco
1155 Market Street, 4th Floor
San Francisco, CA 94103

Jared Blumenfeld
 Director
 San Francisco Department of the Environment
 City and County of San Francisco
 11 Grove Street
 San Francisco, CA 94102

II. FILING OVERVIEW

On February 27, 2007, Pacific Gas and Electric Company (“PG&E”) filed applications for two preliminary permits for projects entitled 1) *Humboldt WaveConnect Project* and 2) *Mendocino WaveConnect Project*. The applications are for, in total, an area of some 200 square miles¹. The former application, which is the subject of this intervention and protest, was assigned Project No. 12779-000. The objective of this project is to undertake study of between 8 and 200 wave-energy conversion buoys having a generating capacity of 200 kilowatts to 1 megawatt with a transmission line and appurtenant facilities off the Humboldt County coast, California².

III. INTEREST OF SAN FRANCISCO

San Francisco is keenly interested in supporting the development of local, clean, renewable energy, such as that anticipated in the PG&E projects. The City has itself committed funds to undertake studies of the potential for such energy from waters adjacent and close to San Francisco. The City is also active in recent and ongoing Commission review of the rules governing approval and oversight of applications such as the PG&E applications.³

While San Francisco is aware of the potential for clean renewable energy derived from wave and tidal resources in its surrounding waters, the City is also acutely aware of

¹ San Francisco submitted an intervention in the *Mendocino WaveConnect Project* on June 5, 2007.

² San Francisco notes that on March 22 the Commission wrote to PG&E requiring more information on, and greater specificity in, the PG&E applications. The Commission also requested that PG&E scale back the extent of the application to more realistic boundaries. PG&E responded on April 12, 2007.

³ Commission Technical Conference, Docket No. AD06-13-000 and Commission NOI specifically on preliminary permits, Docket No. RM07-8-000.

threats to the marine and related environment. The City notes that the actions of currents, patterns of marine migration and channels of navigation can easily transfer an impact in one area of water off the California coast to adjacent areas of coastline. San Francisco believes that the coastal resources of California are an unmatched natural resource and that their exploitation must be undertaken only with extreme care and in light of all proper protection. Accordingly, San Francisco's participation is in the public interest and San Francisco therefore requests leave to intervene.

IV. PROTEST

San Francisco strongly supports the development of energy from waves, tides and ocean currents. The City believes these resources have the potential to provide clean, renewable and local energy that will decrease reliance on more polluting sources of energy. The City applauds efforts by PG&E to undertake study of these resources and would welcome inclusion in the consultations PG&E indicates it is undertaking with stakeholders.⁴ The City shares PG&E's stated goal of "bringing wave power generation to California as soon as feasible." San Francisco believes that the date by which such resources can be assessed as feasible may be hastened by the cooperation of all affected parties.

However, per the Notice of Inquiry issued by the Commission on February 15, 2007, the Commission is currently in the process of reassessing the regulatory regime for all such new technology hydropower projects. Specifically, the Commission is reviewing the rules governing applications for and oversight of preliminary permits. The Commission has put all parties interested in wave, current and tidal power on notice regarding two key aspects of the regulation of such resources: first that the Commission is considering at least three options as the potential outcome of its review of preliminary permits and second that the Commission has adopted an Interim Policy, effective immediately. One of the options the Commission invited comment on was that the

⁴ Application cover letter, page 1

Commission would no longer issue preliminary permits for new technology hydropower projects.

San Francisco, along with several other California parties, submitted comments in response to the NOI specifically addressing the options set out by the Commission. In that filing we urged the Commission to cease issuing preliminary permits for such projects. The parties state, *inter alia*:

Declining at this time to issue preliminary permits for new technology hydropower projects should commence immediately and should cover both currently pending and future applications.⁵

San Francisco believes that while the Commission considers the option to cease issuing preliminary permits, whatever the outcome of those deliberations, the Commission should not issue new permits in the meantime. While specifically not referring to this application, San Francisco believes the risk of sparking a 'gold rush' by ill-prepared applicants with ill-conceived projects is too high and the drain on Commission resources in reviewing such applications would be too great. San Francisco notes that this application already has a competing application requiring Commission attention in Project No. 12780-000, filed February 28, 2007. The adoption of the strict scrutiny approach for *new* applications during the pendency of the review proceeding would only make the burden of review of current and future applications all the greater. San Francisco supports the interim policy with respect to preliminary permits that have already been issued and would urge the Commission to apply those resources to oversight of existing permits, to assure that those sites are not being banked by entities that have no realistic expectation of developing them within their permit term.

This approach would place all current and prospective applicants on the same footing. Preliminary permits are not a prerequisite for development under the Federal Power Act, so even if the Commission decides not to grant a preliminary permit, the proposed project could still proceed, assuming the applicant has all other relevant permission(s).

⁵ NOI Comments of City and County of San Francisco, The City of San Jose, the City of Oakland, the City of Sacramento and the County of Marin, April 30, 2007 p.9, Docket No. RM07-8-000.

**V.
CONCLUSION**

For the reasons stated herein, San Francisco urges that the Commission grant the City's request to intervene. Further, the Commission is urged to reject PG&E's application for a preliminary permit, at least while the future of such permits remains under review in the current NOI.

Respectfully submitted,

Dennis J. Herrera
City Attorney
Theresa L. Mueller
Stephen A. S. Morrison
Deputy City Attorneys

/s/

Stephen A. S. Morrison

Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
(415) 554-4640 (Telephone)
(415) 554-4763 (facsimile)
stephen.morrison@sfgov.org

June 15, 2007

FERC, Docket No. P12779-000

PROOF OF SERVICE

I, PAULA FERNANDEZ, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102-0917.

On June 15, 2007, I served the following document on FERC Service List, Docket No. P-12779-000.

**MOTION TO INTERVENE AND PROTEST OF
THE CITY AND COUNTY OF SAN FRANCISCO**

on the following persons at the addresses specified below:

Annette Faraglia Esq.
Pacific Gas and Electric Company
Law Department
PO Box 7442, MC B30A-2479
San Francisco, CA 94120-7442
ARF3@pge.com

Roy Kuga,
Vice President - Energy Supply
Pacific Gas and Electric Company
P. O. Box 770000
San Francisco, CA 94177
RMK4@pge.com

David White
Hydraulic Engineer
777 Sonoma Ave., Suite 325
Santa Rosa, CA 95404
david.k.white@noaa.gov

Dan Hytrek
Attorney
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
Dan.Hytrek @noaa.gov

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed June 15, 2007, at San Francisco, California.

/s/

PAULA FERNANDEZ

Submission Contents

MOTION TO INTERVENE AND PROTEST OF
THE CITY AND COUNTY OF SAN FRANCISCO

FERCmot3.pdf..... 1-7