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<b>Project Title:</b>	Puente Power Project
<b>TN #:</b>	212257
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STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 15-AFC-01
	)	
APPLICATION FOR CERTIFICATION FOR	)	APPLICANT’S RESPONSE TO THE
THE PUENTE POWER PROJECT	)	REQUEST FOR EXTENSION OF THE
	)	PUBLIC REVIEW PERIOD FOR THE
	)	PRELIMINARY STAFF ASSESSMENT
	)	

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The revised Committee Scheduling Order, docketed on April 29, 2016, establishes a 45-day public comment period for the Preliminary Staff Assessment (PSA). On June 28, 2016, intervener City of Oxnard (“City”) filed a request to extend the public comment period by an additional 45 days, which would result in a 90-day comment period ending on September 19, 2016.<sup>1</sup> In the alternative, the City requests a 15-day extension, which would result in a 60-day comment period ending August 16, 2016.<sup>2</sup> On June 29, 2016, the Hearing Officer determined the request would be considered as a motion pursuant to Title 20, Cal. Code of Regs., § 1211.5, with responses due by July 12, 2016.

On July 7, 2016, interveners Environmental Coalition, Environmental Defense Center, and Sierra Club, Los Padres Chapter (collectively, the “Environmental Interveners”) filed comments in support of the City’s request citing the length of the PSA and conflicts with summer vacation schedules.<sup>3</sup>

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<sup>1</sup> City of Oxnard, June 28, 2016, TN # 211999.

<sup>2</sup> *Id.*

<sup>3</sup> Environmental Defense Center, July 7, 2016, TN # 21243.

On July 7, 2016, staff for the California Coastal Commission submitted comments in support of the City's request.<sup>4</sup> The basis of the Coastal Commission support for the City's request is that extending the PSA comment period would allow the Coastal Commission to complete its report prepared pursuant to California Public Resources Code Section 30413(d) ("Section 30413 Report") prior to the end of the public comment period, thereby allowing its findings and recommendations to be addressed in the Energy Commission staff's Final Staff Assessment (FSA). Coastal Commission staff indicates that it plans to bring the Section 30413(d) Report before the Coastal Commission for consideration and approval at its meeting on September 7-9, 2016.

For the reasons set forth below, Applicant opposes the City's request. Applicant appreciates the timing constraints faced by the Coastal Commission staff related to preparing the Section 30413(d) Report and bringing it before the Coastal Commission. However, we believe that the needs of the Coastal Commission can be addressed without extending the PSA comment period.

### **The City's Request is Untimely**

The City has been aware of the 45-day public comment period since the Committee Scheduling Order was issued on April 29, 2016. Moreover, the 45-day comment period was established based, in part, on requests that the City made at the Committee Status Conference on March 28, 2016. The City asked for—and received—an increase to the previously proposed 30-day PSA comment period.<sup>5</sup> Specifically, during the March 28, 2016 Committee Status Conference, the City's outside counsel asked for a month to review the Preliminary Determination of Compliance (PDOC), which it has already received with the publication of the PDOC on May 19, 2016,<sup>6</sup> and a 45- to 60-day period to review the PSA:

I would just like to echo the comment for having a robust period of time for public review. You know, one of the things that the City has noted with the Applicant's materials is that there are significant concerns about the Air Quality analysis for this project. And without having the benefit of the PDOC in front of us, we do think that that's going to require a very robust review, especially to see if there's any PSD permitting trigger in there. ***And so allowing for the month period after the release of the PDOC and then a 45-to-60 day comment period would be appropriate to give both the***

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<sup>4</sup> California Coastal Commission, July 7, 2016, TN # 212164.

<sup>5</sup> California Energy Commission Staff's Project (P3) Status Report 5, March 15, 2016, TN # 210728, at 3.

<sup>6</sup> Ventura County Air Pollution Control District, Notice of Preliminary Determination of Compliance, Puente Power Project (15-AFC-01), TN # 211570, May 19, 2016.

*City, the public and other agencies sufficient time to review those materials.*<sup>7</sup>

The Committee granted the City's request to extend the comment period from 30 days, as proposed by Energy Commission staff and supported by the Applicant, to 45 days as reflected in the current Committee Scheduling Order. Now, two months after issuance of the Committee Scheduling Order granting the City the relief it requested, the City seeks a further extension of the PSA comment period. The City's latest request is inconsistent with its statements during the Committee Status Conference. Furthermore, the latest request amounts to a challenge to the Scheduling Order issued by the Committee on April 29, 2016. The City failed to request that the Committee reconsider its Scheduling Order and failed to appeal the Scheduling Order to the full Commission. Pursuant to Title 20, Cal. Code of Regs., § 1215(b), appeals of written orders of the Committee must be filed within 10 days of the date the order is issued. Thus, the City's request is untimely and should be denied on that basis alone.

**The Interveners Have Failed to Demonstrate a Need for an Extended Public Comment Period**

The City is a sophisticated party with substantial resources at its disposal. The City has its own professional planning staff and attorneys who are experts at the preparation and review of documents prepared pursuant to the California Environmental Quality Act. The City has also retained outside counsel with extensive experience and expertise in such matters. Furthermore, the City has thoroughly reviewed and briefed many of the substantive environmental issues addressed in the PSA in proceedings before the California Public Utilities Commission.<sup>8</sup> The City has not explained why it cannot complete its review within the 45-day period that it previously requested. Given its level of sophistication, and prior involvement with the project, the City should have been well aware of the issues to be addressed in the PSA and of the comprehensive and lengthy analysis contained therein. The City supports its request by stating City residents will need additional time to review the PSA, but no such request was made by a member of the public, as far as we are aware.

The Environmental Interveners consist of three separate organizations, the resources of which can be brought to bear on review of the PSA. The Environmental Interveners' concerns regarding conflicts with summer vacation schedules are unwarranted since they have known of the anticipated timing of the release and review of the PSA since the Committee Scheduling Order was issued on April 29, 2016.

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<sup>7</sup> California Energy Commission, Committee Status Conference, March 28, 2016, Corrected Transcript, at 16:25-17:15 (emphasis added).

<sup>8</sup> Application of Southern California Edison Company for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area, Application 14-11-016.

**The Timing Requested by the Coastal Commission Staff is Not Mandated by the Memorandum of Agreement Between the Agencies, and Its Purpose Can Be Achieved Without Unnecessarily Extending the PSA Comment Period**

Applicant has no objection to making appropriate accommodation for the work to be done by the Coastal Commission staff to complete the Section 30413 Report. However, extension of the PSA comment period is neither required, nor necessary, to accommodate the Coastal Commission.

Coastal Commission staff states that the requested extension “would allow the [Coastal] Commission to consider and approve a [Public Resources Code Section] 30413(d) Report for the proposed Puente Power Project at its September 7-9 public meeting.” Coastal Commission staff further states that “[p]referably, the Coastal Commission’s 30413(d) Report on a proposed project is submitted during the PSA comment period, such that its findings and recommendations can be addressed in the CEC’s final staff assessment.”

The 2005 Memorandum of Agreement (MOA) between the Energy Commission and the Coastal Commission, which specifically addresses the timing of the Section 30413(d) Report, does not call for the report to be issued during the public comment period on the PSA. According to the MOA, the report must be prepared in time to support the Presiding Member’s Proposed Decision.<sup>9</sup> The report should be submitted “in time to be entered into the Energy Commission’s hearing record at an evidentiary hearing in the AFC proceeding.”<sup>10</sup> Further, Section 25523(b) of the Warren-Alquist Act requires the Coastal Commission’s report prior to the CEC’s final decision. Thus, we are not aware of any statute, regulation or guidance that supports the need to submit the Section 30413(d) Report during the PSA public comment period.

Furthermore, although not required, in this case the Section 30413 Report would, in fact, likely be available prior to Energy Commission staff’s issuance of the FSA. According to the timing laid out in the current Scheduling Order, the FSA would be released on approximately September 5, 2016 (30 days following close of the comment period on the PSA). The Coastal Commission is expected to consider and approve the Section 30413 report at its September 7-9, 2016 meeting. Staff typically makes available reports at least 10 days before Coastal Commission meetings, and often provides a longer time for review. Thus, Coastal Commission staff may make the report available by Friday, August 26, 2016, and possibly sooner. Therefore, even though not required, Energy Commission staff is likely to have the Section 30413 Report available to it for review prior to release of the FSA.

Finally, if it was desired that the Section 30413 Report be available to Energy Commission Staff even further in advance of issuance of the FSA, that can be accomplished without unnecessarily extending the PSA comment period. Issuance of the FSA could be postponed by a week or two to allow Energy Commission staff additional time to review the Section 30413 Report and incorporate its findings and recommendations into the FSA if that was the desire of the

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<sup>9</sup> MOA, § I(A).

<sup>10</sup> *Id.*, § I(B).

Committee. Making such an accommodation would not require extension of the public comment period on the PSA.

Maintaining the current PSA comment period, which closes on August 4, 2016, will give Energy Commission staff the necessary time to respond to public comments that will cover substantially the entire PSA, leaving staff free to focus on the Section 30413 Report when it is released. Leaving the PSA comment period open until September 19, 2016 would mean that Energy Commission staff would be reviewing all PSA comments and the Section 30413 Report at the same time. Thus, the sequencing of public comments on the PSA and release of the Section 30413 Report provided for in the current schedule results in a more orderly review of all input by Energy Commission staff, and less chance for significant delay of the FSA.

**It is Important that the Current Committee Scheduling Order Be Adhered to as Closely as Possible**

The Application for Certification for the Puente Power Project was deemed data adequate over a year ago, on June 10, 2015. Extensive discovery was conducted in this case, and Energy Commission staff was afforded ample time to complete a PSA that is complete and reflects careful consideration of all relevant issues. With that groundwork in place, there is no reason not to proceed according to the schedule established by the Committee, which reflects input received from the parties at the Status Conference held on March 28, 2016. Failure to do so jeopardizes completion of the Energy Commission review process and the ability to bring the Project on line according to schedule.

For all of the above reasons, Applicant urges the Committee to reject the request of the City to extend the comment period for the PSA.

DATED: July 12, 2016

Respectfully submitted,

*/s/ Michael J. Carroll*

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