

DOCKETED

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Description:	Letter to CCC submitted on behalf of intervenors to this CEC proceeding (Environmental Coalition, Environmental Defense Center, Sierra Club)
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AGENDA ITEM F10a—September 2016 Meeting (Newport Beach)



September 1, 2016

California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Proposal to Upgrade Mandalay Generating Station (Energy, Ocean Resources and Federal Consistency) (Agenda Item F10a)

Sent via email to alison.dettmer@coastal.ca.gov

Dear Honorable Commissioners:

On behalf of Environmental Coalition of Ventura County, Environmental Defense Center, and Sierra Club, we respectfully urge you to adopt staff's proposed Report (prepared pursuant to section 30413(d) of the Coastal Act) to the California Energy Commission ("CEC") for NRG Energy's proposed "Puente Power Project," which would be the *fourth* fossil-fuel power plant to be sited on the City of Oxnard's beaches. Our organizations, which are also formal intervenors in the CEC certification process for Puente, believe that CCC staff has done a commendable and thorough job in preparing the Report, and we support the detailed recommendations identified by staff as necessary to bring the project in compliance with the Coastal Act, including the fundamental recommendation "that the CEC require NRG to relocate the project to an off-site alternative location that is free of current and future flood hazards."

Although proposed power plants such as Puente do not require a coastal development permit, your Commission still plays an essential and substantive role in the CEC power plant certification process by providing findings with respect to specific measures necessary to bring the project into compliance with Coastal Act policies. The CEC can only disregard these recommendations if it finds that they are infeasible or would cause greater environmental impacts than the project as proposed.

Here, the Puente Power Project 30413(d) Report concludes that the project as proposed and as analyzed by the CEC in its Preliminary Staff Assessment ("PSA") does not address all environmental impacts, including direct impacts to wetlands; indirect impacts to wetlands and environmentally sensitive habitat areas ("ESHA"); site exposure

to present and future hazards from flooding, sea level rise, and tsunamis; and effects on public access to the shoreline. The Report also notes that the Puente project would conflict with several land use policies under the Coastal Act and the City of Oxnard's Local Coastal Program.

CCC staff's clear-eyed review of this project illustrates that the proposed site is counter to basic Coastal Act policies:

Ultimately, in spite of the uncertainty surrounding the exact degree of risk, there is substantial evidence that the project site could be exposed to flooding during its proposed 30-year operating life, and that over the long-term, this possibility would become a certainty. In this situation, Coastal Act Section 30253 requires that risks to life and property be minimized, and the stability and structural integrity of new development be assured, without resorting to the construction of shoreline protective devices. The Commission believes that the requirements of this policy can best be met through risk avoidance, that is, by the selection of an alternative inland site that is free of flooding hazards. (Staff Report, at p. 34).

Accordingly, the 30413(d) Report recommends "that the CEC require NRG to relocate the proposed project to an alternative site that is (a) outside the current 100-year and 500-year flood zones, and (b) would not be at risk of flooding related to high water levels, storm waves, or coastal erosion, including the effects of sea level rise, over the full 30-year project term." Similarly, the 30413(d) Report recommends that "the Energy Commission require that the proposed project be relocated to an alternative site that would not result in direct impacts to or fill of coastal wetlands." (Staff Report, at p. 13). Although the 30413(d) Report makes several additional laudable recommendations in an effort to lessen or mitigate Puente's array of adverse environmental impacts, we write primarily to support the most basic recommendation asking that the CEC require NRG to locate an alternate site.

In addition to our general support for the recommendations made in the 30413(d) report, we offer the following comments:

1. Direct Impacts on ESHA

Although the 30413(d) Report addresses indirect impacts to ESHA in detail, it does not appear to address the potential for onsite ESHA. The PSA dismisses the potential for onsite ESHA without discussion. Although the PSA does acknowledge that the project site contains more than 2 acres of wetlands (as defined by CCC wetlands policy), it does not take the next step to address whether these wetlands are ESHA. This

omission is particularly notable given that coastal wetlands and other natural waters are generally presumed to also be an ESHA. *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 515.

Should the coastal wetlands or other areas within the project site also be determined as ESHA, section 30240 of the Coastal Act “does not permit its restrictions to be ignored based on the threatening or deteriorating condition of a particular ESHA.” *Id.* at 507. The underlying policy rationale for the Coastal Act’s strict protection of ESHAs has particular relevance to the proposed siting of this fourth power plant on the City of Oxnard’s beaches:

[I]f, even though an ESHA meets the requirements of section 30107.5, application of section 30240’s otherwise strict limitations also depends on the relative viability of an ESHA, developers will be encouraged to find threats and hazards to all ESHAs located in economically inconvenient locations. The pursuit of such hazards would in turn only promote the isolation and transfer of ESHA habitat values to more economically convenient locations. Such a system of isolation and transfer based on economic convenience would of course be completely contrary to the goal of the Coastal Act, which is to protect *all* coastal zone resources and provide heightened protection to ESHAs. *Id.* (emphasis in original).

We respectfully ask staff to clarify whether onsite ESHA, and potential direct impacts to that ESHA, was considered in preparation of the 30413(d) Report.

2. Environmental Justice

The 30413(d) Report appears to also omit consideration of environmental justice issues. As stated in the CCC’s 2015 Sea Level Rise Policy Guidance, the Coastal Act “recognizes the fundamental importance of the fair distribution of environmental benefits.” Accordingly, the Policy directs that “[e]nsuring low-income and underserved communities are included in environmental decisions is a key tenet of environmental justice and will minimize disproportionate environmental and public health impacts.”

The environmental justice implications of the Puente project are undeniable. The City of Oxnard is a majority-minority community, with 74% of residents of Hispanic descent and an additional 10% of residents identified as non-white. In addition to the three existing coastal power plants, Oxnard also contains an EPA Superfund site, landfills, and extensive oil and gas development adjacent to residences. State of California data contained within CalEnviro Screen 2.0 characterizes much of the City as disadvantaged, with several census tracts classified within the highest “score” (91%-

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100%). When all census tracts are considered, the City of Oxnard ranks within the top 10% of California communities in terms of the environmental burden of dangerous and polluting industries. This community should not be saddled with yet another coastal power plant.

3. Conclusion

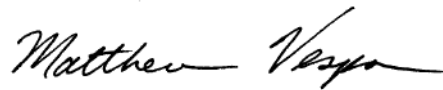
The siting of any additional fossil-fueled power plants on California's irreplaceable beaches is shortsighted under any circumstance; NRG's proposal to build the Puente project in an area uniquely vulnerable to sea level rise, beach erosion, and tsunami risk is simply reckless. We respectfully request that the California Coastal Commission fully and responsibly exercise its statutory authority under the Coastal Act and Warren-Alquist Act by adopting staff's 30413(d) Report (and recommendations) for the Puente Power Project, and transmitting that Report to the California Energy Commission.

Thank you for considering our recommendation.

Sincerely,



Brian Segee, Senior Attorney
Environmental Defense Center



Matthew Vespa, Senior Attorney
Sierra Club

cc: California Energy Commission, Docket No. 15-AFC-01