

## DOCKETED

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September 15, 2016

*Via electronic filing*

California Energy Commission  
Dockets Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5512  
ATTN: Shawn Pittard, Project Manager

**Re: Comments of California Environmental Justice Alliance on Preliminary Staff Assessment for Puente Power Project (Docket No. 15-AFC-01)**

Dear Mr. Pittard:

The California Environmental Justice Alliance (“CEJA”) respectfully submits these comments on the Preliminary Staff Assessment (“PSA”) of the proposed Puente Power Project (“P3”).

## **I. INTRODUCTION**

CEJA is a statewide, community-led coalition that works to achieve environmental justice in low-income communities and communities of color. CEJA seeks to address toxic industries that pollute peoples’ land, water, and health, and to create a green, locally-based and sustainable economy. CEJA was formed in 2001 and today represents approximately 20,000 Asian American, Latino, and African American residents across California.

CEJA has seen some success in building and amplifying the voices of environmental justice communities. For example, this year CEJA members helped get several environmental justice bills through to the Governor’s desk, including

- SB 1000 (Leyva) - Will improve local planning efforts to reduce disproportionate environmental and health impacts on California’s most vulnerable residents by ensuring that local governments include an EJ element in General Plans when they are updated.
- AB 2722 (Burke) - Will create a comprehensive approach to reduce greenhouse gas (“GHG”) emissions by creating a new, funded, program in disadvantaged communities to help accelerate sustainability plans and help California meet its climate change goals.
- SB 32 (Pavley) - Requires the Air Resources Board to approve a statewide GHG limit that is equivalent to 40% below the 1990 level to be achieved by 2030.

- AB 197 (E. Garcia) - Directs the Air Resources Board to prioritize local emission reductions for greenhouse gas emitters.
- AB 1550 (Gomez) - Requires at least 35% of Greenhouse Gas Reduction Fund proceeds will benefit underserved communities and low-income Californians.
- AB 1937 (Gomez) - Requires utilities to show that they actively seek, and give preference to, bids for resources that are not gas-fired generating units located in communities that suffer from cumulative pollution burdens.
- AB 1066, Gonzalez. Removes exemption that deprived agricultural workers of wages, hours, and working conditions protections.

These legislative successes build on CEJA’s history of advocating in administrative and legislative venues to ensure the voice of environmental justice communities affects land use planning, including, specifically, to determine whether and when new gas-fired generation is approved in California. CEJA’s goal in these venues is to ensure that the state’s transition from a fossil-fuel based electricity system to a sustainable energy system takes into account existing environmental injustice, including the cumulative impacts already suffered by low-income communities of color.

The Central Coast Alliance United for a Sustainable Economy (“CAUSE”) is a member organization of CEJA. CAUSE builds grassroots power to achieve social, economic, and environmental justice for the people of California’s central coast region. CAUSE began its environmental justice work in 2007, when diverse grassroots leaders came together to organize their community to stop the world’s largest mining company from building a South Oxnard offshore liquefied natural gas import terminal. At that point, more than 80 percent of the population in South Oxnard were people of color, with one-third of the community earning below the federal poverty level and 71 percent of its children qualify for free and reduced lunch programs. South Oxnard is twice as likely to have an environmental hazard as other communities of Ventura and Santa Barbara Counties. Building on its initial experience with a massive proposed energy project, the Oxnard chapter of CAUSE, and its members, have identified proposed gas-fired power plants as a threat to environmental justice.

CEJA has specific concerns around new gas-fired power plants in disadvantaged communities, and at the behest of its member organizations, has intervened in several administrative proceedings that determine whether new gas-fired generation is approved. In 2015, CEJA intervened in the California Public Utilities Commission (“PUC”) proceeding reviewing Southern California Edison’s application for approval of its procurement contract with NRG Oxnard for P3. In that proceeding, CEJA provided expertise regarding use of CalEnviroScreen 2.0, technical information regarding the Oxnard community in which the Project would be located, and general legal representation of CEJA’s and CAUSE’s interests. The Administrative Law Judge (“ALJ”) and two commissioners specifically relied on information provided by CEJA in their respective proposed decisions.<sup>1</sup>

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<sup>1</sup> CEJA’s testimony in the PUC proceeding was submitted into the CEC docket on October 15, 2015 by Maricela Morales, Executive Director of CAUSE, who also provided written and oral information summarizing the socioeconomic conditions in the area surrounding the proposed P3 project. CEC Docket 15-AFC-01, #TN 206369.

As the proposed decisions by ALJ DeAngelis and Assigned Commissioner Florio and the final decision by Commissioner Peterman confirmed, the PUC record shows that Oxnard is a disproportionately burdened, environmental justice community. Environmental justice communities are marked by significant populations of low-income residents and residents of color bearing disproportionate environmental burdens. Oxnard fits this profile. As briefed by CEJA in the PUC proceeding and noted in the decisions, CalEnviroScreen 2.0, which is the singular screening tool developed by the California Environmental Protection Agency to evaluate community environmental health, identifies census tracts in Oxnard as “within the top 20% most environmentally burdened communities in California.” This is in sharp contrast to the rest of the Moorpark sub-area, which contains many white, affluent communities, and no other communities in the top 80th percentile of CalEnviroScreen. In particular, environmental burdens from power generation in the Moorpark sub-area have fallen disproportionately on the people of Oxnard. Indeed, Oxnard already has “once-through” cooling power plants in two different locations, two at Mandalay and two at Ormond Beach, and two gas-fired peakers – one at Mandalay and one close to Mandalay at Macgrath State Beach. Oxnard also has a toxic superfund site, and heavy pesticide contamination. The P3 project, as an additional fossil fuel plant in the City of Oxnard, would worsen environmental conditions in the area, including air quality, biological resources, coastal water quality, and would deprive residents of a reliable energy source in the face of climate change, economic benefits associated with alternative energy projects, and non-industrial, clean natural recreational space.

Although it relies on different measures, the PSA correctly concludes that Oxnard, and the communities in proximity to the proposed P3 plant, are environmental justice communities. Adding P3 to the cumulative effects of existing pollution sources would impose additional burdens on an already heavily disadvantaged and vulnerable population. Within the environmentally overburdened communities in Oxnard, 85% of the population is Latino, 29% lives in linguistic isolation, 56% lives below two times the federal poverty level, and 46% of those over 25 years of age have less than a high school education. In addition to the people who live in close proximity to the proposed plant, thousands of farm workers work in even closer proximity. Between 1,000 and 3,000 laborers work in surrounding fields less than half a mile from the site. The economic<sup>2</sup> and air quality benefits of alternatives to P3 are extremely meaningful for these communities.

## II. REGULATORY FRAMEWORK

Pursuant to the Warren-Alquist Act, the Energy Commission is tasked with evaluating applications for certification for thermal power plants greater than 50 MW. The Commission also administers a certified regulatory program under the California Environmental Quality Act

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<sup>2</sup> The PSA appears to have omitted an economic analysis of the P3 project, and its alternatives. California law requires energy agencies seek to direct benefits of renewable generation to disadvantaged communities. Failing to consider the impact of imposing an additional gas-fired power plant on the community, in addition to the project descriptions flaws, make it impossible adequately to comment at this stage on the PSA’s socioeconomic analysis.

(“CEQA”).<sup>3</sup> While an agency operating a certified regulatory program is permitted to follow its own rules to prepare equivalent documents, it must implement CEQA’s fundamental mandates, which are critical to providing reliable public information, protecting the environment, and ensuring that if a project is approved, its potentially significant impacts are mitigated or alternatives are selected.<sup>4</sup>

The CEC has developed its own rules to implement CEQA in its power plant certification process.<sup>5</sup> These rules include a process for CEC staff evaluation as well as consideration of factors such as environmental justice impacts of a proposed plant, existing laws and regulations, alternatives, and enforceable conditions to mitigate potential impacts.

The CEC has “integrate[d] environmental justice into its siting process since 1995, as part of its thorough [CEQA] analysis of applications for siting power plants and related facilities.”<sup>6</sup> The CEC’s final decision in its CEQA review should include consideration of its “[s]taff[’s] . . . analy[ses] [of] . . . disproportionate impacts on minority and low-income populations resulting from exposure to direct and cumulative impacts associated with the proposed facility.”<sup>7</sup> The CEC’s “analy[ses] [include] the existing socioeconomic setting of the area and evaluat[ing] the project in terms of population and demographic characteristics, economic base[,] and employment data[.]”<sup>8</sup>

CEJA is particularly concerned about the CEC’s environmental justice analysis of the proposed P3 plant because the PUC’s final decision concluded that, although in the future the investor-owned utilities will have to give weight to environmental justice impacts, for the P3 plant, the CEC is the only venue that will act to address environmental justice. As the PUC concluded,

This Commission is concerned about environmental justice issues. It is not our interest or intent to approve contracts for pollution-causing power plants in disadvantaged communities or other similarly-impacted areas . . . . If we determine that the Puente Project is consistent with the relevant economic and reliability criteria laid out in D.13-02-015 and SCE’s procurement plan, the CEC is still required to conduct and complete its review. Environmental justice issues are also applicable within the CEC’s CEQA review. The CEC will more fully develop the environmental justice and siting issues in CEC Docket 15-AFC-01 (Application for Certification of Puente Project by NRG). The CEC may disapprove or determine that mitigation measures are required due to environmental justice concerns. If the CEC determines that the project should not be

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<sup>3</sup> Cal. Pub. Resources Code § 21080.5; 14 Cal. Code Regs. § 15251(j).

<sup>4</sup> *Strother v. California Coastal Com’n* (2009) 173 Cal.App.4th 873, 878.

<sup>5</sup> See generally 20 Cal. §§ 1700 et seq.

<sup>6</sup> See [http://www.energy.ca.gov/public\\_adviser/environmental\\_justice\\_faq.html](http://www.energy.ca.gov/public_adviser/environmental_justice_faq.html).

<sup>7</sup> See California Energy Commission, Energy Facility Licensing Process: Developers Guide of Practices and Procedures Staff Report / Draft, December 7, 2000, at 30, available at [http://www.energy.ca.gov/siting/documents/2000-12-07\\_700-00-007.pdf](http://www.energy.ca.gov/siting/documents/2000-12-07_700-00-007.pdf).

<sup>8</sup> *Id.*

permitted for environmental justice or other reasons within its jurisdiction, it will not go forward.

In future procurement applications, we intend to explicitly consider environmental justice issues as part of our review of procurement contracts.<sup>9</sup>

The PUC has approved the contract for P3, despite having reviewed and accepted the evidence showing that the communities closest to the project are among only the environmental justice communities in the area. CEJA and CAUSE participated in the PUC proceeding. Among the arguments raised were the concern that the PUC was taking action that could affect the CEC's options when it considers alternatives to, and mitigation for, P3. Specifically, CEJA and CAUSE argued that the PUC should defer its consideration of the NRG/SCE contract for P3 until the conclusion of the CEC's CEQA analysis to ensure that the PUC's description of the P3 project would not affect the CEC's consideration of alternatives and mitigation such as alternative sites, alternative operating conditions, and, most importantly, alternative technologies to meet the local need. The PUC declined to delay its decision, concluding the CEC is analyzing the P3 project independently of the contents of the NRG/SCE contract, and retains its full power and authority to require mitigation and alternatives. The CEC, in sum, is the critical agency decisionmaker for environmental justice issues for the Oxnard community's long effort to ensure that its beaches are someday free of industrial uses, its lungs are free from emissions from gas-fired electricity generation, and its people are able to exist their homes on the same basis with the other, more affluent, whiter, communities in the region.

### III. PROJECT DESCRIPTION

Under CEQA, an "accurate, stable and finite" project description is the *sine qua non* of an environmental impact report ("EIR").<sup>10</sup> Only through an accurate depiction of a project may the public, interested parties, and public agencies balance the proposed project's benefits against its environmental cost, consider suitable mitigation measures, assess the advantages of rejecting the proposal, and appropriately weigh alternatives.<sup>11</sup> The importance of an accurate project description cannot be overstated.

The PSA project description suffers several defects. These include a basic failure to identify what the project includes, and does not include – the construction and operation of P3, which is the activity within the CEC's jurisdiction to approve, and not the decommissioning and demolition of units that are otherwise required by law. It also fails to identify P3's operational characteristics – how much will P3 operate (capacity factor range from 10%<sup>12</sup> to 24.5%<sup>13</sup> to

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<sup>9</sup> Decision (D)16-05-051, pp. 18-19.

<sup>10</sup> *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 199.

<sup>11</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 655.

<sup>12</sup> PSA at 4.1-48.

<sup>13</sup> PSA at 4.1-116.

30%<sup>14</sup> up to 31%.<sup>15</sup>) and how many shut down and start up events will occur. Finally, it fails to describe the project's objectives as required by CEQA.

**A. The Project is Construction and Operation of P3; it does Not Include Decommissioning and Demolition of MGS OTC Units**

The PSA errs in describing the Project as one that includes both construction and operation of P3 and decommission and demolition of the two existing Mandalay Generating Station Once Through Cooling units (“MGS Units 1 and 2”) in 2020. While CEJA strongly supports the decommissioning and demolition of MGS Units 1 and 2, they must be considered as mitigation for the significant impacts the P3 project imposes. The distinction is significant.

NRG submitted its Application for Certification for P3 describing a project that would consist of construction of P3.<sup>16</sup> This was the project for which the PUC considered a contract. As the PUC final decision observed, while NRG subsequently filed a description of the demolition of MGS Units 1 and 2 with the CEC, proposing to include the demolition by late 2022, “[n]either NRG’s proposal nor the contract presented in this proceeding included the demolition at the proposed site....”<sup>17</sup> Likewise, for months NRG asserted its intention to leave MGS Units 1 and 2 in place.

Although NRG submitted a “Project Enhancement and Refinement, Demolition of Mandalay Generating Station Units 1 and 2” on November 19, 2015, CEC staff must consider whether this “enhancement and refinement” is, as NRG asserts, part of the project, a necessary mitigation measure, or simply an undertaking that would be required of NRG whether or not the CEC approves P3.<sup>18</sup> The PSA errs in describing the project as the construction of a 262 MW electric power project, the decommissioning of MGS Units 1 and 2, and the demolition and removal of the power blocks and exhaust structure.<sup>19</sup> CEJA is concerned that this project description is inaccurate, distorts the public understanding of the project, and wrongfully includes mitigation measures in violation of CEQA.

A “project” under CEQA is defined to be “the whole of an action, which has the potential for resulting in . . . a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>20</sup> In contrast, the term “mitigation” involves “feasible changes in any or all activities involved in the project in order to substantially lessen or

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<sup>14</sup> PSA at 3-1.

<sup>15</sup> PSA at 4.1-132.

<sup>16</sup> D.16-05-050, pp. 14-15 fn 33; *see also* NRG filing CEC Docket 15-AFC-01, #TN206698, 11/19/2015.

<sup>17</sup> D.16-05-050, pp. 14-15 fn 33.

<sup>18</sup> Note that under the Warren-Alquist Act and CEQA, when NRG engages in a separate project of demolition of its existing units the CEC’s delegated program and authority to implement LORS, which applies only to certification of thermal power plants greater than 50 MW, will not apply. Other authorities will conduct environmental review and issue requisite permits.

<sup>19</sup> CEC Preliminary Staff Assessment, 1-1.

<sup>20</sup> Cal. Code Regs., tit. 14, § 15378.

avoid significant effects on the environment.”<sup>21</sup> Mitigation may not be incorporated into project description, because doing so makes it impossible to evaluate the true impacts of the project and prevents the agency and the public from evaluating whether the mitigation measures are tailored to address the project’s impacts.<sup>22</sup>

The court in *Lotus v. Department of Transportation* confirmed that under CEQA, project descriptions should not include mitigation measures.<sup>23</sup> In that case, petitioners challenged the sufficiency of an EIR for a highway construction project that would affect a redwood forest.<sup>24</sup> The lead agency, Caltrans, concluded that “no significant environmental effects” were expected as a result of the project because it was going to “implement[] special construction techniques” as part of the project.<sup>25</sup> The court found that these “special construction techniques,” which included restorative planting, invasive plant removal, and use of an arborist and of specialized equipment, were mitigation measures that could not be considered parts of the project.<sup>26</sup> The court found that by incorporating mitigation measures into its significance determination, and relying on those measures to determine that no significant effect would occur, Caltrans violated CEQA.<sup>27</sup>

The court stated it that would “not provide Caltrans a shortcut to CEQA compliance by allowing Caltrans to rely on mitigation measures that ha[d] not been adequately adopted.”<sup>28</sup> The court explained that this failure to comply with the requirements of CEQA constituted a failure to “proceed in a manner required by law” and thus, constituted an abuse of discretion.<sup>29</sup> Further, the court explained that this failure was prejudicial because it “subvert[ed] the purposes of CEQA [by] . . . omit[ting] material necessary to inform decisionmaking and informed public participation.”<sup>30</sup>

Generally, an activity is mitigation when it is a “proposed subsequent action by the project proponent to mitigate an environmental impact of the proposed project”<sup>31</sup> and in certain circumstances, when the activity works to address a “preexisting problem.”<sup>32</sup> The *Lotus* court provides examples of what would be considered part of an EIR’s project description -- use of a “certain type of cement that affected redwood roots less than other types of cement.”<sup>33</sup> The court

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<sup>21</sup> Cal. Code Regs., tit. 14, § 15041(a).

<sup>22</sup> See *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645.

<sup>23</sup> See *id.*

<sup>24</sup> *Id.* at 647.

<sup>25</sup> *Id.* at 651.

<sup>26</sup> *Id.* at 657.

<sup>27</sup> *Id.* at 655.

<sup>28</sup> See *id.* at 658 (citing Cal. Pub. Resources Code, § 21168.9).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See e.g., *Save the Plastic Bag Coalition v. City and County of San Francisco*, 222 Cal. App. 4th 863 (2013).

<sup>32</sup> See *Wollmer v. City of Berkeley*, 193 Cal. App. 4th 1329 (2011).

<sup>33</sup> *Lotus v. Department of Transportation*, 223 Cal. App. 4th at 657, fn. 8.



stated that it would be “nonsensical” in that case to “analyze the impact of using some other composition of paving then to consider use of this particular composition as a mitigation measure.”<sup>34</sup> By contrast, landscaping and restorative plantings were mitigation for project impacts.

In another case, a city’s 10-cent fee as part of an ordinance restricting the use of plastic bags at retail stores was an “integral” part of the City’s plan to address the problem of single-use bags, and was part of the project.<sup>35</sup> There, the fee was not a mitigation measure because it was not a “proposed subsequent action[] by the project proponent to mitigate or offset the alleged adverse environmental impacts” of the project.<sup>36</sup>

The court in *Berkeley Hillside Preservation v. City of Berkeley* used the standard of what constituted a “mitigation measure” from *Save the Plastic Bag Coalition* to determine that a traffic-management plan for a project to build a house on the Berkeley hillside was not mitigation because it was not a “proposed subsequent action taken to mitigate any significant effect of the project.”<sup>37</sup> The court determined that the project was exempt from CEQA, and that the traffic plan was a part of the project because managing traffic during home construction is a “common, typical concern.”<sup>38</sup> The court thus rejected that the traffic plan amounted to a mitigation measure, which would have preempted the project from CEQA exemption.

Under *Lotus*, mitigation may not be included in the CEC’s description of the P3 project.<sup>39</sup> Because of this, decommission of the existing MGS Units 1 and 2, and demolition and removal of the power blocks and exhaust structure of the MGS constitute mitigation that should not be included in P3’s project description.

First, decommissioning of MGS Units 1 and 2 will occur regardless of the P3 project, and should not be included as part of the project description. As correctly explained in September 13, 2016 PSA comments by Environmental Coalition of Ventura County, Sierra Club Los Padres Chapter, and Environmental Defense Center, because these actions will occur independent of P3, it is incorrect to lump decommissioning in with the P3 project.<sup>40</sup> Similarly, regardless of whether P3 is approved, once the Once Through Cooling regulation operates to shut down MGS Units 1 and 2, the City of Oxnard may exercise its police power or public nuisance authority to mandate demolition. From a practical perspective, mis-defining the P3 project to include decommissioning, demolition and removal prevents the CEC from adequately considering alternatives to the project. The project benefits of decommissioning, demolition and removal are all lacking from every alternative considered.

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<sup>34</sup> *Id.*

<sup>35</sup> *Save the Plastic Bag Coalition* (2013) 222 Cal. App. 4th 863, 868.

<sup>36</sup> *Id.* at 882-83.

<sup>37</sup> *See Berkeley Hillside Preservation v. City of Berkeley*, (2015) 241 Cal. App. 4th 943.

<sup>38</sup> *Id.*

<sup>39</sup> *See Lotus v. Department of Transportation*, (2014) 223 Cal. App. 4th 645.

<sup>40</sup> PSA Comments of Environmental Coalition of Ventura County, Sierra Club Los Padres Chapter, and Environmental Defense Center, September 13, 2016, pp. 3-4.

Second, to the extent the CEC considers demolition and removal of the power blocks and exhaust structure of the MGS as part of this PSA (rather than concluding they are projects in their own right, subject to separate jurisdiction) the actions constitute mitigation. As described in *Save the Plastic Bag Coalition* and *Berkeley Hills Preservation*, demolition and removal would be “proposed subsequent action[s] taken to mitigate . . . significant effect[s] of the project.”<sup>41</sup> Unlike the 10-cent fee for plastic bags in *Save the Plastic Bag Coalition* and the traffic plan in *Berkeley Hillside Preservation*, which both courts deemed “integral” to their respective projects, here, the only “integral” part of the P3 project is its construction – not the decommissioning, demolition, or removal of existing, appendage structures. Decommissioning of Unit 1 is scheduled for after P3 construction, and demolition and removal of both power blocks and exhaust structure are scheduled for after P3 construction. They are therefore subsequent actions. Further, these actions would mitigate some of the aesthetic, environmental and socioeconomic impacts P3 would impose. Like restorative planting or invasive plant removal in *Lotus*, decommissioning, demolition and removal of MGS Units 1 and 2 would provide after the fact relief from some of the project’s impacts.

## **B. Project Objectives**

In addition to the flawed project description, the description of project objectives overly narrows the range of alternatives the CEC considers, thwarting CEQA alternatives analysis requirement. CEJA agrees with, and for the sake of efficiency incorporates by reference the Comments of Center for Biological Diversity regarding Project Objectives. filed in this docket September 12, 2016 at TN # 213621. In addition to CEJA’s full agreement with CBD’s explanation of legal requirements regarding project objectives, CEJA in particular objects to the inclusion of the first articulated project object – “Fulfill NRG’s obligations under its 20-year Resource Adequacy Purchase Agreement (RAPA) with SCE requiring development of a 262-MW nominal net output of newer, more flexible and efficient natural-gas generation”<sup>42</sup>

Inclusion of NRG’s contract obligations in the CEC’s project objectives is precisely the concern CEJA raised at the PUC. Under CEQA, the applicant’s desires for its project do not set the agenda the agency considers.<sup>43</sup> Indeed, narrowing the objectives to include satisfaction of the contractual obligations NRG voluntarily committed to, and insisting that the contract be finalized prior to CEC review of the P3 project would provide an incentive for every developer to tie the CEC’s hands in that way. The PUC final decision rejected the concern that CEJA and other parties raised, specifically finding that “[c]onsideration of the NRG Puente Project contract by this Commission does not prejudice the CEC review.”<sup>44</sup> As discussed below, in CEJA’s alternatives discussion, while the PSA does seek to interpret the objectives broadly in order to

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<sup>41</sup> See *Save the Plastic Bag Coalition*, 222 Cal. App. 4th 863 (2013); *Berkeley Hillside Preservation v. City of Berkeley*, 241 Cal. App. 4th 943 (2015).

<sup>42</sup> PSA at 1.3; 6.1-6.

<sup>43</sup> See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 736-37.

<sup>44</sup> D.16-05-050, p. 22.

consider off-site alternatives and preferred resources, under CEQA the first project objective should be removed from the Staff Assessment.

#### IV. PROJECT IMPACTS

CEQA requires environmental review to address all of a proposed project's anticipated environmental impacts.<sup>45</sup> "An EIR shall identify and focus on the significant environmental effects of the proposed project."<sup>46</sup> It must "identify and focus on the significant environmental effects of the proposed project," including providing an analysis of both short-term and long-term significant environmental impacts.<sup>47</sup> Agencies, moreover, should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid the significant environmental impacts contained in the project's EIR.<sup>48</sup>

Evaluating a project's impacts necessarily involves describing the environmental setting, or baseline, in which the project will occur. An EIR must describe the environmental conditions in the vicinity of the project "as they exist at the time the notice of preparation is published" or "at the time environmental analysis is commenced."<sup>49</sup> This description "normally constitutes the baseline physical conditions" by which the agency measures whether the proposed changes to the environment will have a significant impact.<sup>50</sup>

An agency may use a future baseline in certain circumstances. For example, in *Communities for a Better Environment v. South Coast Air Quality Management District*, the California Supreme Court stated that the date for establishing the baseline conditions of a project is not rigid: "Where environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project, project effects might reasonably be compared to predicted conditions at the expected date of approval, rather than to conditions at the time analysis is begun."<sup>51</sup> In that case, the Court reversed the agency's determination that the baseline measurement of a petroleum refinery's emissions should include additional NOx emissions expected to occur as a result of the proposed modification project.<sup>52</sup>

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<sup>45</sup> Public Resource Code § 21100(b)(1); *See also, County of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 3d 185, 199.

<sup>46</sup> 14 Cal. Code Regulations § 15126.2(a).

<sup>47</sup> *Id.*

<sup>48</sup> Cal. Pub. Resources Code §§ 21002, 21002.1(a).

<sup>49</sup> 14 Cal. Code Regulations § 15125(a).

<sup>50</sup> *Id.* CEC regulations do not illuminate the definition of the baseline measurement, but simply state that environmental review must include information about existing conditions at the proposed site. *See* 20 Cal. Code Regulations Appendix B: Information Requirements for an Application, at subsection (g)(1) ("For each technical area listed below, provide a discussion of the existing site conditions . . .").

<sup>51</sup> *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, 328.

<sup>52</sup> *Id.* at 322.

The agency had justified this decision because the expected increase in emissions would still be within the refinery's capacity for emissions under its existing permit.<sup>53</sup>

In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, the agency relied on a future baseline to analyze traffic impacts of a proposed metro line expansion.<sup>54</sup> The California Supreme Court disallowed the future baseline, emphasizing that an agency must justify such a decision by establishing that using the present conditions as the baseline “would be misleading or without informational value.”<sup>55</sup> This can be accomplished by showing that an adjustment in the timeframe for the baseline is necessary “to account for a major change in environmental conditions that is expected to occur before project implementation.”<sup>56</sup>

The PSA's efforts to identify project impacts are flawed *ab initio*, since the incorrect description of the project as including both the proposed P3 plant and significant changes to the surrounding plants. This flaw affects the baseline the PSA uses and the impacts it evaluates, which are rendered inaccurate for each category of impact. Accurately describing the P3 project would result in an entirely different consideration of air quality, GHG emissions, and socioeconomic/environmental justice.

Further, mitigation for each impact would change significantly. CEQA requires that feasible mitigation measures be adopted to reduce adverse environmental impacts, and the failure of the lead agency to adopt mitigation measures is a violation of CEQA.<sup>57</sup> The policy of CEQA is to promote the adoption of the most environmentally-friendly feasible alternatives possible.

The lead agency must make findings in the record based on substantial evidence regarding alternatives, mitigation measures, and their feasibility.<sup>58</sup> CEQA Guidelines require that “[e]conomic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR.”<sup>59</sup>

## A. Air Impacts

CEJA agrees with, and for the sake of efficiency incorporates by reference the Comments of Environmental Coalition of Ventura County, Sierra Club Los Padres Chapter, and

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<sup>53</sup> *Id.* at 318.

<sup>54</sup> *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 446.

<sup>55</sup> *Id.* at 457; *see also id.* at 453 (“Thus an agency may forgo analysis of a project's impacts on existing environmental conditions if such an analysis would be uninformative or misleading to decision makers and the public.”).

<sup>56</sup> *Id.* at 452.

<sup>57</sup> Pub. Res. Code §§ 21002 - 21002.1(b), 21081; 14 Cal. Code Regulations § 15021(a)(2).

<sup>58</sup> *See* Public Resource Code §§ 21081 and 21081.5; *see also, San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 690-91.

<sup>59</sup> 14 Cal. Code Regulations § 15131(c).

Environmental Defense Center regarding Air Quality impacts.<sup>60</sup> As a preliminary matter, the PSA fails adequately to describe the air quality impacts the P3 project because the PSA's descriptions of P3's capacity factor range from 10%<sup>61</sup> to 24.5%<sup>62</sup> to 30%<sup>63</sup> up to 31%.<sup>64</sup> With this range of capacity factor, project emissions are simply too varied to allow the CEC or the public to assess the potential impacts.

For air quality purposes, the PSA assumes that P3 would run at most at a 10% capacity factor, and would only startup and shutdown 200 times each year. Specifically, the PSA states that

The following assumptions were used by staff in determining the expected maximum annual emissions as follows:

- A 10 percent capacity factor, equivalent to approximately 876 hours per year.
- The turbine undergoes 200 startups.
- The turbine undergoes 200 shutdowns.<sup>65</sup>

The PSA frames the 10% capacity factor, with 200 startups / shutdowns, as the “Estimated Reasonable Worst Case Annual Emissions”.<sup>66</sup> As explained by Environmental Coalition, Sierra Club and Environmental Defense Center, were P3 to replace the output from the existing MGS Units 1 and 2, its ordinary operation would be a 16% capacity factor. Further, P3 is not proposed solely as replacement for MGS Units 1 and 2 – the local area need is described as a flexible generation need to help incorporate increasing levels of renewable generation into the grid. While the energy agencies project a daily steep ramp in net demand as additional wind and solar resources support our grid, potentially resulting in a daily double ramp (“the Duck”), the idea that a flexible resource that is running fewer than 900 hours would startup and shut down *at most* once a day just over half the days of the year is not realistic. The California Independent System Operator expresses its view that, as the balancing authority for the majority of California including SCE's service territory, it needs flexible “resources with...the ability to start and stop multiple times per day” to address the duck chart.<sup>67</sup> In short, far from the “worst case” emissions, the PSA air quality analysis presents an unlikely operating profile for P3.

Determining appropriate mitigation for the P3 air quality impacts is, of course, impossible without an accurate expression of P3's emissions, since the mitigation measures must

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<sup>60</sup> Comments of Environmental Coalition of Ventura County, Sierra Club Los Padres Chapter, and Environmental Defense Center, filed in Docket 15-AFC-01 September 13, 2016 at TN # 213635.

<sup>61</sup> PSA at 4.1-48.

<sup>62</sup> PSA at 4.1-116.

<sup>63</sup> PSA at 3-1.

<sup>64</sup> PSA at 4.1-132.

<sup>65</sup> PSA at 4.1-48.

<sup>66</sup> PSA at 4.1-48.

<sup>67</sup> [http://www.caiso.com/Documents/FlexibleResourcesHelpRenewables\\_FastFacts.pdf](http://www.caiso.com/Documents/FlexibleResourcesHelpRenewables_FastFacts.pdf); *see also* <https://energyathaas.wordpress.com/2016/05/02/the-duck-has-landed/>

mitigate the impacts.<sup>68</sup> Further, except in very specific circumstances, development of mitigation measures may not be deferred.<sup>69</sup>

To the extent the PSA identifies air quality impacts, it proposes, as one of two mitigation measures, that NRG “may provide ERC’s for either or both pollutants satisfying the requirements of the VCAPCD. Such ERC’s shall be from emission reductions occurring within the VCAPCD air basin and shall be applied at a 1:1 offset ratio.”

Emission Reduction Credits (“ERCs”) are not measures that are likely to mitigate the P3 air quality impacts. The PSA requires that the ERCs be from within the local air basin; beyond that, the PSA does not provide information about the likely sources of the ERCs. The ERCs identified for P3 in the VCAPCD’s PDOC are illustrative of how poorly ERCs would address the impacts on CEJA of air emissions. As CEJA explained in its comments to the VCAPCD on the PDOC:

*These ERCs do not represent emission reductions that address any of the air quality concerns implicated by the NO<sub>x</sub> increases P3 threatens. Further, as the PDOC explains, the “ERC Certificates were created by the Southern California Edison Co. in the early 1990’s as a part of an electrification conversion program. Over eighty (80) natural gas-fired engines were replaced with electric motors. These engines were used to power equipment such as oil well rod pumping units, natural gas compressors, and water well pumps.”*

*The ERCs NRG is surrendering pose two significant concerns to CEJA. First, none of the emission reductions occurred anywhere near the community that will be exposed to the increased NO<sub>x</sub> emissions. The emissions were reduced in Ojai, Ventura and Fillmore. The local NO<sub>x</sub> impacts will occur in Oxnard. The DOC should require NRG to offer ERCs from local sources to address local impacts.*

*CEJA’s second significant concern is that, while the ERCs represent reductions of NO<sub>x</sub> emissions, the reductions were due to electrification of natural gas-fired engines. The electric engines are not emitting NO<sub>x</sub>, but P3 will emit NO<sub>x</sub> to power the engines. Essentially, cleaner air enjoyed by the people breathing in Ojai, Ventura and Fillmore will be at the direct expense of the dirtier air imposed on the people breathing in Oxnard. The connection between Oxnard’s NO<sub>x</sub> burden and the region’s improvements is a reflection of, and exacerbation of, the existing inequities in the region. As CEJA’s expert testimony established, and the PUC affirmed, Oxnard is one of the very few environmental justice communities in the Moorpark sub-area, and has the most quantifiably impacted communities of any part of the region. To subsidize the region’s environment by offsetting P3’s emissions increases with ERCs from shutdowns that occurred in the early 1990s from as far as 80 miles away directly contradicts the environmental justice mandates the California Resources Agency imposes on California’s agencies.*

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<sup>68</sup> See 14 Cal. Code Regulations § 15126.4

<sup>69</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95.

Even without identification of specific ERCs, CEJA believes it is unlikely any ERCs would be procured that would address the concerns of Oxnard's environmental justice communities. The increases in criteria pollutant emissions that will be breathed by farmworkers in the field across from P3, and residents in the state's most impacted census tracts nearby, are not mitigated by emissions reductions somewhere in the air basin. Further, simply requiring ERCs in a plan later to be concluded would violate CEQA's mandate that mitigation be identified in the environmental review process, not deferred until later.<sup>70</sup>

## **B. GHG emissions**

The PSA fails accurately to describe the GHG emissions from the P3 project, let alone their impact. CEJA agrees with, and for the sake of efficiency incorporates by reference the Comments of Center for Biological Diversity regarding the PSA GHG analysis.<sup>71</sup> In addition to the flaws identified by CBD, reliance on California's cap and trade system to conclude that P3's GHG emissions will be accounted for is incorrect. As CBD explained, the cap-and-trade program sunsets in 2020, a mere six months after P3's online date.<sup>72</sup>

Since the PSA was issued, California's SB 32 was enacted, requiring greater GHG emissions after 2020.<sup>73</sup> SB 32 did not extend cap-and-trade as part of its mandate. In addition, AB 197—companion legislation to SB 32—specifically requires the Air Resources Board to prioritize “direct emission reductions” in achieving reductions beyond the 2020 limit.<sup>74</sup>

These new laws will result in major shifts across our state to meet the growing crisis of climate change. They are critical to the health of environmental justice communities, as shown by a report issued September 14, 2016, by researchers at UC Berkeley, USC, Occidental and SFSU. The researchers reviewed cap and trade compliance data from the Air Resources Board, looking at residential demographics of communities hosting regulated greenhouse gas (GHG) facilities, along with trends in GHG and particulate emissions. The report, “A Preliminary Environmental Equity Assessment of California's Cap-And-Trade Program,” demonstrates that polluters using the cap and trade system are adversely impacting environmental justice communities. The system is not delivering public health or air quality benefits, not achieving local emissions reductions, and it is exporting our climate benefits out of state.

The primary conclusions from the report are:

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<sup>70</sup> *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, 328.

<sup>71</sup> Comments of the Center for Biological Diversity, filed in docket 15-AFC-01 September 12, 2016 at TN # 213621.

<sup>72</sup> 17 Cal. Code Regulations § 95840(c); PSA at 3-3.

<sup>73</sup> Health & Saf. Code § 38566.

<sup>74</sup> Health & Saf. Code § 38562.5.

1. Emissions from cap-and-trade participant facilities in EJ communities are not substantially decreasing, even though overall GHG emissions have declined under the cap.

When it comes to greenhouse gas pollution, place matters. When we drill down to what is happening on the local level under cap and trade, we see either no decline or actual increases in GHG emissions. Environmental justice communities have long been concerned that cap and trade will not deliver “local emission reductions” in greenhouse gases (GHGs). These types of reductions, which occur on-site at facilities and also reduce co-pollutants, are critical to communities on the frontlines of climate change.

Unfortunately, the analysis shows GHG increases in several sectors, including cement, hydrogen, and oil and gas production and suppliers. Most emission reductions have come from the out-of-state electricity sector, as California has reduced imports from sources with a greater carbon footprint, such as coal. Emissions from in-state electricity generation, by contrast, have actually increased by 4.5%.

According to the report: “While overall, greenhouse gas emissions in California have continued to drop from a peak in 2001, we find that, on average, many industry sectors covered under cap-and-trade report increases in localized in-state GHG emissions since the program came into effect in 2013.”<sup>75</sup>

2. Environmental justice communities are disproportionately impacted by large greenhouse gas emitters, whose emissions are correlated with harmful air toxics.

California’s cap and trade program is exacerbating a long standing air pollution problem, whereby some communities have clean air and some have dirty air and related health issues.

The state’s large emitters don’t just release GHGs; they release a range of pollutants, including PM<sub>10</sub>, which is known to negatively impact air quality and health. The emissions compound and potentially exacerbate already existing environmental impacts; large GHG emitters are more likely to be in neighborhoods that have already high pollution burdens, as shown by CalEnviroScreen 2.0.

3. Offsets have allowed polluters, in particular SCE and NRG, to avoid making local emission reductions.

Offsets allow emitters to buy credits for projects run by another company. Theoretically, these projects reduce GHGs, and buyers get to include the saved GHGs as part of their legal requirement to reduce. Offsets are the cheapest way to meet required reductions under cap and trade.

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<sup>75</sup> A PRELIMINARY ENVIRONMENTAL EQUITY ASSESSMENT OF CALIFORNIA’S CAP-AND-TRADE PROGRAM, Cushing et al (16 Sept. 2016) p. 6 (available at [http://dornsife.usc.edu/assets/sites/242/docs/Climate\\_Equity\\_Brief\\_CA\\_Cap\\_and\\_Trade\\_Sept2016\\_FINAL.pdf](http://dornsife.usc.edu/assets/sites/242/docs/Climate_Equity_Brief_CA_Cap_and_Trade_Sept2016_FINAL.pdf).)



During the time period analyzed, over four times the total offset credits were used than the total reduction in allowable GHG emissions. To meet the GHG reduction requirements, many of the largest emitters were buying offsets. It was primarily large climate polluters that were benefiting from use of cheap offsets; four companies accounted for nearly half (44%) of all offsets used: Chevron, Calpine Energy Services, Tesoro and SoCal Edison. The top 10 users of offsets accounted for about 36% of the total emissions and 65% of the offsets used, and include PG&E, San Diego Gas & Electric, NRG Power, and La Paloma Generating Station.<sup>76</sup>

## V. ALTERNATIVES

Under CEQA, there can be “no approval or adoption of a proposed activity ‘if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse [environmental] effect’ (§ 21080.5, subd. (d)(2)(A))...”<sup>77</sup> It is the responsibility of the CEC, as lead agency, to conduct a thorough alternatives analysis.

The PSA discusses whether a Preferred Resources Alternative should be considered. After reviewing the operational attributes of energy efficiency, demand response, energy storage, utility scale and distributed renewable generation, it concludes that because the PUC approved the NRG/SCE contract for P3, preferred resources were not an option. The PSA concluded that the PUC “effectively found that preferred resources beyond those procured by SCE in response to its RFO could not feasibly and reliably be counted on to cost-effectively meet local reliability needs.”<sup>78</sup> This is factually inaccurate. The PUC concluded that the RFO complied with its procurement authorization and with the procurement plan approved by the PUC’s Energy Division. It made no finding concerning whether preferred resources could be feasible or reliable.<sup>79</sup> As a matter of law, the CEC may not simply rely on a PUC decision approving a contract for one project to conclude alternatives to the project are not feasible. Regardless of whether the PUC reached a conclusion based on its record that preferred resources could not constitute an alternative, the CEC has an independent duty to review the facts and evaluate a Preferred Resources Alternative. The CEC must consider all feasible alternatives to P3.

As an initial matter, the PSA errs in asserting that “In the two most recent CPUC decisions in the Long-term Procurement Planning (LTPP) proceeding, levels of procurement are specified for preferred resources, energy storage, and natural gas-fired generation...”<sup>80</sup> The PUC concluded that preferred resources in the Moorpark Subarea could meet the local need. The fact that it also opined that generation at the location of the retiring OTC units would meet the need did not exclude preferred resources. Unlike the detailed instructions the PUC provided regarding categories of resource procurement for SCE’s LA Basin procurement, the PUC simply instructed

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<sup>76</sup> *Id.* p. 9.

<sup>77</sup> *Strother v. California Coastal Com'n* (2009) 173 Cal.App.4th 873, 878.

<sup>78</sup> PSA, p. 6.1-13.

<sup>79</sup> *See generally* D.13-02-015.

<sup>80</sup> PSA, p. 6.1-7.

that SCE procure “between 215 and 290 Megawatts of electric capacity to meet local capacity requirements in the Moorpark sub-area of the Big Creek/Ventura local reliability area by 2021.”<sup>81</sup> After extensive briefing and evidentiary hearings regarding whether to require specific levels and sequencing of procurement efforts, the PUC allowed SCE to conduct an RFO that was open to all sources. Indeed, SCE’s procurement effort was prohibited from including any “... provisions specifically or implicitly excluding any resource from the bidding process due to resource type (except as authorized through this decision)”<sup>82</sup> “SCE’s procurement process should have no provisions specifically or implicitly excluding any resource from the bidding process due to technology, except for specific requirements in this decision for the LA basin local area.”<sup>83</sup> Indeed, SCE entered into contracts for both of the Renewable Distributed Generation projects proposed to meet the RFO.<sup>84</sup>

A Preferred Resources Alternative is not only feasible, it meets the project objectives as well as satisfying many of the City’s, State’s and agency goals regarding environmental justice, land use, greenhouse gas. As described below for each preferred resource, due to the timing and circumstances of the SCE RFO, PUC approval of a contract for P3 fails to establish a lack of available preferred resources. Further, CAISO set out rules regarding demand response parameters after the RFO was issued, leaving DR providers hamstrung. Finally, since the RFO was issued in 2013, the landscape for renewable resources has improved.

Regarding potential for local distributed renewable generation, CEJA agrees with the information provided by the Center for Biological Diversity and the Bill Powers testimony.<sup>85</sup> The fact that SCE conducted its RFO simultaneously with its significantly larger LA Basin RFO, which had a minimum mandate for preferred resources, resulted in poor responses to the Moorpark RFO. Further, SCE failed to conduct a targeted solicitation to secure renewable resources in the Moorpark Subarea’s disadvantaged communities. It is undisputed in the PUC’s record that SCE did not, in either its solicitation or procurement efforts, express any preference for renewables in Oxnard, or at any location other than Goleta—an area that has not been recognized as having environmental justice communities. Specifically, SCE witness Bryson testified that Edison emphasized the procurement of preferred resources at its bidder conference, but never emphasized the need for preferred resources in Oxnard. He testified that SCE “emphasized [the] . . . desire for preferred resources in the Moorpark area and then more specifically a preference for resources in Goleta.”<sup>86</sup> He unequivocally testified that “Edison never communicated a need or preference for preferred resources to benefit Oxnard particularly.”<sup>87</sup> SCE witness Singh acknowledged that SCE gave “qualitative preference” to

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<sup>81</sup> D. 13-02-015, Ordering paragraph 2, p.131

<sup>82</sup> D. 13-02-015, p.91.

<sup>83</sup> D. 13-02-015, Conclusion of Law 4, p.119.

<sup>84</sup> D. 16-05-050.

<sup>85</sup> Comments of the Center for Biological Diversity, filed in docket 15-AFC-01 September 12, 2016 at TN # 213621.

<sup>86</sup> PUC Evidentiary Hearing Transcript, vol. 1 (redacted) p. 151.

<sup>87</sup> *Id.*

renewables in general, but never considered a qualitative advantage to renewable projects in disadvantaged communities like Oxnard.<sup>88</sup>

In addition, numerous behind the meter projects that were conceived and funded after conclusion of the PUC's local area need finding are likely to be installed prior to 2021. For example, the Multifamily Affordable Housing Solar Rooftops bill, AB 693,<sup>89</sup> provides significant funding to install rooftop solar on multifamily affordable housing. Many qualifying buildings exist in and around Oxnard. While the PUC is currently establishing implementation parameters, the program is due to launch in 2017. Parties to the AB 693 proceeding contend that, in order to maximize benefits of the program, solar installations should be paired with storage, to shift load, assisting with the flexibility function identified as a need in the local area.

Demand response, a preferred resource correctly identified in the PSA as having many of the attributes necessary for the local need, would likely be available were the CEC to consider a Preferred Resource Alternative. As presented by EnerNOC to the PUC, demand response providers who bid into the SCE RFO were unable to participate because CAISO set rules excluding every single project. Were a new RFO issued, which set out the actual requirements in advance, DR providers would be more likely participate.<sup>90</sup>

Energy storage, for which the PUC has set specific IOU procurement targets, provides significantly more benefits than previously documented. As with renewable energy resources, SCE's application for approval does not reflect the likely results of a renewed procurement effort, and is certainly not reflective either of the capabilities storage offers to meet the local area need or of the actual availability of feasible resources. The sole contract for storage that SCE presented for the Moorpark Subarea was tied to a non-incremental gas-fired generation project, and is still being considered by the PUC.<sup>91</sup>

The PSA incorrectly asserts that natural gas-fired power plants are currently the only type of new facility that can provide "ancillary" services in the quantities needed now and in the near future.<sup>92</sup> To the contrary, the actual capabilities of storage as it already exists are well documented. One study documented storage use for grid services such as black start capability, spinning / non-spinning reserves, energy arbitrage and frequency regulations.<sup>93</sup> In addition to documented current uses of storage, storage offers numerous under-utilized opportunities to address existing flaws in the electricity system. For example, behind-the-meter storage can

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<sup>88</sup> *Id.* at 40.

<sup>89</sup> Cal. Pub. Util. Code 2870 et seq.

<sup>90</sup> See Comments of the Center for Biological Diversity, filed in docket 15-AFC-01 September 12, 2016 at TN # 213621, Attachment PE-25 EnerNOC Response to Application, pdf p. 194.

<sup>91</sup> D. 16-05-050, p. 39 ("All contracts presented by Southern California Edison Company are accepted and approved, with the exception of 447021 (Ellwood) and 447030 (Energy Storage). These contracts will be considered in a subsequent decision in this docket.")

<sup>92</sup> PSA, p. 4.1-120.

<sup>93</sup> THE ECONOMICS OF BATTERY ENERGY STORAGE, Fitzgerald et al., Rocky Mountain Institute (Oct. 2015) (available at <http://www.rmi.org/Content/Files/RMI-TheEconomicsOfBatteryEnergyStorage-FullReport-FINAL.pdf>) pp. 5, 15.

provide benefits to the grid, address the duck curve and allow customers to control utility bills as Time of Use rates come into effect.<sup>94</sup> The Multifamily Affordable Housing Solar Roofs program may provide specific, funded opportunities in the Moorpark subarea to deploy customer-sited storage in tandem with rooftop solar, to provide precisely these services.

Another, recent, study connects California peaker plants, air pollution and the ability of storage to provide significant air quality benefits by reducing use of peakers.<sup>95</sup> The California peaker study observed that “84% of the 64 peaker plants mapped are in locations that have higher than average EJ scores (i.e., are located in more disadvantaged communities). Over half of the plants are located in communities with the top 30% of EJ scores.”<sup>96</sup> As described above, the P3 plant would add another peaker to the environmental justice community in Oxnard, which already hosts, and will continue to host, Mandalay Unit 3 and Macgrath Peaker. While air districts regulate on a basinwide basis, the air quality impacts of peakers operation are more concentrated in the community in near proximity to them. As described above, CEJA objects to use of ERCs as a mitigation measure. Krieger et al. concur that offsetting local emissions from peakers is not the best approach:

Siting of large powerplants in California requires an assessment of EJ measures, including minority concentration within a six-mile radius, but if sufficient pollutant offsets are purchased then the environmental impact is considered negligible. Instead of simply limiting emissions in a specific air basin, we suggest siting cleaner energy resources to actively displace emissions in areas with poor air quality, and especially near high populations densities and populations that are disproportionately exposed to poor air quality and other environmental and socio- economic stressors.<sup>97</sup>

Storage, paired with other preferred resources in a comprehensive Preferred Resource Alternative, would avoid many of the project impacts, and must be considered.

A Preferred Resources Alternative must be analyzed, to comply with CEQA’s requirement that the agency consider feasible alternatives that may meet the project goals. Upon review of a Preferred Resources Alternative, CEJA believes the CEC will conclude it will better meet the project goals, and ensure protection of environmental justice communities.

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<sup>94</sup> *Id.* at p. 16

<sup>95</sup> A FRAMEWORK FOR SITING AND DISPATCH OF EMERGING ENERGY RESOURCES TO REALIZE ENVIRONMENTAL AND HEALTH BENEFITS: CASE STUDY ON PEAKER POWER PLANT DISPLACEMENT, Krieger et al., *Energy Policy* 96 (2016) 302–313.

<sup>96</sup> *Id.* at 308.

<sup>97</sup> *Id.* at 306.

## VI. CONCLUSION

CEJA is cognizant of the time and effort staff have invested in the PSA, and trusts that these comments will help develop an adequate assessment that fully implements CEQA and the CEC's implementing regulation.

Dated: September 15, 2016

Respectfully Submitted,

By: /s/

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