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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)	SUPPLEMENT TO APPLICANT'S
THE PUENTE POWER PROJECT)	STATUS REPORT NO. 9 – OBJECTION
)	TO PROPOSED SCHEDULE DELAY
)	
)	

Applicant objects to California Energy Commission (“CEC”) staff’s proposal, contained in its Status Report filed on November 1, 2016, to delay publication of the Final Staff Assessment (“FSA”) by nearly three weeks beyond the deadline recently established by the Committee in its Revised Scheduling Order issued on October 14, 2016 (TN #21408) (“Revised Scheduling Order”). The Revised Scheduling Order directs that the FSA be issued by November 18, 2016; whereas, staff is now identifying December 8, 2016 as the publication date. This nearly three week delay in publishing the FSA will likely result in even longer delays to the remainder of the schedule since it will not be possible to complete certain milestones, such as the proposed FSA Workshop, prior to the holidays.

The Revised Scheduling Order included the following admonishment to the parties: “The Committee encourages the parties to consider this schedule an outer boundary and make their best efforts to complete the milestones ahead of these dates” (Revised Scheduling Order, p. 2). As set forth below, there is no reasonable basis for the proposed delay in publication of the FSA. Given the time that has passed since the Committee Status Conference on September 27, 2016, and the time that remains between now and November 18, 2016, staff should be able to complete whatever additional analysis it deems necessary for the FSA. Applicant therefore urges the Committee to reaffirm the deadlines specified in the Revised Scheduling Order.

Discussion

The Revised Scheduling Order reflects information provided by the parties prior to, during, and subsequent to, the Committee Status Conference on September 27, 2016.

In its Conference Statement filed on September 23, 2016 (TN # 213769), staff identified three prerequisites to issuance of the FSA: i) issuance of the Final Determination of Compliance (“FDOC”) by the Ventura County Air Pollution Control District (“VCAPCD”); ii) Applicant responses to data requests on the most recent Project refinements; and iii) comments from the California Department of Fish and Wildlife (“CDFW”) on the Preliminary Staff Assessment (“PSA”).

During the Committee Status Conference, staff reiterated these three prerequisites (See, Transcript of 9/27/2016 Committee Status Conference (TN #214006), p. 40, lines 15-25) (“Conference Transcript”). Staff also indicated during the Committee Status Conference that it was preparing a supplemental environmental justice (“EJ”) analysis for inclusion in the FSA (Conference Transcript, p. 39, lines 22-25 through p. 40, lines 1-14).

Following the Committee Status Conference, on October 7, 2016, staff submitted a proposed schedule for publication of the FSA (TN #213920). In that filing, staff reiterated the same three prerequisites for publication of the FSA. Staff did not mention the need for any additional time to complete its review of Project alternatives or its supplemental EJ analysis. Staff proposed the November 18, 2016 deadline for publication of the FSA that is reflected in the Revised Scheduling Order:

Staff proposes to publish its FSA on November 18, 2016. This date provides a minimum of 30 days for staff to complete its analysis after it receives the FDOC and allows for an exchange of data requests and responses relating to the changes in project design. It assumes timely filing of the FDOC, timeliness and completeness of data responses, and timely receipt of comments from CDFW. The proposed November 18, 2016 FSA publication date will allow staff to incorporate into the FSA detailed responses to the over 1,000 pages of comments received on the PSA, in an effort to provide as complete a record as possible for the Committee and parties going forward. If any of these assumptions are not met, and the project schedule will be impacted, staff will inform the Committee (TN #213920, pp. 1-2).

All of the previously identified prerequisites to publication of the FSA have now been satisfied in accordance with the deadlines established in the Revised Scheduling Order (with the exception of a 24-hour delay in Applicant’s submission of responses to certain data requests). On October 14, 2016, the VCAPCD issued the FDOC (TN #214005-1 through #214005-15). Also on October 14, 2016, CDFW submitted its comments on the PSA (TN #214009). Finally, Applicant provided responses to data requests from intervener Robert Sarvey on October 31, 2016 (TN #214303), and to data requests from intervener City of Oxnard (TN #214330) and CEC staff (TN #214336) on November 1, 2016.

Notwithstanding completion of all previously identified prerequisites, staff now proposes to delay publishing the FSA until December 8, 2016. The two justifications provided by staff in its November 1, 2016 Status Report are: i) additional time for preparation, coordination and review

of the supplemental EJ analysis; and ii) additional investigation being conducted by cultural resources staff related to the Ormond Beach alternative site.

With respect to the supplemental EJ analysis, staff indicated that this work was underway at the Committee Status Conference on September 27, 2016 and did not indicate then, or in its subsequent filing on October 7, 2016, that it might require more time to complete this analysis. With respect to additional cultural resources investigation, more than five weeks have passed since the Committee asked staff to follow up on these issues.¹ Furthermore, an additional two weeks remain prior to the scheduled deadline for the FSA. Seven weeks should be ample time for staff to complete whatever additional analysis it deems necessary.

Conclusion and Alternative Proposal

Applicant appreciates staff's efforts to respond to requests from the Committee and the public and to ensure that the FSA provide a complete and robust analysis of the Project and its alternatives. However, Applicant believes that these objectives can be accomplished without a three-week delay in publishing the FSA, and even longer delays to the remainder of the Project schedule. The Committee should reaffirm the November 18, 2016 deadline and direct staff to complete its additional analysis within the time remaining.

In the alternative, if staff finds that it is impossible to complete the additional analysis within this timeframe, the Committee should direct staff to publish the FSA as scheduled, and to issue an FSA supplement with any additional analysis on or before December 21, 2016, which is the current deadline for all other parties to file opening testimony. The parties would have ample opportunity to review, and, if necessary, respond to the new analysis in their rebuttal testimony currently due on or before January 13, 2017. This alternative approach would provide the CEC staff with additional time to complete its analysis on the limited identified issues, without delaying the entire FSA and the remainder of these proceedings.

DATED: November 4, 2016

Respectfully submitted,

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¹Staff's November 1, 2016 Status Report indicates that it is conducting additional cultural resources research on the Ormond Beach alternative site. Applicant notes that the Committee's request for additional information on cultural resources related to the Del Norte/Fifth Street alternative site, not the Ormond Beach alternative site: ". . . there were several areas where the PSA indicates that there was need for more information regarding, for example, the ability to get control of the site, determining whether or not there were potential archeological resources at the Del Norte 5th site. And whether or not there was potential contamination at the Ormond Beach site -- in general, just needing some additional information to complete the Alternatives Analysis" (Conference Transcript, p. 21, lines 17-25 and p. 22, lines 1-3). Applicant also notes, however, that although the Committee request focused on the Del Norte/Fifth Street site, the PSA indicated that there were gaps in available cultural resource information for both alternative sites (PSA, Part 1, pp. 6.1-54 and 6.1-80). We raise this issue to ensure that whatever additional analysis staff is currently undertaking is responsive to the requests from the Committee.