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**STATE OF CALIFORNIA**

**Energy Resources Conservation and Development Commission**

In the Matter of:

APPLICATION FOR CERTIFICATION  
OF THE PUENTE POWER PROJECT

DOCKET NO. 15-AFC-01

Center for Biological Diversity's  
Pre-Hearing Conference Statement  
with Exhibit List

**CENTER FOR BIOLOGICAL DIVERSITY'S  
PREHEARING CONFERENCE STATEMENT WITH EXHIBIT LIST**

**EXHIBIT 7031**

January 27, 2017

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**Center for Biological Diversity  
Prehearing Conference Statement**

**1. The subject areas [as identified in the table of contents of the Final Staff Assessment (FSA), Parts 1 and 2] that are complete and ready to proceed to Evidentiary Hearing;**

The Center is prepared to proceed to hearing on the following subject areas: Air Quality, Alternatives and Project Objectives, Biological Resources, Environmental Justice, and Land Use.

The Center is also prepared to proceed to hearing regarding Override to some extent but is concerned with the statement regarding override finding in the Committee's January 20, 2017 Notice of Prehearing Conference and Scheduling Order:

**Evidence Regarding Environmental or LORS Overrides**

If it is determined that the Project is inconsistent with state or local laws, ordinances, regulations, or standards (LORS), or an unmitigable significant environmental impact is found, the Committee will consider whether it is appropriate to override the inconsistency or impact pursuant to Public Resources Code Section 25525 and California Code of Regulations subsections, title 20, sections 1745.5(b)(2)(C) and (b)(3)(B)(ii). The parties shall prepare and present evidence relevant to that determination as part of their opening and rebuttal testimony and by the deadlines described above. The Committee will consider the question of overrides during the February Evidentiary Hearing and does not intend to conduct a separate hearing on the question.

(TN 215476 at 3). The issue of override presents mixed questions of fact and law and requires specific findings by the Commission.<sup>1</sup> Furthermore, the propriety of an override cannot be considered until the CEQA review is complete. Without any determination or findings having yet been made by the Committee or the Commission regarding LORS inconsistency or unmitigable significant environmental impacts, it makes little sense to limit the parties' ability to explore the factual questions that may relate to any override at this time.<sup>2</sup> Such a limitation also appears to show the Committee is already predisposed to a specific outcome before the hearings have even begun which would clearly undermine a full and fair proceeding.

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<sup>1</sup> The Commission may not certify any project that does not comply with applicable LORS unless the Commission finds both (1) that the project "is required for public convenience and necessity" and (2) that "there are not more prudent and feasible means of achieving public convenience and necessity." (Public Resources Code § 25525.) In order to approve the Project despite its significant environmental impacts, the Commission must find (1) that mitigation measures or alternatives to lessen these impacts are infeasible, and (2) specific overriding benefits of the Project outweigh its significant environmental effects. (Public Resources Code § 21081; 20 C.C.R. § 1748(b).)

<sup>2</sup> In addition, a federal Clean Water Act section 404 permit and Endangered Species Act consultation or permitting will also be needed for the project, as well as NEPA compliance. None of those processes have even begun, much less been completed. Thus, it is impossible for the Commission or Committee to determine consistency with those federal laws at this time.

The Center is also concerned with the inadequacies in the identification and analysis of impacts to biological resources (direct, indirect and cumulative impacts), inadequacies in the alternatives analysis, and lack of adequate identification and analysis of minimization and mitigation measures for the impacts of the project. The Center asserts that because the Commission has failed to date to fully comply with their duties under CEQA to date, these evidentiary hearings are premature.

The Center maintains that many of the environmental impacts have not been adequately identified or analyzed. Nor have alternatives been adequately assessed by the Commission to date. Therefore none of the subject areas are complete or ready to proceed to evidentiary hearing. While the Commission proceeds under a certified regulatory program that is intended to provide the equivalent of CEQA compliance and which provides some flexibility to the Commission (*see* § 21080.5; CEQA Guidelines § 15251(j)), that program does not allow the Commission to shift the Commission's duty to provide for adequate CEQA review, including identification and analysis of environmental impacts, minimization and mitigation measures, and alternatives, or to defer any of the required CEQA review or delegate it to some other entity. Rather, it remains the Commission's duty to comply with CEQA's substantive and procedural mandates. Cal. Pub. Res. Code §§ 21000, 21002; *Sierra Club v. Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Joy Road Area Forest and Watershed Association v. Cal. Dept. of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, 667-68. The Center and other parties have pointed out many of the shortcomings in the information provided and the lack of support for conclusory statements in the FSA and other staff documents. These inadequacies inhibit a full and fair evidentiary hearing. For example, as the Center's testimony pointed out, the lack of surveys for rare plants and other rare species that may be affected by the proposed project undermines the ability of the Commission or the public to fairly evaluate the impacts of the proposed project on habitats and species or to formulate and evaluate alternatives.

Also of concern to the Center is the proposal to defer development of critical minimization and mitigation measures and plans to a later time. (*See, e.g.*, Bio-6 (biological resources mitigation), Bio-9 (wetlands mitigation), and Bio-10 (removal of outfall structure)). Deferring identification and discussion of these key measures fails to comply with the requirements of CEQA and would undermine review and comment by the public and parties in this matter. CEQA requires that environmental review must also analyze any proposed mitigation measures, their impacts, and their likely efficacy. CEQA Guidelines § 15126.4(a)(1)(D) ("If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measures shall be discussed . . ." emphasis added); *Save Our Peninsula Comm. v. Monterey Board of Supervisors* (2001) 87 Cal.App.4th 99, 130 ("An EIR is required to discuss the impacts of mitigation measures."). Because the development of minimization and mitigation measures has been deferred to a later time, these issues and the adequacy of the minimization and mitigation measures cannot be fairly addressed at hearing.

Along these same lines, the Center is concerned with the lack of outreach to and participation by other responsible agencies and trustee agencies including the California Department of Fish and Wildlife and the Coastal Commission. While the Commission may issue its decision in lieu of permitting by other responsible and trustee agencies, it must fulfill the statutory duties assigned to those agencies on whose behalf it is acting. For example, because the proposed project may "take" species protected under the California ESA, and the Commission has stated that it acts in lieu of the California Department of Fish and Wildlife in approving any take of those species, the Commission

must in addition to addressing alternatives to avoid impact, ensure that all impacts to CESA species are “fully mitigated.” (See Fish & Game Code § 2081(b).) Similarly, the Commission must ensure that no take of a fully protected species will occur unless an NCCP has been prepared. (See Fish & Game Code § 2835.) Given the lack of accurate identification and analysis of the potential impacts to these species and the lack of participation by expert responsible and trustee agencies, the Center is concerned that many of the subject areas have not been adequately explored by the Commission and its staff and are not ready for evidentiary hearing.

**2. The subject areas upon which any party proposes to introduce testimony in writing rather than through oral testimony;**

The Center has introduced written opening and rebuttal testimony from Bill Powers, P.E., relevant to the following subject areas: Air Quality/Greenhouse Gases, Project Objectives, and Alternatives. The Center has introduced written opening and rebuttal testimony from Ileene Anderson relevant to the Biological Resources subject area. Testimony from both Mr. Powers and Ms. Anderson may also be relevant to the propriety of a LORS conflict override under Public Resources Code section 25525. Although the Center does not anticipate introducing any further written testimony during the evidentiary hearing, the Center respectfully reserves the right to supplement written testimony and provide additional evidentiary support in response to any changes or late-filed information before the conclusion of the evidentiary hearing on each topic area.

As discussed in further detail below, in addition to their written testimony, both Mr. Powers and Ms. Anderson intend to testify at the evidentiary hearing. At present, Mr. Powers intends to testify in person at the hearing, while Ms. Anderson seeks to testify telephonically due to a pre-existing schedule conflict. However, because the schedule for the evidentiary hearing has not yet been set, and Mr. Powers’ and Ms. Anderson’s availability is limited, the Center respectfully requests that either or both of its experts be permitted to appear telephonically at the evidentiary hearing if necessary.

**3. The subject areas and issues in dispute that require adjudication, and the precise nature of the dispute for each issue;**

The Center has focused its testimony on the following subject areas and issues are in dispute and require adjudication: Air Quality/Greenhouse Gases (including baseline, characterization, and analysis of greenhouse gas emissions; enforceability and sufficiency of air quality mitigation measures); Project Objectives; Alternatives (including present need for the Project; availability of feasible and prudent alternatives, including preferred resources); Biological Resources (including baseline, characterization, and analysis of effects to sensitive and special-status species including, but not limited to, California least tern, tidewater goby, and Ventura Marsh milk-vetch; FSA’s failure to identify all special-status species potentially affected by the Project).

The Center also maintains that other subject areas require adjudication and intend to participate in the disputed hearing on these subject areas including: Environmental Justice and Land Use.

Notably, many of the disputed issues identified by the Center involve both legal and factual disputes while others are predominantly legal issues (including, but not limited to, adequacy of CEQA review of resource areas, environmental impacts, feasibility, alternatives, overriding considerations,

and mitigation and minimization measures analysis and adequacy). The Center therefore respectfully reserves the right to address each disputed issue, and any other disputed issues identified at the prehearing conference, at later stages of this process, including in briefing following the evidentiary hearing.

**4. The subject areas (if any) that are not complete and not yet ready to proceed to Evidentiary Hearing, and the reasons therefor;**

As noted above, the Center maintains that many of the environmental impacts have not been adequately assessed by the Commission to date, which will inhibit a full and fair evidentiary hearing. The Center believes that there remain fundamental unresolved issues in many areas including, but not limited to: Air Quality; Biological Resources (including lack of key baseline surveys); Alternatives and Project Objectives (including reliance on the California Public Utilities Commission's approval of a power purchase agreement to limit range of feasible alternatives); Environmental Justice; Land Use; and Overriding Considerations.

As noted above, the Center does not view these topics as complete and ready for evidentiary hearings given the lack of adequate identification and analysis of the impacts of the proposed project provided to date by the Commission. While the Commission's certified regulatory program under CEQA allows it to utilize a different procedure than the traditional EIR, it does not relieve the Commission of its duty to identify and analyze environmental impacts and a range of alternatives to avoid those impacts as well as minimization and mitigation measures. The Center and other parties have pointed out the shortcomings in the information provided including many that such as the lack of surveys for rare plants and other rare and imperiled species.

As discussed above, the Center is particularly concerned with inadequacies in the identification and analysis of impacts to rare and imperiled species and habitats, impacts to air quality and GHG emissions, and the lack of robust alternatives analysis. In addition, many of the mitigation and minimization proposals are deferred for development to a later time such that the potential impacts of those measures have not been addressed at all. For example, regarding the change in the outfall structure (which has been framed variously as a part of the project or a mitigation measure), a federal Clean Water Act section 404 permit and Endangered Species Act consultation or permitting will also be needed, as well as NEPA compliance; again, none of those processes have even begun, much less been completed. Thus, it is impossible to know whether the proposed generalized minimization and mitigation measures, requirements for plans, etc. in the biological conditions of certification proposed by staff will be adequate to ensure consistency with applicable federal laws and regulations.

**5. The identity of each witness the party intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witness(es) will offer testimony, whether the testimony will be oral or in writing, a brief summary of the testimony to be offered by the witness(es), qualifications of each witness, the time required to present testimony by each witness, and whether the witness seeks to testify telephonically;**

The Center will sponsor the following two witnesses at the Evidentiary Hearing:

**Bill Powers:** Mr. Powers submitted written Opening Testimony and Rebuttal Testimony related to the following subject areas: Air Quality/Greenhouse Gases (including baseline, characterization, and analysis of greenhouse gas emissions; enforceability and sufficiency of air quality mitigation measures); Project Objectives and Alternatives (including present need for the Project; availability of feasible and prudent alternatives, including preferred resources). Mr. Powers' qualifications are detailed in his written testimony and attached curriculum vitae. Mr. Powers intends to testify **in person** at the hearing and his oral testimony will concern the same subject areas as his written testimony (Air Quality/Greenhouse Gases and Alternatives). The Center requests a minimum of **30 minutes** for Mr. Powers to present his direct testimony.

**Ileene Anderson:** Ms. Anderson submitted Opening Testimony and Rebuttal testimony related to biological resources. Ms. Anderson's qualifications are detailed in her written testimony and attached curriculum vitae. Ms. Anderson seeks to testify **telephonically** due to a previously scheduled conference presentation at a meeting of The Wildlife Society the same week as the hearings. Ms. Anderson **is** available to testify on Tuesday, February 7 before 11 am, Wednesday, February 8 at any time, Thursday February 9 after 1 pm, and Friday February 10 between 10 am and 11:30 am. Ms. Anderson is **not** available to testify on Tuesday, February 7 after noon (due to airline travel), Thursday February 9 before 1 pm (due to previously scheduled conference presentation), and Friday February 10 before 10 am (due to previously scheduled conference presentation) or between 11:30 am and 6 pm (due to airline travel). The Center requests a minimum of **15 minutes** for Ms. Anderson to present her direct testimony.

**6. Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions (including questions regarding witness qualifications), the issue(s) to which the questions pertain, and the time desired to question each witness. (Note: A party who fails to specify the scope, relevance and time for questioning other parties' witness(es) risks preclusion from questioning witnesses on that subject area.);**

Because the prehearing conference has not yet been conducted and the format for the evidentiary hearing has not been decided, it is difficult to anticipate with precision either the exact scope of questioning or the time needed for either formal cross-examination or informal questioning of witnesses. Nonetheless, the Center has provided its best estimates as to the potential scope of questions and the time needed for questioning the witnesses identified below in specified subject areas. The Center respectfully reserves the right to modify its estimates and the anticipated scope of questions in light of decisions reached at or following the prehearing conference.

Subject Area	Witness	Scope of Questions	Time
<u>Air Quality / Greenhouse Gases</u>	Staff: Jacquelyn Record and/or David Vidaver	<ul style="list-style-type: none"> <li>• GHG analysis (including baseline, characterization of emissions, and conclusions)</li> <li>• Project efficiency, capacity factor, and GHG emissions relative to existing generation (local and statewide) and broader trends in California grid</li> <li>• CAISO dispatch assumptions</li> <li>• Air pollutant offset requirements (including ERC and Carl Moyer program issues)</li> <li>• CEQA mitigation requirements</li> </ul>	20 mins

	Applicant: Gary Rubenstein	<ul style="list-style-type: none"> <li>• GHG analysis (including baseline, characterization of emissions, and conclusions)</li> <li>• Project efficiency, capacity factor, and GHG emissions relative to existing generation (local and statewide) and broader trends in California grid</li> <li>• CAISO dispatch assumptions</li> <li>• Air pollutant offset requirements (including ERC and Carl Moyer program issues)</li> <li>• CEQA mitigation requirements</li> </ul>	20 mins
<u>Alternatives (Project Objectives)</u>	Staff: Jeanine Hinde and/or David Vidaver	<ul style="list-style-type: none"> <li>• Need for Project</li> <li>• Changes in electricity demand</li> <li>• Availability and feasibility of preferred resources</li> <li>• Availability of reasonable and feasible alternatives</li> <li>• Role of CPUC decisions in AFC proceeding</li> </ul>	20 mins
	Applicant: Brian Theaker and/or Sean Beatty	<ul style="list-style-type: none"> <li>• Need for Project</li> <li>• Changes in electricity demand</li> <li>• Availability and feasibility of preferred resources</li> <li>• Availability of reasonable and feasible alternatives</li> <li>• Role of CPUC decisions in AFC proceeding</li> </ul>	20 mins
<u>Biological Resources</u>	Staff: Carol Watson and/or Jon Hilliard	<ul style="list-style-type: none"> <li>• Special status species at proposed site and alternatives sites</li> <li>• Presence of and potential impacts to Tidewater goby, Ventura marsh milkvetch, rare plants, and California least tern at proposed site</li> <li>• Wetlands and ESHA at proposed site and alternatives sites</li> <li>• Proposed conditions of certification and minimization and mitigation measures and plans</li> </ul>	20 mins
	Applicant: Julie Love	<ul style="list-style-type: none"> <li>• Lack of surveys for special status species at proposed site and alternatives sites</li> <li>• Presence of and potential impacts to Tidewater goby, Ventura marsh milkvetch, rare plants, and California least tern at proposed site</li> <li>• Lack of surveys for wetlands and ESHA at proposed site and alternatives sites</li> <li>• Proposed conditions of certification and minimization and mitigation measures and plans</li> <li>• Mitigation ratios and effectiveness of mitigation</li> </ul>	20 mins

**7. A list identifying exhibits with transaction numbers (by TN number) that the party intends to offer into evidence during the Evidentiary Hearing, and the technical subject areas to which they apply (see below for further details on Exhibit Lists);**

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S EXHIBITS 7000-7031

Exhibit	Docket Transaction Number	Title of Document from Docket Log	Subject Areas
7000	215440-1	Opening Testimony of Bill Powers, Declaration, and CV	Air Quality, Project Objectives, Alternatives
7001	215440-2	CPUC D.16-12-030, Order Modifying Decision (D.) 16-05-050 and Denying Rehearing, As Modified, December 1, 2016	Air Quality, Project Objectives, Alternatives
7002	215440-3	CPUC D.13-02-015, February 13, 2013	Air Quality, Project Objectives, Alternatives
7003	215451-1	California Energy Demand 2010-2020 Staff Revised Forecast, Form 1.5d, Statewide 1-in-10 Net Electricity Peak Demand by Agency and Balancing Authority, December 2009.	Air Quality, Project Objectives, Alternatives
7004	215440-4	California Energy Demand Update Forecast, 2016 - 2027, Mid Demand Baseline Case, Mid AAEE Savings, Form 1.5d – Statewide, 1 in 10 Net Electricity Peak Demand by Agency and Balancing Authority (MW), January 2017.	Air Quality, Project Objectives, Alternatives
7005	215440-5	CEC, Thermal Performance Gas-Fired, March 2016	Air Quality, Project Objectives, Alternatives
7006	215453	2015 SCE Corp. Responsibility Report	Air Quality, Project Objectives, Alternatives
7007	215440-6	TN 215396, Applicant's Responses to Information Requested by VCAPCD re Application for Authority to Construct/ Determination of Compliance, May 15, 2015, Attachment 3	Air Quality, Project Objectives, Alternatives
7008	215440-7	Gas Turbine World, <i>550 MW El Segundo combined cycle provides 300 MW in 10 minutes</i> , September-October 2013.	Air Quality, Project Objectives, Alternatives
7009	215440-8	CAISO homepage, January 17, 2017	Air Quality, Project Objectives, Alternatives
7010	215446-1	CAISO, <i>Answer of the California Independent System Operator Corporation to (FERC) Compliant</i> , Docket No.EL16-88-000, July 7, 2016	Air Quality, Project Objectives, Alternatives
7011	215446-2	CARB, Carl Moyer Program Guidelines, Chapter 1, Program Overview	Air Quality, Project Objectives, Alternatives
7012	215451-2	CARB, Carl Moyer Program Source Categories	Air Quality, Project Objectives, Alternatives
7013	215446-3	Sears Expert Report	Air Quality, Project Objectives, Alternatives
7014	215446-4	CPUC, <i>D.15-11-041: Decision Approving, In</i>	Air Quality, Project

		<i>Part, Results of Southern California Edison Company Local Capacity Requirements Request for Offers for the Western LA Basin Pursuant to Decisions 13-02-015 AND 14-03-004, November 19, 2015</i>	Objectives, Alternatives
7015	215446-5	<i>CPUC, D.16-05-050: Decision Approving, In Part, Results of Southern California Edison Company Local Capacity Requirements Request for Offers for Moorpark Sub-Area Pursuant to Decision 13-02-015, May 26, 2016</i>	Air Quality, Project Objectives, Alternatives
7016	215446-6	<i>Southern California Edison, CPUC Application A.14-11-012, Testimony of Southern California Edison Company on the Results of Its 2013 Local Capacity Requirements Request For Offers (LCR RFO) for the Western Los Angeles Basin, November 21, 2014</i>	Air Quality, Project Objectives, Alternatives
7017	215446-7	<i>CPUC, Resolution E-4791 Authorizing expedited procurement of storage resources to ensure electric reliability in the Los Angeles Basin due to limited operations of Aliso Canyon Gas Storage Facility, May 26, 2016.</i>	Air Quality, Project Objectives, Alternatives
7018	215446-8	<i>CPUC, Resolution E-4804. Southern California Edison Company (SCE) requests approval of three resource adequacy only contracts with Western Grid Development, LLC, AltaGas Pomona Energy Storage Inc., and Grand Johanna LLC, September 15, 2016.</i>	Air Quality, Project Objectives, Alternatives
7019	215451-3	<i>SDG&amp;E press release, California regulators approve SDG&amp;E energy storage projects, August 18, 2016.</i>	Air Quality, Project Objectives, Alternatives
7020	215451-4	<i>Utility Dive, Inside construction of the world's largest lithium ion battery storage facility, December 6, 2016.</i>	Air Quality, Project Objectives, Alternatives
7021	215451-5	<i>Utility Dive, SCE taps Tesla for 80 MWh storage project to deal with Aliso Canyon gas shortage, September 16, 2016.</i>	Air Quality, Project Objectives, Alternatives
7022	215431-1	<i>Testimony of Ileene Anderson Re: Impacts to Biological Resources from the Proposed Puente Power Project</i>	Biological Resources, Alternatives
7023	215431-2	<i>USFWS, Recovery Plan for the Tidewater Goby (Eucyclogobius newberryi), 2005</i>	Biological Resources, Alternatives
7024	215431-3	<i>Southern California Coastal Ocean Observing System; Salinity visited Jan. 17, 2017 <a href="http://www.sccoos.org/data/autoss/">http://www.sccoos.org/data/autoss/</a></i>	Biological Resources, Alternatives
7025	215452	<i>Center for Biological Diversity Opening Testimony and Initial Exhibit List</i>	Air Quality, Project Objectives, Biological

			Resources, Alternatives
7026	215535-4	Rebuttal Testimony of Ileene Anderson	Biological Resources, Alternatives
7027	215535-3	Rebuttal Testimony of Bill Powers	Air Quality, Project Objectives, Alternatives
7028	215535-2	Total Electricity System Power	Air Quality, Project Objectives, Alternatives
7029	215535-1	Center for Biological Diversity PSA Comments	Air Quality, Project Objectives, Alternatives
7030	215609	Copy of CARB report on GHG emissions in 2015 sorted by Bill Powers. <a href="https://www.arb.ca.gov/cc/reporting/ghg-rep/reported-data/ghg-reports.htm">https://www.arb.ca.gov/cc/reporting/ghg-rep/reported-data/ghg-reports.htm</a>	Air Quality, Project Objectives, Alternatives
7031		Center for Biological Diversity Pre-hearing Conference Statement	

## 8. Proposals for briefing deadlines or other scheduling matters.

**Briefing and other deadlines:** The Center proposes that the Opening briefs be due no earlier than 30 days after all of the hearing transcripts are made available and that Reply briefs be due no earlier than 15 days after the Opening briefs are due.

The Center is concerned that under the current schedule as provided in the Committee’s January 20, 2017 Notice of Prehearing Conference and Scheduling Order, the Committee has proposed releasing a Presiding Member’s Proposed Decision (PMPD) in “Mid-March 2017.” This would be just slightly more than 30 days after evidentiary hearings are complete. This schedule does not allow the parties sufficient time to review the transcripts and the full evidentiary record and prepare briefs. Even more troubling, it does not allow the Committee or the Presiding Member sufficient time to consider the parties’ briefs before issuing the PMPD.

The January 20, 2017 revised schedule further anticipates a Committee Conference on the PMPD in “Mid-April 2017,” even though this would be approximately only 30 days after anticipated issuance of the PMPD. Both the parties and the public, however, must be given at least 30 days to comment on the PMPD. (20 C.C.R. § 1745.5(c).) This schedule effectively renders the Committee’s consideration of party and public comments at the Committee Conference impossible. Moreover, the schedule anticipates release of a revised PMPD (if any) in “Late April 2017”—mere days after the Committee Conference—and a final decision by May.

All of these aspects of the Committee’s proposed schedule—which rushes this project toward a final decision without providing adequate time for consideration of party and public input—thus give the distinct impression that the Commission does not intend to fully consider briefing and comments from the parties and the public before issuing the PMPD, holding the Committee Conference, and moving toward a final decision. This truncated schedule thus represents a serious violation of the parties’ rights to due process as well as a violation of the Legislature’s purpose in providing avenues for public input into power plant siting decisions.

The Center raises these scheduling concerns now in the interest of efficiency, so they may be addressed promptly at the Prehearing Conference. If these serious flaws are not remedied, however, the Center reserves the right to file a motion seeking changes to the schedule in order to accommodate adequate participation by parties and the public.

**Other scheduling matters:** The Center requests that set times are scheduled for beginning the hearings, for lunch and dinner breaks each day during the hearings, and that no hearings are held after 9 pm. In addition to public comments being scheduled at 5:30 pm each evening of the hearings, the Center requests additional public comment should also be scheduled after the lunch break each day of the hearings.

### **9. Input on Discussion Regarding Formal and Informal Hearing Procedures.**

The Committee's January 20, 2017 Notice of Prehearing Conference and Scheduling Order describes both formal and informal hearing procedures and states that this issue will be discussed at the prehearing conference. **The Center requests that formal hearing procedures be used.** If, however, the Committee chooses to use informal hearing procedures, the Center requests that the procedure outlined in the Notice be modified to ensure that all witnesses are provided adequate and equal opportunity for opening statements and that all parties are provided an opportunity to ask questions of the witnesses on any panel including conducting cross-examination where needed.

Dated: January 27, 2017

Respectfully submitted,

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