

DOCKETED

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**APPLICATION FOR CERTIFICATION FOR THE
PUENTE POWER PROJECT**

Docket No. 15-AFC-01

MOTION TO STRIKE EXHIBIT NO. 4030

I. Summary

California Energy Commission (Energy Commission) Staff submits this *Motion to Strike Exhibit No. 4030*, "Email from J. Engel, California Coastal Commission." Staff respectfully requests that the Committee preclude Exhibit 4030 from the evidentiary record for the ongoing proceeding for the Puente Power Project to avoid any confusion as to the official position of the California Coastal Commission regarding the proposed Puente Power Project, expressed in the California Coastal Commission 30413(d) Report for the proposed project.

II. Background

On September 15, 2016, the California Coastal Commission docketed with the Energy Commission the Final Approved California Coastal Commission 30414(d) Report for the Puente Power Project (Exhibit No. 3009).

On January 27, 2017, Intervenor Environmental Defense Center filed Exhibit No. 4030, entitled "Email from J. Engel, California Coastal Commission." The filing is a copy of an email sent on January 26, 2017 from Dr. Jonna Engel, Staff Ecologist at the California Coastal Commission, to Brian Trautwein of the Environmental Defense Center. In the email, Dr. Engel responds to three questions posed by Mr. Trautwein concerning: (1) the California Coastal Commission's evaluation of Environmentally Sensitive Habitat Areas at the proposed site of NRG Energy Center Oxnard, LLC's proposed Puente Power Project; and (2) Dr. Engel's review of testimony submitted by Lawrence Hunt, a witness sponsored by the Environmental Defense Center in the Puente Power Project proceedings.

At the Prehearing Conference on February 1, 2017, Staff reserved the right to move to strike Exhibit No. 4030 from the evidentiary record based on forthcoming information from the California Coastal Commission regarding the purpose of Dr. Engel's responses.

On February 3, 2017, Dr. Engel filed a letter address to Presiding Member Janea Scott in which Dr. Engel stated that she “did not speak on behalf of the Coastal Commission when [she] sent the email,” and that the recommendations adopted by the Coastal Commission in its 30413 Report still stand (TN 215757).

III. Discussion

The evidentiary record of a power plant siting proceeding provides the basis for the Committee’s—and, ultimately, the Energy Commission’s—decision on an application for certification of a power plant. Exhibit No. 4030 should be precluded from the evidentiary record in order to provide the Committee with the most relevant information on which to base their decision.

A. Exhibit 4030 Does Not Include a Declaration by Dr. Engel.

Exhibit No. 4030 was submitted with an attached declaration of Brian Trautwein, but not Dr. Jonna Engel. Mr. Trautwein can speak only to the fact that he received the correspondence from Dr. Engel and to the nature of the correspondence as an email; he cannot corroborate the facts and opinions contained in Dr. Engel’s responses. Therefore, the inclusion of Exhibit No. 4030 would be misleading in that it could not be relied upon for its substance, only that an email was sent and received.

B. Dr. Engel Will Not Be Present at Evidentiary Hearings for Cross Examination.

Dr. Engel did not provide a declaration and, based on discussions with Deputy Chief Counsel Louise Warren at the Prehearing Conference, will not be appearing as a witness during the upcoming Evidentiary Hearings on the proposed Puente Project. Therefore, the parties would not have an opportunity to cross examine Dr. Engel about the substance or intent of her responses nor her qualifications as an Ecologist. It would be prejudicial to include Exhibit No. 4030 on behalf of the Environmental Defense Center without providing the other parties an opportunity to question the source of the testimony.

C. Dr. Engel’s Responses Do Not Represent the Views of the California Coastal Commission.

By her own admission, Dr. Engel did not speak on behalf of the Coastal Commission when she sent the email. Dr. Engel states that the California Coastal Commission’s evaluation of the proposed Puente Project is included in the 30413(d) report that was approved in September 2016 and which was posted to the Energy Commission docket the same month.

D. Dr. Engel's Responses Do Not Change the Coastal Commission's Recommendations.

Dr. Engel states that she reviewed information provided to her by the Environmental Defense Center, which, from the context of Exhibit No. 4030, includes testimony from Lawrence E. Hunt (Exhibit Nos. 4017, 4027, and 4035). However, Dr. Engel concludes that, "had the information . . . been available before the Coastal Commission approved its 30413(d) report, this information would not have made a substantive difference in the Coastal Commission staff's recommended Specific Provisions" (Exhibit No. 4030). Therefore, because the conclusions presented in the Coastal Commission's 30413(d) are not changed, Exhibit No. 4030 does not add new evidence, and should be excluded.

E. Exhibit 4030 was Submitted in an Untimely Manner.

Finally, Exhibit No. 4030 was filed on Friday, January 27, 2017. According to the Committee's Scheduling Order issued on January 20, 2017, Opening Testimony was due on January 18, 2017 and Rebuttal Testimony was due on January 24, 2017. Environmental Defense Center's filing of Exhibit No. 4030 was, therefore, untimely without good cause and should be precluded.

IV. Conclusion

For the above-stated reasons, Staff respectfully requests the Committee grant the *Motion to Strike* Exhibit No. 4030 from the Puente Power Project evidentiary record to ensure the integrity of the California Coastal Commission's official report on the proposed Puente Power Project.

Date: February 6, 2016

Respectfully submitted,



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Staff