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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:)
)
APPLICATION FOR CERTIFICATION)
OF THE PUENTE POWER PROJECT)

Docket No. 15-AFC-01

**INTERVENORS' JOINT MOTION
TO MODIFY THE CALIFORNIA
ENERGY COMMISSION'S
COMMITTEE ORDERS FOR
ADDITIONAL EVIDENCE AND
BRIEFING FOLLOWING
EVIDENTIARY HEARINGS**

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The Environmental Defense Center, Sierra Club, Environmental Coalition of Ventura County, the City of Oxnard, California Environmental Justice Alliance, Fighting for Informed Environmentally Friendly Clean Energy, and the Center for Biological Diversity (“Intervenors”) respectfully request that the California Energy Commission Committee (“Committee”) modify the Committee’s Orders for Additional Evidence and Briefing Following Evidentiary Hearings (“Orders”), dated March 10, 2017. Intervenors and the local community appreciate the Committee’s Orders requiring the applicant and California Energy Commission (“CEC”) staff to develop additional evidence in multiple resource areas impacted by the proposed Puente Power Project. Since the initial Preliminary Staff Assessment (“PSA”) was released, Intervenors have consistently requested that the process be paused in order to accurately disclose and assess the Project’s impacts to on-site rare and sensitive species, habitats and Environmentally Sensitive Habitat Areas (“ESHA”). Intervenors’ Joint Motion to Modify the Committee’s Orders requests that the Committee: (1) clarify and supplement its Order regarding Biological Resources survey species, timing and access; and, (2) postpone briefing on Land Use and LORS until the development and submission of additional evidence is completed.

I. Proposed Modifications Regarding Focused Biological Surveys

In order to fulfill the Committee’s objective to obtain a complete and legally adequate assessment of the biological resources on the Project site as required by CEQA and the Coastal Act, Intervenors propose the following modifications:

Additional Special Status Wildlife Species Should Be Surveyed

In addition to the five special status species identified in the Order, Intervenors request that the Committee utilize this time to also order focused surveys of the seven other special status wildlife species that surround the site and could likely occur on the Project site, which must include the beach outfall area where the applicant has proposed significant ground disturbing activities associated with removal of the outfall. Many of these species are endangered and/or state protected species. These include three federally endangered species, the Western Snowy Plover, California Least Tern and Least Bell’s vireo, and three state protected Species of Special Concern and/or California Fully Protected species: Burrowing Owl, White-Tailed Kite, Northern

Harrier, and California Black Rail. There was substantial evidence submitted during the evidentiary record that shows these species are also potentially present on site, have foraging habitat on site, and would be potentially impacted by the Project; yet no species specific focused surveys were conducted and those resources and impacts were not disclosed in the FSA. Intervenors request the Orders be amended to include these species in order to adequately assess the Project's impacts to ESHA and sensitive species in accordance with the requirements of CEQA, the Coastal Act, the City of Oxnard's Local Coastal Program ("LCP"), and federal and state wildlife laws. Development of this evidence is also necessary to adequately assess the Project's LORS consistency and adequately assess Alternatives.

Additional Special Status Plant Species Should Be Surveyed

While the Orders require the applicant to conduct focused surveys for the Ventura Marsh Milk Vetch, it did not include two other special status plant species that may be present on site and should also be part of focused surveys: the federal and state endangered Salt Marsh Birds Beak (*Chloropyron maritimum ssp. Maritimum*) and the Orcutt Pincushion (*Chaenactis glabruiscula orcuttiana*) listed on the California Native Plant Society 1B.1 list. Both of these species would trigger an ESHA designation under the Coastal Act and are critical to determining the environmental constraints of the Project site, as addressed in the testimony of Intervenors' testifying biologists Lawrence Hunt and Ileene Anderson. Intervenors request the Orders be modified accordingly to require focused surveys for these two additional special status plant species.

Survey Timing

The Committee's Orders establish an arbitrary cut off time of July 31, 2017 to conduct and complete biological surveys that is admittedly unrelated to the biologically appropriate time when those species would be present.¹ Not allowing surveys to be conducted within the biologically appropriate and scientifically recommended time period will undermine the peer reviewed survey protocols and accuracy of the evidence. Given the presence of each of these special status species immediately surrounding the Project site, the evidence in the record shows

¹ The Orders state in part, "If the appropriate time for detecting the identified species would normally be after July 2017, the survey will nonetheless be conducted during the above -specified period . . ." (Orders, p. 1.)

that focused surveys should have been conducted before the PSA was released and certainly prior to the Final Staff Assessment (“FSA”).

The survey timing is an integral component of designing and conducting a successful survey for species detection and should not be arbitrarily pre-set in an Order. Intervenors request that the survey timing deadline of July 31, 2017 be deleted from the Order and instead be based on the feedback and recommendations from the parties, public and expert agencies on the proposed survey design appropriate for each species, as otherwise required by the Orders. Intervenors agree that the earliest biologically appropriate time to conduct these surveys should be ordered.

Request to Allow Expert Testifying Biologists Access to the Project Site

Lawrence Hunt, testifying expert for the Environmental Defense Center, is the leading local wildlife biologist on the terrestrial species identified in the Committee’s Order and has been studying the site’s local dune ecosystem and its wildlife for several decades. The Center of Biological Diversity’s senior scientist Ileene Anderson, also an expert biologist, testified and submitted evidence concerning impacts to biological resources. During the hearings, Puente’s attorney attempted to limit and disqualify Mr. Hunt’s and Ms. Anderson’s expert testimony on the grounds that they had not conducted surveys or made observations on the Project site. As such, Intervenors request that Mr. Hunt and Ms. Anderson now be afforded an opportunity to visit and study the site and be allowed to accompany the site visits along with the Coastal Commission and the California Department of Fish and Wildlife. This will help streamline the survey process and allow for an open, transparent process that the community and parties can have confidence in and support.

II. Request briefing on Land Use and LORS be postponed until the development and submission of necessary evidence is completed.

In the Committee’s Orders, immediate briefing is requested on Land Use impacts and LORS compliance before the acquisition of additional evidence pertaining to biological resources and coastal flooding is completed.² The Orders state that briefing these issues will likely be unaffected by the development of additional evidence ordered; however, much of the

² Orders, at p. 4.

Land Use impact analysis and LORS consistency turns on the development of the additional evidence requested by the Committee. For example, the City of Oxnard's Coastal Land Use Plan (LUP) Policy 52 provides that:

Industrial and energy-related development shall not be located in coastal resource areas, including sensitive habitats, recreational areas and archaeological sites. All development adjacent to these resource areas or agricultural areas shall be designed to mitigate any adverse impacts.³

Clearly, evidence as to the location and presence of ESHA, sensitive habitats and coastal resources on site are directly related to the Project's consistency with this policy, as well as Coastal Act Section 30240 restrictions on development that would disturb or destroy ESHA. Additionally, in order to assess compliance with applicable federal and state wildlife laws such as the federal Endangered Species Act and the California Fish and Game Code, it is critical to assess the Project's impacts on the federal and state listed and protected species and their habitat for the species subject to additional focused surveys. As such, the Committee's Order requiring briefing for Land Use and LORS is premature before development and submission of the additional evidence requested.

III. Conclusion

In summary, Intervenors' Motion to Modify the Committee's Order requests that the Committee Modify its Order as follows: (1) supplement its Order regarding Biological Resources surveys to require surveys for the additional special status wildlife and plants listed above; (2) adjust the timing of the surveys to be based on the most biologically and scientifically appropriate time; (3) allow Intervenors' testifying biologists access to the Project site; and, (4) postpone briefing on Land Use and LORS until the development and submission of the additional, related evidence is completed.

Dated: March 21, 2017

s/ Alicia Roessler

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Respectfully submitted,

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³ Ex. 4024, City of Oxnard Coastal Land Use Plan at III-42 (May 14, 2002).

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