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6 State of California

7 Energy Resources

8 Conservation and Development Commission

9 In the Matter of:

Docket No. 15-AFC-01

10 Application for Certification
for the PUENTE POWER PROJECT

11 APPLICANT'S MOTION TO EXCLUDE
FROM THE EVIDENTIARY RECORD THE
SUPPLEMENTAL TESTIMONY OF JAMES H.
12 CALDWELL

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14 Pursuant to Title 20, California Code of Regulations ("CCR") § 1211.5(a) and
15 § 1212(b)(2), Applicant hereby requests that the Committee exercise its authority under Title 20,
16 CCR § 1203(c) to exclude from the evidentiary record the Supplemental Testimony of James H.
17 Caldwell filed by intervener City of Oxnard on April 27, 2017 (TN #217321-217333)
18 ("Supplemental Testimony").¹ The evidentiary record in these proceedings was closed by the
19 Committee on February 10, 2017 (2/10/17 RT 375:24-25; TN #216594). On March 10, 2017,
20 the Committee ordered submission of additional evidence on a limited number of specific issues
21 identified in the "Committee Orders for Additional Evidence and Briefing Following Evidentiary
22 Hearings" (TN #216505) (the "Committee Order"). Except for the specific additional evidence
23 identified in the Committee Order, the evidentiary record in these proceedings remains closed.
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27 ¹ Applicant makes this request based on its assumption that intervener City of Oxnard intends to
28 request that the Supplemental Testimony be moved into the evidentiary record during the
upcoming evidentiary hearing.

1 The Supplemental Testimony is outside the scope of additional evidence identified in the
2 Committee Order, and, therefore, must be excluded from the evidentiary record.²

3 The Committee Order orders the CEC Staff and Applicant, and invites the interveners, to
4 prepare and submit limited specific additional evidence pertaining to four topic areas, including
5 “Alternatives.” The Committee Order states that “[t]he Applicant and Energy Commission Staff
6 are **ordered**, and the other parties invited, to prepare and submit the following additional
7 evidence:” (emphasis in original). The language of the Committee Order, including the phrase
8 “*the following additional evidence*,” makes clear that the interveners are invited to submit only
9 the additional evidence that is specifically identified in the Committee Order. The Committee
10 Order does not, for example, invite the interveners to submit additional evidence “*on the*
11 *following four topics*,” or otherwise indicate that the evidentiary record will be re-opened to
12 receive anything other than the additional evidence specifically identified in the Committee
13 Order.

14 With respect to the topic of Alternatives, the Committee Order invites the interveners to
15 submit the following additional evidence:

16 Analyze the use of one or more smaller (50 – 100 MW) turbines
17 instead of the larger turbine proposed by the applicant at the two
18 alternative sites analyzed in the Final Staff Assessment, the Del
19 Norte/Fifth Street Off-site Alternative and the Ormond Beach Area
Off-site Alternative, to determine whether it is feasible to reduce or
eliminate the previously identified potential impacts on aviation.

20 The additional evidence identified above pertains to evidence presented by the CEC Staff (2/9/17
21 RT 186:20 et seq; TN #216593) and Naval Base Ventura County (2/9/17 RT 176:1 et seq;
22 TN #216593) identifying significant impacts to aviation that would result if the Puente Power
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25 ² In addition to being outside the scope of the Committee Order, the Supplemental Testimony (or
26 portions thereof) suffer from a number of other objectionable defects, including being outside
27 the scope of expertise of the witness, asserting legal conclusions that the witness is not
28 qualified to make, misstating the current evidentiary record, and others. Applicant reserves the
right to raise other objections to admission of the Supplemental Testimony in the event that this
Motion is denied.

1 Project was developed on either of the two alternative sites analyzed in detail by CEC Staff in
2 the Final Staff Assessment.

3 The additional evidence described above is limited to analysis that includes the following
4 three elements: i) “the use of one or more smaller turbines”; ii) “at the two alternatives sites”;
5 iii) “to reduce or eliminate the previously identified potential impacts on aviation.” This point
6 was reiterated by Hearing Officer Kramer during the April 28, 2017 Committee Conference:

7 Well, there’s all kinds of scenarios that people could pitch. We
8 were looking for specifically about what a smaller project and
9 would it -- there may be other issues I’m forgetting, but one of the
10 key points was is it going to solve the aviation issues, for instance,
11 at those other sites if it were a smaller machine. (4/28/17 RT
12 17:14-20; TN #217520).

13 The Revised Committee Scheduling Order issued on May 11, 2017 (TN #217550) also reiterates
14 the limited scope of the additional evidence called for in the March Order at footnote 4:

15 As to each of those topics, the Committee’s request for additional
16 evidence was limited to specific subtopics. For example, regarding
17 Alternatives, the request was directed to an analysis of “the use of
18 one or more smaller (50 – 100 MW) turbines instead of the larger
19 turbine proposed by the applicant at the two alternative sites
20 analyzed in the Final Staff Assessment ... to determine whether it
21 is feasible to reduce or eliminate the previously identified potential
22 impacts on aviation.” See the Orders for Additional Evidence and
23 Briefing Following Evidentiary Hearings (TN 216505) for the
24 precise descriptions of the subtopics.

25 Except for the analysis described above, the record remains closed and any additional evidence
26 that falls outside the scope of such analysis must be excluded.

27 The Supplemental Testimony makes only passing reference to the possible use of smaller
28 turbines at the alternative sites and does not include any analysis whatsoever of aviation hazards,
which is the crux of the Committee’s inquiry. Instead of responding to the Committee’s request,
the City of Oxnard attempts to take advantage of the Committee Order to introduce what it refers
to as its “Preferred Resources Alternative,” certain elements of which were addressed in
Mr. Caldwell’s prior testimony on the topic of Project Need, but which is presented in full for the
first time in the Supplemental Testimony. This “Preferred Resources Alternative” is a complex,
theoretical construct that includes, among other things:

- 1 1. construction of a “smaller peaker ... at an inland site” (TN #217321 at 3);
- 2 2. equipping the “smaller peaker” with “factory supplied options ... to provide
- 3 essential reliability services without combustion” (TN #217321 at 3);
- 4 3. creation and approval of a contract between SCE and NRG “to keep the Mandalay
- 5 3 peaking plant active and available” (TN #217321 at 11);
- 6 4. continued operation of the “inefficient and highly polluting” Mandalay 3 peaking
- 7 plant for 5-7 years (TN #217321 at 12);
- 8 5. continued operation of the “inefficient and polluting” gas fired peaker plant at
- 9 Ellwood for 5-7 years (TN #217321 at 12);
- 10 6. completion of construction, and CPUC approval for cost recovery, of the
- 11 Wakefield Substation battery storage facility (TN #217321 at 11);
- 12 7. successful conclusion of the Goleta Preferred Resource RFO and approval of
- 13 contracts and construction of new facilities selected through that RFO (TN
- 14 #217321 at 11);
- 15 8. retrofit of the Southern California Edison (SCE) owned McGrath Peaker Project
- 16 with General Electric’s Enhanced Gas Turbine technology, combined with
- 17 linkage to existing “slow response” demand response resources (TN #217321 at
- 18 11);
- 19 9. retrofit of Mandalay Units 1 and 2 to serve as synchronous condensers (TN
- 20 #217321 at 13); and
- 21 10. conduct of a “transient stability and short circuit current duty” analysis by CAISO
- 22 and SCE to determine what else may be required to maintain reliability (TN
- 23 #217321 at 15).

24 The Supplemental Testimony is unabashedly outside the scope of the additional evidence that the
25 Committee invited the interveners to submit pursuant to the Committee Order. It presents a
26 myriad of issues regarding technical and practical feasibility, cost and economic feasibility,
27 environmental consequences, substantive and procedural legal considerations, and timing
28 considerations. Allowing the Supplemental Testimony into the evidentiary record would directly

1 contravene the specific language of the Committee Order, open the door to any additional
2 evidence whatsoever that pertains to the topic areas of Alternatives and Project Need, and greatly
3 expand the scope of the additional evidentiary hearings. All parties had ample opportunity to
4 develop and offer evidence on these topics at the February 2017 evidentiary hearings, and no
5 party objected to the Committee’s closing of the evidentiary record at the conclusion of those
6 hearings. There is no justification for re-opening these topics beyond the scope of the specific
7 additional evidence called for in the Committee Order.

8 Applicant requests that the Committee rule on this Motion within the 21-day period
9 provided for in Title 20, CCR § 1211.5(a) to allow adequate time for the parties to raise
10 substantive objections to admission of the Supplemental Testimony, or develop additional
11 evidence pertaining to the matters addressed in the Supplemental Testimony, in the event that the
12 Committee determines not to exclude the Supplemental Testimony from the evidentiary record.³

14 DATED: May 11, 2017

Respectfully submitted,

/s/ Michael J. Carroll

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26 ³ Because the Supplemental Testimony must be excluded from the evidentiary record on
27 procedural grounds, Applicant does not respond herein to the substantive defects of the City’s
28 “Preferred Resources Alternative,” of which there are many. In the event that the
Supplemental Testimony is not excluded from the evidentiary record, Applicant will file
rebuttal testimony addressing these defects.