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STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

IN THE MATTER OF:

APPLICATION FOR CERTIFICATION OF
THE **PUENTE POWER PROJECT**

DOCKET NO. 15-AFC-01

**CALIFORNIA ENVIRONMENTAL
JUSTICE ALLIANCE OPPOSITION TO
APPLICANT'S MOTION TO EXCLUDE
THE SUPPLEMENTAL TESTIMONY
OF JAMES H. CALDWELL**

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California Environmental Justice Alliance Opposition to Applicant's Motion to Exclude the Supplemental Testimony of James H. Caldwell

The California Environmental Justice Alliance (“CEJA”) respectfully submits this Opposition to Applicant’s Motion to Exclude the Supplemental Testimony of James H. Caldwell. CEJA supports the City of Oxnard’s arguments against exclusion of evidence for the reasons articulated in their opposition brief. CEJA writes separately to stress the importance to environmental justice communities, and the integrity of CEQA, of including Mr. Caldwell’s supplemental testimony in the CEC’s record.

I. CEQA Requires Consideration of Feasible Alternatives Based on Record Evidence; Excluding Mr. Caldwell’s Evidence Would Prevent the Commission from Conducting its Analysis.

Pursuant to the Warren-Alquist Act, the CEC is tasked with evaluating applications for certification. The Commission also administers a certified regulatory program under the California Environmental Quality Act (“CEQA”). While an agency operating a certified regulatory program is permitted to follow its own rules to prepare equivalent documents, it must implement CEQA’s fundamental mandates, which are critical to providing reliable public information, protecting the environment, and ensuring that if a project is approved, its potentially significant impacts are mitigated or alternatives are selected. Under CEQA, there can be “no approval or adoption of a proposed activity ‘if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse [environmental] effect’ (§ 21080.5, subd. (d)(2)(A))....”¹ It is the responsibility of the CEC, as lead agency, to conduct a thorough alternatives analysis.

¹ *Strother v. California Coastal Com'n* (2009) 173 Cal.App.4th 873, 878.

The CEC has invited parties to continue building the record regarding, *inter alia*, alternatives to the Puente Project. In its March 10, 2017 “Committee Orders for Additional Evidence and Briefing Following Evidentiary Hearings”, the Committee sought substantial additions to the record, including information on smaller generation alternatives at different locations.² Mr. Caldwell’s supplemental testimony is necessary for consideration of the specific alternatives of which the Committee sought analysis. For this reason alone, excluding the testimony would severely undercut CEQA’s mandate to consider of feasible alternatives that would reduce the significant adverse effects of the Puente Project.

II. The CEC’s Unique Role in Analyzing Environmental Justice Requires that the Record Include the Caldwell Testimony.

The CEC has developed its own rules to implement CEQA in its power plant certification process.³ These rules include a process for CEC staff evaluation as well as consideration of factors such as environmental justice impacts of a proposed plant, existing laws and regulations, alternatives, and enforceable conditions to mitigate potential impacts.

The CEC has “integrate[d] environmental justice into its siting process since 1995, as part of its thorough [CEQA] analysis of applications for siting power plants and related facilities.”⁴ The CEC’s final decision in its CEQA review should include consideration of its “[s]taff[s] . . . analy[ses] [of] . . . disproportionate impacts on minority and low-income populations resulting from exposure to direct and cumulative impacts associated with the

² Committee Order, pp. 1-3 (TN#216506).

³ See generally 20 Cal. §§ 1700 et seq.

⁴ See http://www.energy.ca.gov/public_adviser/environmental_justice_faq.html.

proposed facility.”⁵ The CEC’s “analy[ses] [include] the existing socioeconomic setting of the area and evaluat[ing] the project in terms of population and demographic characteristics, economic base[,] and employment data[.]”⁶

Because the City of Oxnard has several environmental justice communities, as identified both by the Cal/EPA screening tool CalEnviroScreen and by CEC staff’s screening methodology, it is critical that factual information regarding potential to reduce the impacts of the project by substituting renewable resources be admitted into the record.

CEJA is particularly concerned that this evidence, which was not available during the development of the initial factual record, not be excluded. The concerns of low-income communities of color, and their dedication to bringing clean renewable energy to Oxnard, rely on evidence such as Mr. Caldwell’s testimony. Environmental justice communities often lack resources for expert advice on technical subjects like options for energy generation. In admitting Mr. Caldwell’s evidence into the record, the CEC not only follows its own environmental justice mandate, and CEQA’s alternatives requirement, it provides information on with Oxnard’s most impacted communities can review in this proceeding.

Dated: May 25, 2017

Respectfully Submitted,

By: /s/
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⁵ See Developers Guide of Practices and Procedures Staff Report / Draft, December 7, 2000, at 30, available at http://www.energy.ca.gov/siting/documents/2000-12-07_700-00-007.pdf.

⁶ *Id.*