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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

**COMMITTEE ORDER GRANTING APPLICANT’S MOTION TO EXCLUDE
THE SUPPLEMENTAL TESTIMONY OF JAMES H. CALDWELL AND
ACCEPTING THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR’S
OFFER TO CONDUCT A SPECIAL STUDY**

This Order addresses the *Applicant’s Motion to Exclude From the Evidentiary Record the Supplemental Testimony of James H. Caldwell* (Motion to Exclude), filed on May 11, 2017,¹ and the California Independent System Operator’s (California ISO or ISO) offer to conduct a special study of reliability in the Moorpark subarea (Special Study).

For the reasons set forth below, the Committee² **GRANTS** the Motion to Exclude and accepts³ the California ISO’s offer to conduct a Special Study as described herein.

Background

Following the completion of four days of Evidentiary Hearings on February 7-10, 2017, and its initial review of the evidence, the Committee issued *Committee Orders for Additional Evidence and Briefing Following Evidentiary Hearings* (March 10 Orders).⁴ Those orders required the Applicant to provide results from one or more focused biological surveys of the proposed project site, and invited all parties to provide additional evidence regarding those surveys and on specific topics related to Soil and

¹ TN 217565.

² The Committee assigned to conduct proceedings on the Application for Certification (AFC) for the Puente Power Project consists of Commissioner Janea Scott, Presiding Member, and Commissioner Karen Douglas, Associate Member. The Energy Commission made this Committee assignment at its June 10, 2015 Business Meeting.

³ The California ISO is a public benefit corporation that manages California’s bulk transmission grid. It is independent of the Energy Commission and not a party participant in this proceeding.

⁴ TN 216505, filed March 10, 2017.

Water Resources, Alternatives, and Compliance and Closure.⁵ Aside from that limited request, the record was closed at the conclusion of the February Evidentiary Hearings.⁶

On May 11, 2017, the Committee issued a revised schedule for this proceeding providing for the filing of initial supplemental testimony on the identified subtopics on June 15, 2017, submittal of the Applicant's biological survey results on June 23, 2017, and closing testimony on July 14, 2017. Evidentiary Hearings are scheduled on July 26, and 27, 2017, and July 28, 2017, if necessary.⁷

On April 27, 2017, Intervenor City of Oxnard filed 13 documents—the Supplemental Testimony of James H. Caldwell⁸ and various attachments and exhibits thereto⁹ (collectively, the “Caldwell Proposed Testimony”). The Caldwell Proposed Testimony asserts that a combination of renewable resources, synchronous condensers, demand response, and other technologies is preferable to the Puente Power Project. On May 11, 2017, the Applicant filed its Motion to Exclude, on the grounds that the Caldwell Proposed Testimony is outside the scope of the additional evidence requested by the Committee. The City of Oxnard and other parties filed responses to the motion¹⁰ and the Committee heard oral argument during its June 5, 2017 Committee Conference.

The Power Purchase Agreement (PPA) that Southern California Edison (SCE) awarded to the Applicant was the result of a lengthy and deliberative public process. The Energy Commission annually forecasts electricity demand. The California ISO includes these forecasts in its studies and provides a comprehensive evaluation of the ISO transmission grid, including grid reliability requirements, and performing local capacity technical studies to determine the minimum amount of resources within a local capacity area that are needed to ensure the reliable operation of the electric system. The California Public Utilities Commission (CPUC) authorizes its regulated utilities, including SCE, to procure resources that are identified as necessary. After soliciting bids for such resources,¹¹ SCE then submits the resulting contracts to the CPUC for approval. The ISO local capacity requirements study related to the Puente PPA occurred in 2012. In CPUC Decision 13-02-015,¹² the CPUC authorized SCE to procure 215 to 290 megawatts (MW) of resources in the Moorpark subarea of the Big Creek/Ventura local reliability area. SCE sought bids in 2013¹³ and awarded a PPA to Puente in 2014. The PPA was approved by the CPUC in 2016.¹⁴

Separate from the above process, the Energy Commission decides license applications for the construction and operation of thermal power generating facilities of 50 MW or

⁵ TN 216505, pp. 1-3.

⁶ February 10, 2017 Transcript, TN 216594, p. 375, lns 9 – 25.

⁷ TN 217550.

⁸ TN 217321.

⁹ TNs 217322 – 217333, inclusive.

¹⁰ TNs 217741, 217737, 217736.

¹¹ This is generally accomplished via a Request for Offers (RFO) or Request for Proposals (RFP).

¹² <http://docs.cpuc.ca.gov/publisheddocs/published/g000/m050/k374/50374520.pdf>.

¹³ <https://www.sce.com/wps/wcm/connect/b55be7b0-435b-4a12-bbf2-ab4ce42f581c/LCRRFOTransmittalLetter.pdf?MOD=AJPERES>.

¹⁴ <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M162/K881/162881082.PDF>.

greater. The Commission performs a thorough analysis of the proposed facility, including an engineering and environmental analysis that, among other things, discusses a reasonable range of alternatives to the proposed facility and an analysis of the proposed facility's compliance and consistency with federal, state, and local laws, ordinances, regulations, and standards (LORS).

If the Energy Commission's environmental analysis finds significant environmental impacts that can not be mitigated to insignificant levels, a license can not be approved unless the Commission finds as follows:

(a)(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the [Commission Decision].

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. (Cal. Pub. Resources Code, § 21081.)

Similarly, if the Energy Commission finds a LORS inconsistency, the Energy Commission must determine whether:

. . . the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. (Cal. Pub. Resources Code, § 25525.)

The Energy Commission commonly calls the above findings "override" findings. Need is simply one factor among many that we may, but are not required to, consider in deciding whether to make the override findings.

Market realities and recent experience demonstrates that a power plant will not likely be constructed unless there is a buyer for the electricity, generally indicated by a PPA. In this instance SCE proposed a PPA through a competitive process and the CPUC approved that PPA on May 26, 2016.¹⁵

At this point in our proceeding, we have not determined whether it will be necessary for us to consider override findings; we asked for and received evidence on the topic during our February hearings in order to avoid an additional hearing.

¹⁵ TN 215446-5.

California ISO Offer to Conduct a Special Study

During the California ISO Board of Governors May 1, 2017 meeting, Mr. Caldwell offered public comments on behalf of the Center for Energy Efficiency and Renewable Technologies and the City of Oxnard. He requested that the ISO study the scenario described in the Caldwell Proposed Testimony as part of its 2017 Transmission Planning Process.¹⁶ Following a discussion among the ISO Governors and ISO staff, the ISO President and Chief Executive Officer Steve Berberich committed to “tell them [California Energy Commission] that we’re prepared to [do] this [special study], and even suggest that they ask us to do this.”¹⁷ The Committee invited ISO staff to the June 5, 2017 Committee Conference for the purpose of having that conversation.¹⁸

At the Committee Conference, Neil Millar, California ISO Executive Director of Infrastructure Development, described the nature of a special study the ISO could conduct as follows:

. . . would test various portfolios of preferred and conventional resources as well as some interaction with transmission projects that are also moving forward to test how those different portfolios would meet the identified reliability need.... Our offer to CEC is to build on that, to seek to explore and study various portfolios of preferred resources that could also meet the need. That’s what we can do. What we wouldn’t be doing is making an opinion or offering an opinion on whether or not those resources are really there. We don’t have particular insight into the viability of those preferred resources, and that’s where we would turn to the guidance from the CEC and the Industry on which portfolios, in fact, we should be studying.¹⁹

None of the parties offered any specific portfolios or process to identify portfolios in the timelines of this case beyond the Caldwell Proposed Testimony. The Committee recognizes the difficulty of that task. What would be most useful to the Committee is a study that identifies the local capacity requirements and considers the parameters and assumptions listed below:

1. The necessary resources are in place to meet the reliability need in the Moorpark subarea in 2021 with timely Once-Through Cooling (OTC) compliance;

¹⁶ TN 217720, pp. 5-6. As the Applicant notes, the discussion before the ISO Board did not benefit from the perspectives of the Applicant, Energy Commission Staff, or any other party as no prior notice of the discussion was given. For example, Mr. Caldwell suggested that the additional Evidentiary Hearings scheduled by the Committee would consider alternatives in a general way and that the Committee would likely be requesting that the ISO conduct a study similar to that he was requesting (TN 217720, p. 7). In fact, the Committee reopened Alternatives to the limited extent of analyzing whether one or more smaller turbines at the alternative sites would reduce identified impacts on aviation. See the discussion of the Motion to Exclude for the complete textual description of the requested additional evidence.

¹⁷ TN 217720, p 14, Ins 3-6.

¹⁸ TN 217746.

¹⁹ This quotation was obtained from the audio recording of the June 5, 2017 Committee Conference. The written transcript is not yet available.

2. The current OTC compliance deadline(s) for Ormond Beach Units 1 & 2 and Mandalay Units 1 & 2 of December 31, 2020 are not extended and the facilities retire;²⁰
3. Include presently existing generation, contracted generation, and preferred resources and storage the ISO expects to be on line to meet reliability needs in the Moorpark subarea by 2021; and
4. To the extent that it may be helpful in identifying the type and quantity of new preferred resources and storage that could be available by 2021, the ISO may choose to review and consider SCE's 2015 Preferred Resources Pilot RFO, 2016 Aliso Canyon Energy Storage RFO, and the 2016 Aliso Canyon Design, Build, and Transfer RFP.

The Committee understands development of such a study is normally a complex and intensive undertaking, but is hopeful that the California ISO will be able to derive a simplified set of assumptions that will allow the ISO to provide meaningful results within the Committee's timeline. With the above considerations in mind, we accept the ISO's offer to conduct an appropriate and timely study of one or more portfolios. Given that Mr. Millar indicated that the ISO could complete a study in three to four weeks, the Committee looks forward to receiving the study no later than July 19, 2017. The Committee also requests that the ISO inform us, no later than June 16, 2017, as to whether it will conduct the Special Study.

The deadlines for filing of evidence on other topics, as set forth in the Revised Committee Scheduling Order,²¹ will remain the same: June 15, 2017 for Supplemental Testimony, June 23, 2017 for the biological surveys, and July 14, 2017 for closing testimony. If the California ISO confirms that it will perform the Special Study, party responses to the Special Study will be due on July 31, 2017, and the Evidentiary Hearings will move to August 9, 10, and (if necessary) 11, 2017. If the ISO declines to carry out the Special Study, the hearings will remain on July 26, 27, and (if necessary) 28, 2017. The Special Study and party responses will be accepted as part of the Overrides topic.

Applicant's Motion to Exclude the Caldwell Proposed Testimony

At the conclusion of the Evidentiary Hearings in February, the Committee closed the record on all topics.²² By requesting additional evidence of a limited scope in its March 10 Orders, the Committee reopened the record only to receive the additional evidence it requested. It was not an invitation to submit additional evidence on unrelated topics.

²⁰ In 2010, the State Water Resources Control Board adopted a policy to address the adverse impacts of Once-Through Cooling power plants on marine and estuarine ecosystems without disrupting the critical needs of the State's electricity system. A copy of the Water Board's Statewide Policy, effective on October 1, 2010, is available at the following website:

http://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/policy100110.pdf.

²¹ TN 217550.

²² February 10, 2017 Transcript, TN 216594, p. 375, Ins. 9 – 25.

Regarding alternatives, the additional evidence was limited to:

Analyze the use of one or more smaller (50 – 100 MW) turbines instead of the larger turbine proposed by the applicant at the two alternative sites analyzed in the Final Staff Assessment, the Del 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.

The Caldwell Proposed Testimony is outside the scope of the Committee's request and was offered after the record was closed. Therefore, it is excluded.

Conclusion

The Committee accepts the California ISO's offer to conduct a Special Study as described above, and we request the ISO to inform us by June 16, 2017, as to whether it will conduct the Special Study.

The Motion to Exclude is **GRANTED** as described above.

Dated: June 9, 2017, at Sacramento, California

Original signed by

JANEA A. SCOTT
Commissioner and Presiding Member
Puente Power Project AFC Committee

Original signed by

KAREN DOUGLAS
Commissioner and Associate Member
Puente Power Project AFC Committee