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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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***APPLICATION FOR CERTIFICATION FOR THE
PUENTE POWER PROJECT***

Docket No. 15-AFC-01

**MOTION TO STRIKE “CLOSING SUPPLEMENTAL TESTIMONY OF
JAMES H. CALDWELL”**

I. Summary

In accordance with California Code of Regulations, title 20, section 1211.5, California Energy Commission (Energy Commission) Staff submits this Motion to Strike “Closing Supplemental Testimony of James H. Caldwell” (Caldwell’s testimony). (TN 220220.) Under section 1211.5, “[a]ny party may request the presiding member . . . to issue orders or rulings, including but not limited to requests to require another person to act or to refrain from acting, or requests for adjudication of procedural or substantive issues” in the form of a written motion. Staff respectfully requests that the Committee preclude Caldwell’s testimony from the evidentiary record for the ongoing proceeding for the Puente Power Project because it is unresponsive to the Committee’s request for additional evidence and unrelated to the Evidentiary Hearings to be held in July.

II. Background

On March 10, 2017, the California Energy Commission Committee (Committee) assigned to conduct proceedings on the Application for Certification for the Puente Power Project filed “Committee Orders for Additional Evidence and Briefing Following Evidentiary Hearings” (Orders), which required Staff to submit additional evidence regarding Alternatives:

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.

On June 20, 2017, the Committee issued a Revised Committee Schedule requiring closing testimony on “Alternatives—aviation impacts of smaller turbines at alternative

sites” to be filed on Friday, July 14, 2017. The Revised Committee Schedule also set Evidentiary Hearings “on all topics except the California ISO [Independent System Operator] special study” for July 26, 2017 through July 28, 2017. An Evidentiary Hearing “on California ISO special study” is scheduled for Thursday, September 14, 2017. The Committee set the deadline for submission of the California ISO’s special study for August 16, 2017.

On July 17, 2017, Caldwell’s testimony was docketed on behalf of Intervenor City of Oxnard.

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. Caldwell’s testimony should be precluded from the evidentiary record in order to provide the Committee with the most relevant information on which to base their decision on the subject matter of Alternatives.

A. Caldwell’s Testimony Reintroduces Evidence That Was Previously Struck from the Evidentiary Record.

On April 27, 2017, Intervenor City of Oxnard filed “Supplemental Testimony of James H. Caldwell” and supporting documents. (TN 217321 through 217333.) In this submission, Caldwell asserted that technologies other than natural gas combustion, including renewable resources, synchronous condensers, and demand response, were preferable to the proposed Puente Power Project to meet the Local Capacity Requirement (LCR) need. On May 11, 2017, Applicant filed a motion to exclude this information from the evidentiary record, arguing that the information was outside the scope of the March 10, 2017 Committee Order requesting additional evidence. After the submission of reply briefs and oral arguments, the Committee granted Applicant’s motion to exclude Caldwell’s supplemental testimony. (TN 218016.)

Caldwell’s testimony at issue again asserts that technologies other than the proposed Puente Power Project, including renewable resources, synchronous condensers, and “EGT technology” are preferable to meet the identified LCR need. The Committee has already accommodated an extensive review of Caldwell’s testimony regarding preferred resources and formally ruled to exclude such information from the evidentiary record. In the alternative, the Committee accepted the California ISO special study and set dates for the adjudication of the matter later this year. Caldwell’s testimony is an attempt to re-enter evidence in the record which was previously struck.

B. Caldwell’s Testimony Addresses the California ISO Special Study Which Will Not Be Adjudicated at the July Evidentiary Hearings.

Caldwell’s testimony strays from the Committee’s focused request for evidence regarding aviation impacts at proposed alternative sites. The focus of Caldwell’s

testimony is to speculate as to the outcome of the incomplete study by the California ISO regarding preferred alternative resources.¹ Caldwell acknowledges that the California ISO study is currently underway, however, he repeatedly describes results of the study which he is “confident” and “strongly believes” will be shown. Speculation as to the California ISO special study results was not the request of the Committee, nor is it a productive contribution to the evidentiary record.

The results of the independent study being carried out by the California ISO will be available on August 16, and the Committee has already published deadlines for party testimony, evidentiary hearings, and legal briefs on the special study. It is clear that Intervenor City of Oxnard will have the opportunity to participate in the adjudication of the California ISO’s special study, as will all parties to the proceeding, at a later date. To permit evidence on the special study from Intervenor City of Oxnard at this stage of the proceeding, when the study results have not been published and the parties have not yet been invited to submit evidence on the matter, provides misleading information regarding the study results and is irrelevant to the issues presented at this evidentiary hearing.

C. Caldwell’s Testimony Is Not Responsive to the Committee’s Request for Additional Evidence Regarding Alternatives.

As stated above, Caldwell’s testimony does not provide an independent analysis of the effects of smaller turbines on aviation at the proposed alternative sites, nor does it evaluate Staff’s analysis within the narrow scope of the Committee order. Caldwell’s speculation as to the operating period and levels of a smaller turbine, the ability of a smaller turbine to meet the LCR need, and the necessity to analyze the performance of additional technology is not a useful evaluation of Staff’s analysis, which was a narrowly-tailored response to the Committee’s request regarding smaller turbines’ effects on aviation at alternative sites. Furthermore, his conclusions are not supported by citations to facts, data, modeling, or other analyses. Caldwell’s speculative and non-responsive discussion is irrelevant to the issues presented at this evidentiary hearing.

D. Caldwell’s Testimony Was Not Submitted in A Timely Manner.

Closing testimony was due by 5:00 P.M. on Friday, July 14, 2017. Caldwell’s testimony was filed after 5:00 P.M. on Friday. The document was not timely docketed, and so not available for review by the parties and the public, until Monday, July 17, 2017.

¹ Caldwell’s testimony incorrectly states that the California ISO is evaluating the “feasibility” of preferred resource alternatives. In fact, California ISO explicitly stated, “The procurement viability, timing and cost of developing these resources is not part of the scope of the study.” (TN 219979.)

IV. Conclusion

For the above-stated reasons, Staff respectfully requests the Committee grant the Motion to Strike “Closing Supplemental Testimony of James H. Caldwell” from the Puente Power Project evidentiary record to ensure the integrity of the proposed Puente Power Project proceeding.

Date: July 21, 2017

Respectfully submitted,

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Staff