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<b>TN #:</b>	220355
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9 State of California  
10 Energy Resources  
11 Conservation and Development Commission

12 In the Matter of:  
13 Application for Certification  
14 for the PUENTE POWER PROJECT

Docket No. 15-AFC-01

APPLICANT'S MOTION TO STRIKE  
TESTIMONY OF CHRIS CAMPBELL AND  
RELATED EXHIBITS

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16 Pursuant to Title 20, California Code of Regulations ("CCR") § 1211.5(a) and  
17 § 1212(b)(2), Applicant hereby requests that the Committee exercise its authority under Title 20,  
18 CCR § 1203(c) to exclude from the evidentiary record the proposed testimony of Chris Campbell  
19 identified in intervenor City of Oxnard's Prehearing Statement, as well as City of Oxnard's  
20 proposed Exhibit Nos. 3063 (TN #219169), 3064 (TN #219884) and 3070 (TN #220298), all of  
21 which appear to be sponsored by Mr. Campbell (collectively, the "Campbell Testimony").<sup>1</sup> This  
22 Motion to Strike is based on the following grounds: i) the Campbell Testimony is beyond the  
23 scope of the upcoming evidentiary hearings; and ii) the Campbell Testimony was not filed with  
24 the California Energy Commission Dockets Office on a timely basis as required by numerous  
25 Committee Orders.

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28 <sup>1</sup> See, City of Oxnard Prehearing Statement (TN #220305), p. 2 and Attachment A.

1           **A.     The Campbell Testimony is Outside the Scope of the Upcoming Evidentiary**  
2           **Hearings**

3           **1.     The Campbell Testimony Pertains to Riverine Flooding from the Santa**  
4           **Clara River**

5           The proposed documentary evidence, which consists of a “Technical Memorandum” (TN  
6 #219169; proposed Exhibit No. 3063), a link to supporting figures (TN #219884; proposed  
7 Exhibit No. 3064), and Mr. Campbell’s resume (TN #220298; proposed Exhibit No. 3070)  
8 appears to focus exclusively on the topic of riverine flooding from the Santa Clara River. The  
9 Introduction of proposed Exhibit No. 3063, “Technical Memorandum Mandalay Generating  
10 Station Modeling Support” (TN #219169), states as follows:

11                           *cbec, inc. eco engineering (cbec) has been requested by the State*  
12                           *Coastal Conservancy (SCC) to update the previously developed*  
13                           *MIKE FLOOD hydrodynamic model for the Santa Clara River.*  
14                           *The model was originally developed to identify levee setback or*  
15                           *floodplain reconnection opportunities along the Santa Clara River*  
16                           *upstream of Harbor Blvd. The model has now been updated to*  
17                           *more accurately characterize the potential risks of flooding at the*  
18                           *Mandalay Generating Station (MGS) near Oxnard, CA due to a*  
19                           *range of combined coastal and river flood conditions, to include*  
20                           *the effects of sea level rise and climate change. More specifically,*  
21                           *the objectives of this flood risk analysis are to:*

- 17                           1. *Address model inundation questions posed by the California*  
18                            *Energy Commission (CEC) on March 30, 2017 to a SCC letter*  
19                            *dated February 6, 2017.*
- 19                           2. *Update the 2D hydrodynamic modeling prepared by*  
20                            *cbec/Stillwater in 2011 for SCC to better evaluate the potential*  
21                            *risk of coastal and river flooding at the MGS to include the*  
22                            *effects of sea level rise and changes in river flows due to climate*  
23                            *change.<sup>2</sup>*

22           **2.     The Scope of the Upcoming Evidentiary Hearings is**  
23           **Limited to Coastal Flooding**

24           The Committee has been very clear that the scope of the upcoming evidentiary hearings,  
25 including the permissible scope of any additional testimony or documentary evidence, is limited  
26 to the subtopics specifically identified in the March 10, 2017 “Committee Orders for Additional

27 \_\_\_\_\_  
28 <sup>2</sup> TN #219169, p. 2.

1 Evidence and Briefing Following Evidentiary Hearings” (TN #216505) (the “March 10 Orders”).  
2 As stated by the Committee in its June 9, 2017 “Committee Ruling on Motion to Exclude  
3 Caldwell Testimony and Acceptance of ISO Special Study Offer” (the “June 9 Order”):

4 *At the conclusion of the Evidentiary Hearings in February, the*  
5 *Committee closed the record on all topics [citing to February 10,*  
6 *2017 Transcript, TN #216594, p. 375, lines 9 – 25]. By requesting*  
7 *additional evidence of a limited scope in its March 10 Orders, the*  
8 *Committee reopened the record only to receive the additional*  
9 *evidence it requested. It was not an invitation to submit additional*  
10 *evidence on unrelated topics.*<sup>3</sup>

11 Furthermore, in its May 11, 2017 “Revised Committee Scheduling Order” (TN #217550)  
12 (the “May 11 Order”), and the June 9 Order, the Committee made clear that in order for  
13 additional evidence to be admissible, it must be directly responsive to the specific subtopics  
14 identified in the March 10 Orders, and not merely tangentially related. In its May 11 Order, the  
15 Committee stated “[a]s to each of those topics [identified in the March 10 Orders], the  
16 Committee’s request for additional evidence was limited to specific subtopics.”<sup>4</sup> The Committee  
17 applied this strict standard to deny admission of testimony offered by the City on the topic of  
18 “Alternatives” that pertained to alternatives to the Project, but was not within the scope of the  
19 identified subtopic of the “effects of smaller turbine(s) on aviation at alternative sites.”<sup>5</sup>

20 With respect to the topic of “Soil & Water Resources,” the March 10 Orders requested  
21 that the following additional evidence be developed and offered:

22 *2. Regarding CoSMoS 3.0, describe:*

- 23 *a. The relevant validation process for the model and the current*  
24 *state of that process;*  
25 *b. Any relevant feedback received on the validity of the CoSMoS*  
26 *3.0 model to present, and the degree to which feedback has*  
27 *resulted in modifications to the model; and*  
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26 <sup>3</sup> TN #218016, p. 5.

27 <sup>4</sup> TN #217550, p. 2, footnote 4.

28 <sup>5</sup> TN #218016, p. 6.

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*c. How the model currently incorporates sand, beach, and dune erosion/accretion, and beach angle change. If it does not, are there any plans to incorporate these issues in the future?*

*3. Within 30 days of the filing of these orders, Energy Commission Staff shall conduct a noticed workshop to discuss and identify the best approach or approaches to supplement the assessment of **coastal flooding risk** for the Puente Power Plant through 2050. The workshop should include, but is not limited to, discussion of the following:*

- a. The utility and applicability of using CoSMoS 1.0 instead of, or as a supplement to, the analysis conducted using CoSMoS 3.0;*
- b. The utility and applicability of using CoSMoS 3.0 as it was used in the FSA or modified in some way, including by utilizing any additional model information that may have become available since the publication of the FSA;*
- c. The utility and applicability of using a combination of CoSMoS 1.0 and 3.0;*
- d. The utility and applicability of utilizing Dr. Revell’s projection of 2050 conditions as the worst case for flood/sea-level rise risk.*

*After identifying the best approach or approaches for assessing **coastal flooding risk**, Energy Commission Staff shall conduct an analysis using that approach or approaches, taking into consideration the effects of potential dune erosion, beach erosion, and change in beach angle. The analysis should also discuss how the modeled level of risk compares with the flooding risk identified in Federal Emergency Management Agency maps that reflect current conditions with 2 feet of sea level rise. The other parties may prepare their own analysis using either staff’s identified approach(es) or those of their choosing.*

*Invited workshop participants should include, but are not limited to, all parties; U.S. Geological Survey, California Coastal Commission; Coastal Conservancy; Ocean Protection Council; and Energy Commission, Research & Development Division staff.*

- 4. Identify and discuss the feasibility of mitigation necessary to maintain reliability of the proposed project against flood water levels identified by the methodologies analyzed as described above.*
- 5. Identify and discuss any mitigation measures in addition to those identified under item 4, above, necessary to maintain reliability of the proposed project if the beach and dunes in front of the project substantially narrow or erode, for example as caused by diminished sand replenishment or major storm events (emphasis added).<sup>6</sup>*

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<sup>6</sup> TN #216505, p. 2-3.

1 The CoSMoS model, which is at the heart of the request for additional evidence, is the  
2 “Coastal Storm Modeling System” developed by the U.S. Geologic Survey to provide “detailed  
3 predictions (meter-scale) of **coastal flooding** due to both future sea level rise and storms  
4 integrated with long-term coastal evolution (i.e., beach changes and cliff/bluff retreat) for the  
5 southern California region, from Point Conception (in Santa Barbara County) to Imperial Beach,  
6 CA” (emphasis added).<sup>7</sup> The emphasis on validation of CoSMoS, and numerous other  
7 references to coastal flooding in the language reproduced above, make it clear that the relevant  
8 subtopic under “Soil and Water Resources” in the March 10 Orders is “*coastal* flooding.”

9 The Committee has confirmed the scope of the subtopic in multiple subsequent  
10 Committee Orders. In its July 10, 2017 “Notice of Evidentiary Hearing and Related Orders,” the  
11 Committee states:

12 *The subjects to be discussed are described in the March 10, 2017*  
13 *Committee-issued Orders for Additional Evidence and Briefing*  
14 *Following Evidentiary Hearings, which, ordered the Applicant and*  
15 *Energy Commission Staff (Staff) to submit additional evidence*  
16 *regarding specified subtopics related to biological resources,*  
***coastal flooding**, the effects of smaller turbine(s) on aviation at*  
*alternative sites, and the Proposed Project’s eventual closure*  
*(emphasis added).<sup>8</sup>*

17 In its June 20, 2017 “Committee Orders Extending ISO Study Time, Denying City Request for  
18 Additional Time and Revised Committee Schedule,” the Committee states:

19 *On March 10, 2017, the Committee issued Orders for Additional*  
20 *Evidence and Briefing Following Evidentiary Hearings, which,*  
21 *among other things, ordered the Applicant and Energy*  
22 *Commission Staff (Staff) to submit additional evidence regarding*  
23 *specified subtopics related to biological resources, **coastal***  
***flooding**, the effects of smaller turbine(s) on aviation at alternative*  
*sites, and the Proposed Project’s eventual closure (emphasis*  
*added).<sup>9</sup>*

24 The schedules attached to the Committee’s May 11, 2017 “Revised Committee Scheduling  
25 Order” and its June 20, 2017 “Committee Orders Extending ISO Study Time, Denying City

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26 <sup>7</sup> [https://walrus.wr.usgs.gov/coastal\\_processes/cosmos/socal3.0](https://walrus.wr.usgs.gov/coastal_processes/cosmos/socal3.0).

27 <sup>8</sup> TN #220100-1. p. 2.

28 <sup>9</sup> TN #219815, p. 1.

1 Request for Additional Time and Revised Committee Schedule,” both identify the scope of  
2 supplemental testimony to be submitted by June 15, 2017 (opening testimony) and July 14, 2017  
3 (closing testimony) as follows: “Soil and Water Resources – **coastal flooding analysis**  
4 (emphasis added).”<sup>10</sup>

5 **3. Riverine Flooding Analysis is Distinct from Coastal Flooding Analysis**  
6 **and has been Addressed as a Separate Subtopic in these Proceedings**

7 Riverine flooding was previously addressed in testimony submitted by the CEC Staff  
8 (e.g., Ex. 2000-2001, pp. 4.11-2, 4.11-31, 4.11-35-36), the City of Oxnard (e.g., Ex. 3025, p. 24),  
9 and the Applicant (e.g., Ex. 1000-1035, p. 4.15-12 and Appendix N-2 and TN#215441,  
10 Testimony of Phil Mineart, pp. 4-5). As discussed above, except for the specific additional  
11 evidence identified in the March 10 Orders, which the Committee has interpreted to include only  
12 the specifically identified subtopics, the evidentiary record in these proceedings remains closed.  
13 This includes with respect to any additional evidence pertaining to riverine flooding. The  
14 Campbell Testimony on riverine flooding is therefore outside the scope of the upcoming  
15 evidentiary hearings and must be excluded from the evidentiary record.<sup>11</sup>

16 **B. The Campbell Testimony Was Filed on an Untimely Basis and in a Manner**  
17 **that Failed to Put Any Parties on Notice that it Might be Introduced at the**  
18 **Evidentiary Hearings**

19 Even if the Campbell Testimony was within the scope of the upcoming evidentiary  
20 hearings, which it is not, it was not filed with the CEC Dockets Office on a timely basis, and  
21 must be excluded on that basis.

22 The May 11, 2017 Revised Committee Scheduling Order provides for the submission of  
23 supplemental testimony from all parties on all four subtopics within the scope of the March 10  
24 Orders by June 15, 2017, with the exception of the Applicant’s filing of the focused biological  
25 survey results by June 23, 2017. Responsive testimony was due no later than July 14, 2017.

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26 <sup>10</sup> TN #217550, p. 4; TN #219815, p. 5.

27 <sup>11</sup> Applicant reserves the right to raise other objections to admission of the Campbell Testimony in the  
28 event that this Motion to Strike is denied.

1 These deadlines were affirmed in the June 9, 2017 “Committee Ruling on Motion to Exclude  
2 Caldwell Testimony and Acceptance of ISO Special Study Offer” (TN #218016), and again in  
3 the June 20, 2017 “Committee Orders Extending ISO Study Time, Denying City Request for  
4 Additional Time and Revised Committee Schedule Committee Orders Extending ISO Study  
5 Time, Denying City Request for Additional Time and Revised Committee Schedule” (TN  
6 #219815). The Campbell Testimony is not responsive to the testimony of any other Party, and if  
7 its filing were proper at all, it would have been due on or before June 15, 2017. The “Technical  
8 Memorandum” (TN #219169) was filed on June 16, 2017, and the link to supporting figures (TN  
9 #219884) was filed on June 23, 2017, both after the filing deadline that would be applicable if  
10 the testimony was properly within the scope of the upcoming evidentiary hearings.

11 Furthermore, prior to the filing of the City’s Prehearing Statement, there was no  
12 indication whatsoever, that any Party intended to introduce the Campbell Testimony at the  
13 upcoming evidentiary hearings. Both the “Technical Memorandum” (TN #219169) and the link  
14 to supporting figures (TN #219884) were docketed by the CEC Staff, presumably after being  
15 provided to the CEC Staff by the State Coastal Conservancy. The Technical Memorandum  
16 indicates that the analysis was completed by cbec, inc. eco engineering (“cbec”) at the request of  
17 the State Coastal Conservancy (SCC). cbec is not a Party to these proceedings, and prior to  
18 filing of the City’s Prehearing Statement on July 21, 2017, had never been identified as being  
19 retained by a Party. There was nothing about the documents to suggest that they were connected  
20 to any of the Parties or their counsel, or might be offered by one of the Parties as evidence. It  
21 was not until the filing of the City of Oxnard’s Prehearing Statement on July 21, 2017 that the  
22 other Parties were made aware that the City intended to sponsor Mr. Campbell as a witness and  
23 introduce the cbec analysis as exhibits.

24 Thus, the Campbell Testimony was filed after the applicable deadline, and the manner in  
25 which it was filed in no way suggested that it might be offered into evidence, or that the Parties  
26 should prepare responsive filings, or prepare to cross-examine a sponsoring witness. Under  
27 these circumstances, it would be highly prejudicial to allow this unexpected, complex technical  
28 analysis into the record.



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**C. Conclusion**

Because the Campbell Testimony is outside the scope of the March 10 Orders and the upcoming evidentiary hearings, the record on the subtopic of riverine flooding is closed, and the materials were not timely filed in any event, the Campbell Testimony must be excluded from the evidentiary record.

DATED: July 25, 2017

Respectfully submitted,

*/s/ Michael J. Carroll*

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