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<b>Docket Number:</b>	15-AFC-01
<b>Project Title:</b>	Puente Power Project
<b>TN #:</b>	220358
<b>Document Title:</b>	Motion to Strike Declaration of Chris Williamson and Testimony of Chris Williamson re Fifth and Del Norte Inland Site
<b>Description:</b>	N/A
<b>Filer:</b>	Paul Kihm
<b>Organization:</b>	Latham & Watkins LLP
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	7/25/2017 12:04:27 PM
<b>Docketed Date:</b>	7/25/2017

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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

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APPLICANT'S MOTION TO STRIKE  
DECLARATION OF CHRIS WILLIAMSON  
AND TESTIMONY OF CHRIS WILLIAMSON  
RE: FIFTH AND DEL NORTE INLAND SITE

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 following proposed exhibits offered  
19 by intervener City of Oxnard: i) "Declaration of Chris Williamson" (TN #216733; proposed  
20 Exhibit No. 3060) (beach photos); and ii) Testimony of Chris Williamson re: Fifth and Del Norte  
21 Inland Site (TN #220229; proposed Exhibit No. 3069) (alternative site photos) (proposed Exhibit  
22 Nos. 3060 and 3069 are collectively referred to herein as the "Williamson Photographs").

23 **A. *Standards for Admissibility of Additional Evidence at Upcoming Evidentiary***  
24 ***Hearings***

25 In addition to meeting generally applicable standards for admissibility, including  
26 relevancy, any additional evidence offered by Parties at the upcoming evidentiary hearings must  
27 fall within the scope of the subtopics identified in the March 10, 2017 "Committee Orders for  
28 Additional Evidence and Briefing Following Evidentiary Hearings" (TN #216505) (the "March

1 10 Orders”). As stated by the Committee in its June 9, 2017 “Committee Ruling on Motion to  
2 Exclude Caldwell Testimony and Acceptance of ISO Special Study Offer” (the “June 9 Order”):

3 *At the conclusion of the Evidentiary Hearings in February, the*  
4 *Committee closed the record on all topics [citing to February 10,*  
5 *2017 Transcript, TN #216594, p. 375, lines 9 – 25]. By requesting*  
6 *additional evidence of a limited scope in its March 10 Orders, the*  
7 *Committee reopened the record only to receive the additional*  
8 *evidence it requested. It was not an invitation to submit additional*  
9 *evidence on unrelated topics.*<sup>1</sup>

7 Furthermore, in its May 11, 2017 “Revised Committee Scheduling Order” (TN #217550)  
8 (the “May 11 Order”), and the June 9 Order, the Committee made clear that in order for  
9 additional evidence to be admissible, it must be directly responsive to the specific subtopics  
10 identified in the March 10 Orders and not merely tangentially related. In its May 11 Order, the  
11 Committee stated “[a]s to each of those topics [identified in the March 10 Orders], the  
12 Committee’s request for additional evidence was limited to specific subtopics.”<sup>2</sup> The Committee  
13 applied this strict standard to deny admission of testimony offered by the City on the topic of  
14 “Alternatives” that pertained to alternatives to the proposed Project, but was not within the scope  
15 of the identified subtopic of the “effects of smaller turbine(s) on aviation at alternative sites.”<sup>3</sup>

16 With respect to the topic of “Soil & Water Resources,” which according to Attachment A  
17 of the City’s Prehearing Statement is the subject area to which proposed Exhibit No. 3060  
18 pertains, the March 10 Orders requested that the following additional evidence be developed and  
19 offered:

20 *2. Regarding CoSMoS 3.0, describe:*

- 21 *a. The relevant validation process for the model and the current*  
22 *state of that process;*  
23 *b. Any relevant feedback received on the validity of the CoSMoS*  
24 *3.0 model to present, and the degree to which feedback has*  
25 *resulted in modifications to the model; and*  
*c. How the model currently incorporates sand, beach, and dune*  
*erosion/accretion, and beach angle change. If it does not, are*

26 <sup>1</sup> TN #218016, p. 5.

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

28 <sup>3</sup> TN #218016, p. 6.

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*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.<sup>4</sup>*

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<sup>4</sup> TN #216505, p. 2-3.

1 With respect to the topic of “Alternatives,” which according to Attachment A of the  
2 City’s Prehearing Statement is the subject area to which proposed Exhibit No. 3069 pertains, the  
3 March 10 Orders requested that the following additional evidence be developed and offered:

4 *Analyze the use of one or more smaller (50 – 100 MW) turbines*  
5 *instead of the larger turbine proposed by the applicant at the two*  
6 *alternative sites analyzed in the Final Staff Assessment, the Del*  
7 *Norte/Fifth Street Off-site Alternative and the Ormond Beach Area*  
8 *Off-site Alternative, to determine whether it is feasible to reduce or*  
9 *eliminate the previously identified potential impacts on aviation.<sup>5</sup>*

10 **B. *Failure of the Williamson Photographs to Satisfy the Standards for***  
11 ***Admissibility***

12 Proposed Exhibit 3060 consists of a one-page declaration accompanied by four  
13 photographs taken on the beach in the vicinity of the Mandalay Generating Station property, and  
14 an aerial photograph that purports to show the location from which each of the photographs was  
15 taken. Each photograph includes a brief caption.

16 Proposed Exhibit 3069 consists of a one-page declaration accompanied by 11  
17 photographs that purportedly pertain in some way to the Del Norte/Fifth Street Off-Site  
18 Alternative analyzed by the CEC Staff in its Final Staff Assessment, and an aerial photograph  
19 that purports to show the location from which each of the photographs was taken. Each  
20 photograph includes a brief caption.

21 Nothing in the declarations accompanying either of the two proposed exhibits indicates  
22 that Mr. Williamson has any specialized training in photography. None of the photographs are  
23 date or time stamped. The aerial photographs depict, at best, the approximate location from  
24 which each of the photographs was taken, but do not provide any coordinates to establish the  
25 precise location, including elevation, from which the photographs were taken, or the precise  
26 direction from which the photographs were taken.

27 <sup>5</sup> TN #216505, p. 3.

1 With respect to proposed Exhibit No. 3060 in particular, the photographs are tightly  
2 framed, making it difficult for the viewer to place what it being depicted into the broader context  
3 and perspective. No scale or other mechanism is provided in the photographs depicting distances  
4 between, or changes in elevation of, elements in the foreground, mid-ground and background of  
5 the photographs, which further impedes the ability to place what is being depicted into  
6 perspective. For these reasons, it cannot be determined whether or not each photograph is a fair  
7 and accurate representation of what it purports to depict, which is the generally applicable  
8 standard for admissibility of photographs.

9 Neither of the proposed exhibits includes any further explanation regarding their  
10 relevancy or how they fall within the scope of the March 10 Orders. The City's Prehearing  
11 Statement indicates that the Williamson Photographs will be submitted as written testimony  
12 only, meaning presumably that Mr. Williamson does not intend to provide any further testimony  
13 at the evidentiary hearings to authenticate the Williamson Photographs, or establish how they are  
14 relevant to these proceedings and within the scope of permissible evidence established by the  
15 March 10 Orders.

16 With respect to each photograph included within the Williamson Photographs, the City  
17 has failed to: i) properly authenticate the photograph; ii) establish that the photograph is a fair  
18 and accurate representation of what it is attempting to depict; iii) establish the relevancy of the  
19 photograph to these proceedings; and iv) establish that the photograph is within the scope of  
20 evidence that is admissible pursuant to the March 10 Orders. For these reasons, Proposed  
21 Exhibit No. 3060 and proposed Exhibit No. 3069 cannot be admitted into evidence.

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DATED: July 25, 2017

Respectfully submitted,

*/s/ Michael J. Carroll*

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