

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	221111
Document Title:	Response to Applicant's Motion to Strike Exhibits of Intervenor Center for Biological Diversity
Description:	N/A
Filer:	Kevin Bundy
Organization:	Center for Biological Diversity
Submitter Role:	Intervenor
Submission Date:	9/11/2017 9:22:00 AM
Docketed Date:	9/11/2017

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

DOCKET NO. 15-AFC-01

APPLICATION FOR CERTIFICATION
OF THE PUENTE POWER PROJECT

**CENTER FOR BIOLOGICAL DIVERSITY'S RESPONSE TO APPLICANT'S MOTION TO
STRIKE PROPOSED EXHIBITS OF INTERVENER CENTER FOR BIOLOGICAL
DIVERSITY AND OBJECTION TO PROPOSAL TO GO BEYOND THE SCOPE OF THE
UPCOMING EVIDENTIARY HEARINGS**

September 11, 2017

Lisa T. Belenky, Senior Attorney
Kevin P. Bundy, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 510-844-7100
lbelenky@biologicaldiversity.org
kbundy@biologicaldiversity.org

Response to Applicant's Motion to Strike Proposed Exhibits of Intervenor Center for Biological Diversity and Objection to Proposal to Go Beyond the Scope of the Upcoming Evidentiary Hearings

1

Applicant moves to strike two proposed exhibits filed by the Center for Biological Diversity (“Center”) in response to the Moorpark Sub-Area Local Capacity Alternative Study (TN # 220813) (hereafter “CAISO Study”), and objects to addressing air quality and greenhouse gas issues in any form at the upcoming evidentiary hearings.² For the reasons set forth below, the motion should be denied and the objection overruled.

The Applicant moves to strike two proposed exhibits filed by the Center as untimely based on its view that no exhibits could be filed after August 30, 2017 deadline for testimony on the CAISO Study. The Committee Order regarding the CAISO study stated only that “[t]estimony responding to the study is due on August 30, 2017. Prehearing statements are due on September 7, 2017, and the Evidentiary Hearing regarding the special study will be held on September 14, 2017 in Oxnard.”³ Accordingly, although the Order did not provide for any written rebuttal testimony on the CAISO study testimony, it certainly did not preclude parties from offering rebuttal testimony at the hearing; indeed, precluding rebuttal testimony altogether would be entirely improper.

All of the additional exhibits listed in the Center’s prehearing statement were identified by Dr. Karpa as relevant to his rebuttal of issues raised by the Applicant’s witness, Brian Theaker, in his testimony on the CAISO study filed August 30, 2017.⁴ These additional exhibits are relevant to Dr.

¹ The Center submits this response pursuant to Title 20 of the Code of California Regulations, section 1211.5(a), which provides parties with the opportunity to respond to motions in writing according to a schedule set by the presiding member. The Committee’s August 25, 2017 Order directed parties to file motions regarding testimony and evidence responding to the CAISO study by September 8, 2017, but the Order did not address written responses to motions. Accordingly, Section 1211.5(a) should govern, at least to the extent that written responses to motions should be considered within the schedule set by the presiding member. Moreover, in considering motions to exclude evidence, the Committee must consider not only “hearing efficiency,” but also “fairness to the parties” and “adequacy of the record.” (Cal. Code Regs., tit. 20, § 1212(b)(2).) Disallowing responses to motions might seem efficient, but it would be manifestly unfair to the parties and would undermine the Committee’s ability to make evidentiary decisions that result in an adequate record..

² Applicant’s Motion to Strike Proposed Exhibits of Intervenor Center for Biological Diversity and Objection to Proposal to Go Beyond the Scope of the Upcoming Evidentiary Hearings (TN # 221105).

³ June 20, 2017 Committee Orders (TN # 219815) at 3.

⁴ Expert Declaration of Brian Theaker in Response to CAISO Moorpark Sub-Area Local Capacity Alternative Study (TN # 220971).

Karpa's rebuttal of Mr. Theaker's assertions regarding to the cost of operations and maintenance of batteries, battery lifespan, and replacement costs for batteries, as well as estimates of the externalized costs to human health which are relevant to a fair cost comparison of Puente and other alternatives in the CAISO study.

Indeed, the Applicant has identified *only one* of the Center's proposed exhibits (Exhibit 7040) as objectionable.⁵ This document is a recent article from the journal *Asthma Research and Practice* entitled "Asthma costs and social impact," (Nunes et al.), which attempted to monetize the costs of asthma to societies:

In recent decades, both asthma prevalence and incidence have been increasing worldwide, not only due to the genetic background, but mainly because of the effect of a wide number of environmental and lifestyle risk factors.

In many countries noncommunicable diseases, like asthma, are not yet considered a healthcare priority. This review will analyze and discuss disparities in asthma management in several countries and regions, such as access to healthcare human resources and medications, due to limited financial capacity to develop strategies to control and prevent this chronic disease.

This review tries to explore the social and economic burden of asthma impact on society. Although asthma is generally accepted as a costly illness, the total costs to society (direct, indirect and intangible asthma costs) are difficult to estimate, mainly due to different disease definitions and characterizations but also to the use of different methodologies to assess the asthma socio-economic impact in different societies.

The asthma costs are very variables from country to country, however we can estimate that a mean cost per patient per year, including all asthmatics (intermittent, mild, moderate and severe asthma in Europe is \$USD 1,900, which seems lower than USA, estimated mean \$USD 3,100.

This article was identified by Dr. Karpa as relevant to his rebuttal testimony at hearing regarding cost issues raised in the Theaker testimony, which did not take into account externalized costs such as impacts to human health.

⁵ The Applicant's motion seeks to strike both TN # 221082 and TN # 221085 (Motion to Strike and Objection at 2), but these transaction numbers refer to the same document. Due to technical problems with the docket system which could not read the PDF as initially filed, this exhibit was inadvertently docketed twice under TN # 221082 and TN # 221085.

The Applicant failed to object to any of the other exhibits docketed and/or listed on the Center's prehearing statement; accordingly, any objection to the Center's other exhibits is waived. The Center's other exhibits are proper in any event. Proposed Exhibits 7037 (Battery Energy Storage Study for the 2017 IRP, PacifiCorp⁶) and 7038 (Abe et al. Lifetime Prediction for Heavy-duty Lithium-ion Batteries⁷), were both identified by Dr. Karpa as relevant to his rebuttal testimony regarding the cost of operations and maintenance of batteries, battery lifespan, and replacement costs for batteries. These cost issues were raised in the Theaker testimony on the Cal ISO study (TN#220971). Dr. Karpa identified proposed Exhibit 7039 as relevant for the same reasons—fair comparison of the costs of alternatives—that Exhibit 7040 is relevant. Proposed Exhibit 7039 is an article from the British medical journal *The Lancet*, series on Energy and Health 2, entitled “Electricity generation and health,” (Markandya & Wilkinson),⁸ that assessed the costs of various types of energy production including natural gas in terms of human health including minor illness, serious illness and death.

Finally, Applicant complains that the Center's prehearing conference statement⁹ identifies air quality and GHG as issues for the evidentiary hearing, insisting that these issues are “outside the scope” of the CAISO Study.¹⁰ The objection is baseless for two reasons. First, a fair comparison of natural gas generation with the preferred alternatives discussed in the CAISO study has obvious implications for air pollution and greenhouse gas emissions. It would be absurd to preclude witnesses from discussing the environmental impacts that could be reduced or avoided by meeting local capacity requirements with low- or non-emitting preferred and distributed resources—issues squarely “within the scope” of the CAISO Study. Second, as discussed in the August 30, 2017 testimony of James

⁶ Available at <http://www.pacificorp.com/es/irp/irpsupport.html> and on the CPUC website at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M185/K575/185575935.PDF> (beginning at pdf 531).

⁷ Available at http://www.hitachi.com/rev/pdf/2012/r2012_06_108.pdf.

⁸ Available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(07\)61253-7/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(07)61253-7/fulltext).

⁹ As indicated on the docket log the Center's prehearing conference statement was submitted at 5:22 pm, however, what is not indicated there is that the tardiness of this filing was due to a technical problem. The Center attempted to file the prehearing conference statement at approximately 4:25 pm. Once we realized the filing had not gone through due to a technical malfunction we refiled the document as quickly as possible.

¹⁰ Motion to Strike and Objection (TN # 221105) at 2.

Caldwell, the CAISO Study contains important evidence regarding anticipated dispatch of the Puente project under real-world contingency conditions—evidence demonstrating that Puente will increase both criteria pollutant and greenhouse gas emissions.¹¹ The Applicant did not object to this portion of Mr. Caldwell’s testimony, instead focusing its vague objections solely on the “portions” of Mr. Caldwell’s testimony that purportedly discuss “additional proposed alternatives to the Project.”¹² These issues are not “outside the scope” of the CAISO Study, but rather squarely presented by the CAISO Study itself. It would be absurd to preclude witnesses and parties from discussing issues central to the assessment of significant environmental impacts, alternatives, and overrides, when the whole purpose of the CAISO Study was to better inform the Commission on those issues.

The Applicant invites this Committee to ignore facts that should guide reasoned decision-making. The Committee should decline the invitation. The Applicant’s motion should be denied and its objection overruled.

Dated: September 11, 2017

Respectfully submitted,

/s/ Lisa T. Belenky
Lisa T. Belenky, Senior Attorney
Kevin P. Bundy, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 510-844-7100
lbelenky@biologicaldiversity.org
kbundy@biologicaldiversity.org

¹¹ Testimony of James H. Caldwell Regarding The California Independent System Operator’s August 16, 2017, Moorpark Sub-Area Local Capacity Alternative Study (TN # 220974) at 5-7.

¹² Applicant’s Motion to Strike Portions of the James H. Caldwell Testimony in Response to CAISO Report (TN # 221106).