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Document Title:	Committee Ruling on Intervenor Motions to Exclude the Oral Testimony of Dawn Gleiter and Portions of the Oral Testimony, etc.
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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 RULING ON INTERVENOR MOTIONS TO EXCLUDE THE ORAL TESTIMONY OF DAWN GLEITER AND PORTIONS OF THE ORAL TESTIMONY OF RANBIR SEKHON

This Order addresses the requests¹ of Intervenors City of Oxnard, Environmental Coalition of Ventura County, Environmental Defense Center, Sierra Club Los Padres Chapter, and California Environmental Justice Alliance to exclude the oral testimony of Applicant's witness Dawn Gleiter in its entirety and portions of the oral testimony of Ranbir Sekhon, who testified at the Committee's request during an Evidentiary Hearing held on September 14, 2017.

For the reasons set forth below, the Committee assigned to the Puente Power Project² **AFFIRMS** its **DENIALS** of the motions to exclude first made during the September 14 Evidentiary Hearing.

During the September 14 Evidentiary Hearing, intervenors objected to and moved to strike Ms. Gleiter's oral testimony and portions of Mr. Sekhon's oral testimony. The objections were overruled and the motions were denied by the Committee during the hearing. On September 15, 2017, Intervenors Center for Biological Diversity, City of Oxnard, Environmental Coalition of Ventura County, Environmental Defense Center, Sierra Club Los Padres Chapter, FFIERCE, and California Environmental Justice Alliance filed a similar written motion to strike the testimony.³ The Applicant, NRG, filed its opposition to that written motion on September 18, 2017. In addition, the written motion was discussed during the September 18, 2017 Committee Conference.

¹ The requests are made pursuant to California Code of Regulations, title 20, section 1215(a) for a written ruling after oral rulings are made during a proceeding or regarding requests deemed denied by the failure of the presiding officer to make a ruling prior to the end of a hearing under section 1211.5.

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 TN 221191.

The purpose of the September 14 Evidentiary Hearing was to consider a California Independent System Operator (California ISO) study⁴ of whether the Local Capacity Requirements (LCR) in the Moorpark subarea could be met by a combination of preferred resources in place of the proposed Puente Power Project. Neil Millar of the California ISO testified that “the study does demonstrate that there are technologically feasible alternatives relying on preferred resources that could meet the need otherwise met by the proposed Puente Project. These alternatives meet the relevant mandatory planning standards the ISO considers in our studies of grid reliability.”⁵ The study offered information about the relative costs of that solution versus the costs of the proposed Puente Power Project. The study explicitly did not discuss or conclude whether energy storage systems could be procured, installed, and on line by 2021 when two coastal power plants are required to shut down.

The intervenors disagreed with the study’s conclusions regarding costs. They provided testimony to the effect that a combination of preferred resources, including resources other than storage such as synchronous condensers, demand response, and solar photovoltaic, could meet the Moorpark subarea LCR and be on line by 2021.

Ms. Gleiter’s testimony included her opinion as to whether there were sufficient demand reduction and other preferred resources available to meet the Moorpark subarea LCR and whether the existing Mandalay Generating Station Units 1 and 2, owned by the Applicant, could be retrofitted as synchronous condensers.

Mr. Sekhon’s testimony was in part about the information and assumptions that Southern California Edison (SCE), his employer, gave to the ISO as part of the study’s design. He also commented on the difficulty of obtaining the necessary approvals, soliciting and contracting for and constructing a portfolio of preferred resources by 2021; it is this portion of his testimony that the intervenors seek to exclude.

Neither Ms. Gleiter nor Mr. Sekhon filed written testimony in advance of the September 14 Evidentiary Hearing. However, Applicant’s timely filed Prehearing Statement indicated that “Ms. Gleiter will provide oral testimony regarding the viability of preferred resources alternatives to meet local reliability needs.”⁶ This Prehearing Statement provided notice to the parties both that Ms. Gleiter would be testifying and the topics upon which she would testify.

Mr. Sekhon’s attendance at the Evidentiary Hearing was secured through e-mails exchanged between Hearing Officer Paul Kramer and counsel for SCE.⁷ Hearing Officer Kramer’s initial e-mail indicated a desire for witnesses from SCE who could “provide SCE’s perspective on” “[t]he relative costs, timing, and feasibility of alternative technologies.”⁸ That e-mail was filed on September 11, 2017, following the filing of party Prehearing Statements from which the Committee noticed that no party had identified

⁴ Ex. 9000 (TN 220813).

⁵ 9-14-17 Transcript, p. 14, lns. 9-15.

⁶ TN 221083, p. 2.

⁷ TNs 221108, 221117, 221119, 221138, and 221141.

⁸ TN 221108.

any witnesses from SCE. It provided notice to the parties that the participation of SCE at the Evidentiary Hearing was being requested by the Committee as the Committee is allowed to do under California Code of Regulations, title 20, section 1203.⁹

Intervenors assert that the oral testimony must be excluded because the witnesses were required to first file it in written form. The Committee's requirement that "additional evidence in response to the California ISO Study be filed by August 30, 2017,"¹⁰ applies to written testimony and documentary evidence. It does not require that all testimony be in writing.

Intervenors assert that they were not prepared to discuss the feasibility of getting preferred resources on line by 2021, and were therefore prejudiced. This assertion finds no support in this record. Intervenors themselves question the need for the proposed Puente Power Project and assert that preferred resources should supplant it. The City of Oxnard's witness, James Caldwell, requested during public comment at a California ISO Board Meeting,¹¹ that the California ISO volunteer to conduct the study the Committee has now taken into evidence. Mr. Caldwell's testimony in response to the study proposes both the conversion of the existing Mandalay Generation Station Units 1 and 2 into synchronous condensers, and asserts that preferred resources can be procured and on line by 2021.¹² Ms. Gleiter's testimony responds directly to both aspects of Mr. Caldwell's testimony. Mr. Sekhon's testimony responds to the second aspect.

The Energy Commission certifies (permits) the construction and operation of thermal power generating facilities of 50 MW or greater. The Energy 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 cannot be mitigated to insignificant levels, certification cannot be approved unless the Energy Commission finds as follows:

⁹ "[T]he chair or presiding member . . . shall have the power to: (a) Request and secure information as is relevant, or reasonably calculated to lead to discovery of relevant information, in carrying out the purposes of the proceeding." (Cal.Code Regs., title 20, §1203.)

¹⁰ TN 220900, p. 3.

¹¹ TN 217720.

¹² TN 220974. In addition Matt Owens of STEM and Andy Schwartz of Tesla described their energy storage systems as available and in use now. (9-14-17 Transcript, pp. 168-181.)

(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.

Whether the project alternatives proposed by the intervenors are feasible is clearly relevant to override determinations. Feasibility includes questions of relative cost and timing—can they be on line in the required time? That those questions might be discussed regarding the proposed Puente Power Project in connection with a study on the technical feasibility of an alternative should surprise no one.

The intervenors also object that Mr. Sekhon exceeded the scope of testimony defined by his counsel, Tristan Reyes Close. Ms. Reyes Close said that both Mr. Sekhon and Mr. Garry Chinn would themselves define the scope of their individual testimony.¹³ We do not see that Mr. Sekhon made any such statement. But even if he did so, it is up to him to filter his responses. In any event, SCE’s counsel’s definition does not bind the Committee.

¹³ September 14, 2017 Transcript (TN 221283), p. 101, Ins 7-15.

Conclusion

The oral testimony of Ms. Gleiter and Mr. Sekhon were not required to be pre-filed in writing and are relevant in this proceeding.

Therefore, the Committee's **DENIALS** of Motions to Strike or Exclude the testimony made during the September 14 Evidentiary Hearing are **AFFIRMED**.¹⁴

Dated: September 26, 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

¹⁴ The September 15 written motion, to the extent that it extends beyond the oral motions made during the Evidentiary Hearing is also **DENIED**. The proper avenue for addressing rulings made during a hearing is to request a written ruling and then, if dissatisfied, appeal that ruling as provided in California Code of Regulations, title 20, section 1215.