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FFIERCE Opening Brief on Alternatives

FFIERCE understands the analysis of feasible alternatives to the Puente Power Project (P3) to be the critical, final step in determining the need and advisability of the project. Moreover, FFIERCE suggests that CEC has responsibility to make its determination based on the analysis of alternatives, particularly in relation to environmental justice considerations. When the CPUC approved the contract for P3, declining to defer their decision until the conclusion of CEC's CEQA analysis, CPUC stated that CEC retained authority to require mitigation and alternatives.¹ Alternatives are understood to include alternative sites, alternative operating conditions and alternative technologies to meet the need the local need—the issue at hand here.

Moreover, the CPUC explicitly stated in its decision: “Environmental justice issues are also applicable within the CEC’s CEQA review. The CEC will more fully develop the environmental justice and siting issues in the CEC Docket 15-AFC-01....In future procurement applications, we intend to explicitly consider environmental justice issues as part of our review of procurement contracts.” In sum, the PUC effectively passed responsibility to the CEC to analyze environmental justice concerns and alternatives, individually and as they relate to each other, as required under CEQA, for this matter.

CEQA states that there can be “no approval or adoption of a proposed activity ‘if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse [environmental] effect’ (§ 21080.5, subd. (d)(2)(A))....”² In response to the local community urging CEC to accept an offer from CAISO (California Independent Systems Operator) to conduct a study of alternatives to P3, the Committee ordered the study to be prepared.³

On August 26, 2017 CAISO submitted its findings, reporting several alternatives to be feasible in meeting the local reliability needs. Specifically, CAISO reported it had “quantifie[d] the amount of preferred resources, energy storage, and/or reactive power devices that would be necessary to meet LCR in the Moorpark sub-area” and “developed three alternative resource scenarios to meet the Moorpark LCR in the absence of Puente.”⁴ In addition, Neil Millar of CAISO testified during the September 14, 2017 Evidentiary Hearings that “ISO sought to determine whether preferred resource alternatives to the Puente Project were feasible in addressing grid reliability, which is the

¹ Communities for a Better Environment comments on PSA, TN# 213682, September 15, 2016, p. 5

² *Strother v. California Coastal Com'n* (2009) 173 Cal.App.4th 873, 878, cited in Shana Lazerow, Communities for a Better Environment Comments on PSA, TN#213682, p. 16.

³ Committee Order Granting Applicant’s Motion to Exclude the Supplemental Testimony of James H. Caldwell and Accepting the California Independent System Operator’s Offer to Conduct a Special Study (TN#218016) (June 9 Order).

⁴ Moorpark Sub-Area Local Capacity Alternative Study (TN#220813), August 16, 2017

question we understand the Energy Commission was asking.”⁵

FFIERCE also understands this as the sole question that is within the CEC’s mandate to pursue, and that the analysis should be confined to, in this proceeding. Mr. Millar continued in his oral testimony: “The ISO acknowledges that there is a large range of combinations of resources that could work together to meet the need, but considers further attempts to optimize at this point unnecessary to demonstrate the feasibility of preferred resource alternatives to meet that need and beyond the scope of the proceeding.”⁶

Moreover, Mr. Millar testified that CAISO had determined that the alternative scenarios identified were deemed to be both technically feasible and not cost-prohibitive, and once this conclusion was made, CAISO did not pursue their analysis of costs further:

[A]s I indicated in my opening statement, the question we were trying to answer was whether or not the preferred resources were feasible. We’re not trying to conduct an actual procurement exercise. We’re trying to get our foot against whether or not the costs are prohibitive from a feasibility point of view. We concluded they weren’t.... So, we didn’t see the need to pursue the cost exercise further.⁷

Millar further recognized in his oral testimony that CAISO relied on publicly available data that was not updated to reflect the trends of rapidly declining costs of alternative energy technology in the current market:

That cost information included high-level capital costs, only, that were drawn from publicly available material through various formal or informal regulatory processes. We anticipated it to provide a starting point for the cost considerations, while recognizing that the preferred resource costs are trending downward and are reasonably expected to be lower in the future.⁸

Thus, Millar suggested that the true costs of these preferred resource alternatives could only be determined through a Request for Offers (RFO) process:

Further, the only way to test the economic feasibility of the preferred resource options is to conduct an RFO specifically targeted to procuring those resources....

Other cost data is being provided through this process for consideration by the Commission, but costs will only truly be known after an RFO is conducted.⁹

⁵ Testimony of Neil Millar of CAISO, Transcript of 9/14/2017 Evidentiary Hearing, (TN # 221283), p. 13

⁶ Ibid., p. 16

⁷ Ibid., p. 47

⁸ Ibid., p. 15

⁹ Ibid., pp. 15-16

Mr. Millar's comments reveal a catch-22 situation at hand here: As Millar suggests, the true costs of preferred resource alternatives to P3 could only be determined once a bidding process were initiated following an RFO. Yet an RFO would only be issued once the CEC rejects the P3 application, and then the matter of procurement of preferred resources for the region would go back to the PUC to issue an RFO. The CEC's original mandate was ostensibly only to evaluate the existence of feasible alternatives. Yet once these were identified and explicitly deemed not cost-prohibitive by CAISO, the CEC then introduced a new question as to the ability to get alternative technologies online in time. Ostensibly, that question also could be answered through a new or expanded RFO to procure those preferred resources. Even so, it appears that the CEC keeps "moving the goal post" mid-stream--or at what should be the end of the game--hardly a fair process.

Simultaneously, these actions have allowed the two regulatory agencies, CEC and CPUC, to avoid ultimate responsibility for ruling on the basis of Alternatives or Environmental Justice. These are two crucial dimensions in resolving this matter, and are intertwined and inseparable. As discussed earlier, the CPUC deferred both issues to the CEC. Now, it appears that the CEC may use the questions of cost and time to get alternatives online as the "sticking points" to keep avoiding responsibility for making the right decision to reject P3 based on the principles of environmental justice and available alternatives that align with and advance this justice.

As FFIERCE and members of the public have observed the proceeding unfold thus far, we see this to be a circular, untenable and unjust process. FFIERCE suggests that, just as CAISO witness Millar stated that they stopped their inquiry at the point they determined the alternatives they identified were both technically feasible and not cost-prohibitive, CEC should do so as well, adopting the conclusions of the study that the Commission itself approved to be undertaken. As hearing officer Paul Kramer stated during the Evidentiary Hearings of September 14, 2017:

But what we want to be clear, as we tried to be the other day, is that we are not here to try to redesign the project to -- or, rather, the electrical system in the area or to decide that, you know, some other way of setting it up is going to be the way going forward. We're asked to give a yes or no answer to a request for a permit for Puente. And as far as, you know, procurement, approving the procurement, that's in the hands of the California Public Utilities Commission.¹⁰

FFIERCE suggests that Kramer's statement should be taken on faith and honored as such, leading to the only possible outcome that the CEC will reject the application for P3 and the next steps for procurement of the alternative preferred resources will proceed, under the direction of the CPUC. At that point, preferred resources identified through the CAISO study, through alternative energy experts and providers, and those yet to be discovered can indeed be identified through a bidding process in the current market.

¹⁰ Statement of Paul Kramer, Transcript of 9/14/2017 Evidentiary Hearing, (TN # 221283), p. 30.

If, however, that is not the endpoint or conclusion reached by the CEC, then several witnesses from Stem, Tesla and Clean Coalition provided testimony that is convincing and compelling, identifying potential (and in some cases, already existing) applications of alternative technologies to fulfill the needs of the region at lower cost and with fewer negative environmental impacts, such as greenhouse gas emissions. These provide a credible preview of the alternative, renewable energy and storage technologies that could be undertaken and brought online quickly in the region, or have already been deployed, at lower costs that continue to fall rapidly.¹¹

These should be considered in light of Mr. Millar's testimony that CAISO's analysis of costs was admittedly limited because they were derived from outdated information, and only an RFO process would reveal the true costs in the current market. Even if we were to rely solely on the conclusions provided by CAISO, with the understanding of these limitations, CAISO's conclusions point to the fact, that the alternatives identified are not cost-prohibitive, as repeated by Millar in both written and oral testimony. Furthermore, CAISO's witness, Mr. Millar, stated explicitly that cost is not the only or the most important factor to consider:

The ISO does not believe that the capital costs identified in the ISO study render the preferred resource alternatives infeasible. The ISO does not believe that feasible options need to be the least expensive, either on an up-front or lifecycle basis in order to be feasible, [e]specially given the other environmental and performance issues that need to be considered."¹²

Indeed, in one of the alternative scenarios offered by the CAISO study, scenario 2, the estimated capital costs of \$309 million are competitive with the capital costs projected for P3 at \$299 million. While the difference of \$10 million is not trivial, it could and should be viewed in the broader context of benefits for the recognized environmental justice communities who will be impacted by the P3 or its alternatives. The city of Oxnard comprises many communities of low-income people of color who have been disenfranchised beyond even the measures acknowledged in this proceeding, They have historically been over-burdened by the existing plants and all of the other environmental hazards that directly impact the local area and region in question. In that context, FFIERCE suggests that \$10 million is a small price to pay to begin to rectify this historical injustice, and prevent its continued assault on these communities.

The consequences of these assaults are amply articulated by Oxnard community members and CAUSE youth leaders and organizers in two videos submitted as public comment,

¹¹ Transcript of 9/14/2017 Evidentiary Hearing, (TN # 221283), Testimony of Doug Karpa, Clean Coalition; Matt Owens, Director of Business Development, STEM; and Andy Schwartz, Tesla, pp. 168-188.

¹² Transcript of 9/14/2017 Evidentiary Hearing, (TN # 221283), Testimony of Neil Millar, CAISO, p. 15.

along with a petition signed by 300 people urging the CEC to reject the P3.¹³

FFIERCE urges the Committee and Commission members to view these videos as you consider all of the costs of the proposed P3 and its alternatives, and in your deliberations about the impacts of this history of environmental racism on the people of Oxnard. FFIERCE particularly urges the Committee and Commission to consider whether these communities, and especially the youth of Oxnard, deserve a better future and if there is any cost too great to pay for this remedy, and “investment” towards the future.

Pursuing these preferred resource alternatives to cover the Moorpark Subarea, instead of building another fossil-fuel burning plant in Oxnard, would offer a corrective to the historical and ongoing sacrifice of the people of Oxnard residents as well as the farm workers, youth and (would-be) beach goers in the direct vicinity of the proposed and existing plants. These alternatives would offer the additional benefits of more and better local jobs in Oxnard while meeting the region’s electric reliability needs at lower cost. These clean energy technologies would also meet the state and federally mandated goals that have been established with the clear recognition that the planet will not otherwise survive the processes of environmental degradation at their current pace.

¹³ See “Why Oxnard?” by Coral Tree Productions, at <https://vimeo.com/204629609> and “Welcome to Oxnard,” produced by Lena Jackson of Fusion (Univision) at <https://www.facebook.com/FusionProjectEarth/videos/1870535536545288/> available at TN# 221334