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9 Energy Resources

10 Conservation and Development Commission

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

Docket No. 15-AFC-01

14 APPLICANT'S RESPONSE TO HEARING
OFFICER MEMORANDUM REGARDING
MOTION TO SUSPEND PROCEEDINGS ON
THE APPLICATION FOR CERTIFICATION

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16 As requested in the Hearing Officer Memorandum issued on October 19, 2017
17 (TN #221552), Applicant hereby specifies the length of the suspension it seeks pursuant to its
18 Motion to Suspend Proceedings on the Application for Certification filed on October 16, 2017
19 (TN #221524) ("Motion to Suspend") and replies to the responses of the intervenors on the
20 Motion to Suspend.

21 A. Requested Length of Suspension

22 Applicant requests that the proceedings be suspended for a period of six months from the
23 date of the Committee's ruling on the Motion to Suspend. In its statement issued on October 5,
24 2017, (TN #221401) ("Committee Statement"), the Committee indicated that it intends to
25 recommend denial of the Project, presumably in favor of a preferred resources alternative, the
26 feasibility of which all parties and the Committee have conceded can only be established by
27 conducting an expedited request for offers ("RFO"). The results of the RFO are necessary to
28 determine the feasibility of preferred resources as an alternative to the Project. Until the results

1 of the RFO are known, it would be premature to proceed with a recommendation to deny the
2 Project in favor of preferred resources. Even an expedited preferred resources RFO will take at
3 least six months to complete, and, therefore, this is an appropriate period of time to suspend the
4 proceedings. A six-month suspension will maintain the status quo while the necessary
5 information is gathered to determine whether and to what extent preferred resources are a
6 feasible alternative to the Project. At that point, and in light of the results of the RFO, the
7 Committee and the Applicant can evaluate whether or not to proceed to a final decision on the
8 Project.

9 B. Reply to Intervenor Responses to Motion to Suspend

10 Intervenor City of Oxnard, Sierra Club Los Padres Chapter, Environmental Defense
11 Center, Environmental Coalition of Ventura County, Center for Biological Diversity, and
12 California Environmental Justice Alliance filed a joint response to the Motion to Suspend
13 (TN #221527) (“Joint Response”) in which intervenor FFIERCE also joined (TN #221537)
14 (“FFIERC Joinder”). Intervenor Robert Sarvey filed a separate response (TN #221589) (“Sarvey
15 Response”).

16 1. *A suspension will not impede a preferred resources RFO.*

17 Intervenor City of Oxnard, Sierra Club Los Padres Chapter, Environmental Defense
18 Center, Environmental Coalition of Ventura County, Center for Biological Diversity, and
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28 Response”).

26 In fact, based on recent ex parte filings at the CPUC, it appears that SCE is already
27 engaged in discussions with the CPUC to initiate a preferred resources RFO for the Moorpark
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1 Sub-Area:¹ “SCE stated that it is considering options on how to meet local capacity
2 requirements obligations without the Puente project, including launching a solicitation for
3 preferred resources. SCE indicated that it intends to act as expeditiously as possible, and that it is
4 coordinating with NRG on the status of the Puente Power Project power purchase agreement
5 with NRG.”

6 2. *A suspension will conserve the resources of the Committee and the parties.*

7 Intervenor further assert that issuance of the Presiding Member’s Proposed Decision
8 (“PMPD”) will bring finality to the proceedings (Joint Response at 2) and relieve the parties
9 from having to devote resources to monitoring the status of the proceedings (Sarvey Response at
10 2-3). Issuance of a PMPD, even one recommending denial of the proposed project, does not
11 result in the “finality” that intervenors suggest. To the contrary, significant additional process is
12 involved to move from a PMPD to a final decision, including commenting on the PMPD and
13 conducting a PMPD review conference. All of the resources necessary to complete that process,
14 which would be significantly greater than whatever resources might be required to monitor the
15 status of the suspension, can be saved if the AFC is suspended for six months pending the
16 outcome of the preferred resources RFO and Applicant then decides to withdraw the AFC.

17 We note that almost all of the intervenors who now oppose a suspension of the
18 proceedings pending the outcome of a preferred resources RFO requested that very thing, i.e., a
19 delay in a decision pending the outcome of an RFO, in their recently filed briefs. Granting the
20 Motion to Suspend gives the intervenors what they have been asking for all along.

21 3. *There is no basis for distinguishing Applicant’s request from numerous other*
22 *similar requests that have been granted.*

23 As pointed out in the Sarvey Response, requests to suspend AFC proceedings are
24 routinely granted by the Committee (Sarvey Response at 2). *See, e.g., Order Suspending*
25 *Proceedings, In The Matter Of The El Segundo Energy Center Amendment, 00-AFC14C,*

27 ¹ Southern California Edison’s Notice of *Ex Parte* Communication filed October 19, 2017, A.14-
28 11-016.

1 March 7, 2016. Sarvey contends that this situation is different because there is nothing the
2 Applicant can do to overcome the proposed denial of the Project (Sarvey Response at 2);
3 however, that contention is not necessarily correct. The Committee Statement did not identify
4 the significant environmental effects about which the Committee has concerns, or the specific
5 laws, ordinances regulations and standards (“LORS”) with which the Project fails to conform.
6 Depending on the specific environmental effects and LORS, it may be possible for the Applicant
7 to address them by modifying or relocating the Project. Thus, it is not the case that Applicant
8 has no options for responding to the October 5 Committee Statement and is simply delaying the
9 inevitable, as suggested by Sarvey, and this request is not materially different than the others that
10 he concedes are routinely approved.

11 4. *Applicant has satisfied its burden of demonstrating good cause to suspend the*
12 *proceedings.*

13 Based on the foregoing, Applicant has satisfied its burden as the moving party pursuant
14 to Title 20, California Code of Regulations (“CCR”) § 1211.5(a). The Committee can find that
15 there is good cause to suspend further proceedings for a period of six months from the date of
16 decision based on one or more of the following: i) suspending the AFC will allow the preferred
17 resources RFO to proceed to determine whether or not feasible alternatives to the Project can be
18 procured on a timely basis – information that is critical if the Committee intends to recommend
19 approval of this alternative; ii) suspending the proceedings will preserve the status quo and allow
20 the Committee to reconsider the Project, or some other alternative thereto, in the event that the
21 preferred resources RFO does not result in the required resources; iii) suspending the AFC will
22 allow all parties and the Committee to essentially “stand down” during the period of the
23 preferred resources RFO, as opposed to expending resources to complete and review the

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1 PMPD and proceed to a final decision – none of which will be necessary in the event that the
2 results of the RFO lead Applicant to withdraw the AFC.

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4 DATED: October 30, 2017

Respectfully submitted,

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/s/ Michael J. Carroll

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Counsel to Applicant

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