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Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	221667
Document Title:	Intervenors' Joint Application to File Supplemental Response to NRG's Motion to Suspend AFC
Description:	Intervenors: City of Oxnard, Center for Biological Diversity, Communities for a Better Environment, Environmental Defense Center, California Environmental Justice Alliance (CEJA), and Sierra Club, and Environmental Coalition of Ventura County
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Submitter Role:	Intervenor Representative
Submission Date:	11/2/2017 2:17:41 PM
Docketed Date:	11/2/2017

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Application for Certification of the
PUENTE POWER PROJECT

DOCKET NO. 15-AFC-01

**INTERVENORS' JOINT APPLICATION
TO FILE SUPPLEMENTAL RESPONSE
TO NRG'S MOTION TO SUSPEND AFC**

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The City of Oxnard, California Environmental Justice Alliance, Sierra Club, Environmental Defense Center, Environmental Coalition for Ventura County, Center for Biological Diversity requests leave to file the following response demonstrating that NRG’s motion for suspension should be denied.

On October 31, 2017—the same day this Committee heard NRG’s motion for suspension—NRG filed a supplement to its bankruptcy reorganization plan which states that NRG is no longer seeking a lease on Mandalay property where the Puente project would be located.¹ When the bankruptcy reorganization plan is approved, NRG and GenOn will emerge as separate entities. The confirmation hearing on NRG’s bankruptcy plan is currently scheduled for November 13, 2017. Therefore, the bankruptcy is anticipated to be concluded by the end of this year. With relinquishment of its lease on the Mandalay property, NRG will no longer have control over the site and cannot assure development of the Puente project. In fact, the Final Staff Assessment questioned the feasibility of offsite project alternatives due the lack of site control by NRG.²

NRG’s attempt to keep the AFC open so that all “options are on the table” (as NRG’s counsel stated at the hearing on the suspension motion) is undermined by its decision to relinquish site control at Mandalay. The original bankruptcy filing of NRG and GenOn contemplated a cooperation agreement whereby NRG and GenOn would work together to maximize the value of certain “development projects,” including Puente.³ However, the most recent cooperation agreement filed with the bankruptcy court does not include any provision for

¹ Reorganization Plan Supplement, p. 3, docketed concurrently with this filing.

² See e.g., Exhibit 2000, p. 1-4.

³ Second Amended Reorganization Plan filed on October 5, 2017, p. 5 (defining Development Projects to include Puente); p. 5 (defining Cooperation Agreement to include “Development Projects.”)

Puente at all.⁴ Presumably, NRG is releasing its request for a lease at the Mandalay property to avoid any potential liability for cleanup at the Mandalay site if Puente is not approved. Even if NRG and GenOn could later agree to proceed with Puente, this Committee should not facilitate NRG's attempt to maximize its ability to seek approval for Puente while at the same time attempting to avoid liability for site cleanup. This is not an appropriate use of the AFC process and NRG's motion should be denied.

DATED: November 2, 2017

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⁴ Cooperation Agreement, Exhibit F. to Reorganization Plan, docketed concurrently with this filing.