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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

**STATEMENT OF THE CITY OF
OXNARD REGARDING
CONSULTATION UNDER PUBLIC
RESOURCES CODE SECTION
25523(D)(1)**

ELLISON FOLK (State Bar No. 149232)
EDWARD T. SCHEXNAYDER (State Bar No. 284494)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Folk@smwlaw.com
Schexnayder@smwlaw.com

Attorneys for the CITY OF OXNARD

STATEMENT OF THE CITY OF OXNARD REGARDING CONSULTATION
UNDER PUBLIC RESOURCES CODE SECTION 25523(D)(1)
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The City of Oxnard submits this statement in response to the January 4, 2017 Hearing Officer Memo, which asks:

Has Energy Commission staff already or does it plan to consult with the City of Oxnard about the Puente Power Project's conformance with the general plan policy discussed in the Land Use section of the FSA or any other alleged areas of conflict with local law?¹

The Final Staff Assessment finds that the Puente Project is inconsistent with policies in the City of Oxnard's General Plan that prohibit the construction of energy facilities exceeding 49 megawatts in areas subject to environmental hazards, including earthquakes, tsunami, and sea level rise. The City has determined that the Puente Project would be located in an area subject to tsunami, sea level rise, and other coastal hazards and therefore the Project is not consistent with City land use regulations. In addition, the City has identified conflicts between the Puente project and a number of other policies in both the Local Coastal Plan and the General Plan. Specifically, the Puente project is sited in an areas designated as wetlands by the Coastal Commission and therefore is inconsistent with LCP Policy 52, which prohibits industrial and energy-related development in "coastal resource areas, including sensitive habitats, recreational areas and archaeological sites." The Puente project is also inconsistent with height limits in the City's General Plan and other policies designed to minimize aesthetic and recreational impacts.²

Energy Commission staff have not consulted with the City regarding the inconsistencies between the Puente project and the City's land use policies. At the issues workshop held on January 10, 2017, Energy Commission staff counsel asserted that it had already consulted with the City and there was no way to make the project consistent with City land use policies. The City disagrees. Staff did not acknowledge any inconsistency with City policies until the release of the FSA on December 8, 2016. And that document only identifies one inconsistency when, in fact, there are several. Staff has never engaged the City in comprehensive consultation regarding all potential inconsistencies between the Puente proposal and City regulations. In noted contrast, Energy Commission staff counsel met directly with representatives of the City of Redondo Beach for purposes of section 24423(d)(1) consultation.³ It remains unclear why

¹ Memorandum from Paul Kramer, Hearing Officer to All Parties and Persons Interested in the Puente Power Project Proceedings (January 4 2017) at 2.

² See Testimony of Ashley Golden.

³ Energy Commission Staff's Status Conference Statement (TN #205592, Docket No. 12-AFC-03); Staff's Record of Conversation with the City of Redondo Beach (TN #204529, Docket No. 12-AFC-03).

Energy Commission staff have not also consulted with the City of Oxnard regarding inconsistency with the City's land use regulations.

This lack of consultation is particularly problematic because there may be feasible project alternatives that would reduce or entirely avoid conflicts with City land use regulations. For example, a project that consists of two 49 megawatt peaker plants that is not located on the wetlands at the current site would not conflict with General Plan Policy 3.5 and would meet actual local capacity requirements.⁴ With a reduction in the height of the stack and appropriate screening, this reduced size project would comply with the height limits in the City's General Plan. None of these alternatives has been addressed in the FSA or in testimony from staff. Instead, staff took the position at the FSA workshop that it was not possible to modify the project at all.

Public Resources Code section 25523(d)(1) provides that the Commission "must consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance" with conflicting laws. It is not possible to engage in consultation to correct or eliminate conflicts with land use regulations if the position of the Commission is that the project cannot be changed.

Moreover, if the Commission determines that the need for the Project is greater than actually identified in current CAISO documents, and that only a gas fired power plant will meet this need, it is also possible to avoid the conflict with City ordinances by denying the Puente project and relying on another project such as the Mission Rock proposal. The technology relied upon for Mission Rock (which includes clutch gear for a synchronous condenser, and battery storage) was specifically recognized in the Commission's IEPR as a superior gas technology that would reduce air pollution and greenhouse gas emissions.⁵

The FSA declined to even consider the Mission Rock project as an alternative because the site is owned by CalPine. It is unclear why that matters here. Approval of the Puente project requires this Commission to override the land use policies of a local community. Where alternatives exist that meet the identified need and avoid the conflict local land use regulations, it is not appropriate to elevate the interests of a particular private company over those of a sovereign public entity and the community it represents.

⁴ See Opening Testimony of Jim Caldwell.

⁵ Proposed Final Integrated Energy Resource Policy Update at 43 (TN #215418, Docket No. 16-IEPR-01).

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SHUTE, MIHALY & WEINBERGER LLP

By:



ELLISON FOLK

EDWARD T. SCHEXNAYDER

Attorneys for the CITY OF OXNARD

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