BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U338E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area.	Application 14-11-016 (Filed November 26, 2014)

OPENING BRIEF OF THE CITY OF OXNARD

PUBLIC VERSION
(EXHIBIT B CONFIDENTIAL)

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INTRODUCTION

Southern California Edison asks the Commission to approve contracts to meet LCR requirements in the Big Creek/Ventura area of Edison's service territory (Moorpark subarea). The Commission established these LCR requirements to ensure a safe and reliable electricity supply in anticipation of the retirement of coastal once-through cooling plants in the Moorpark service area. California has also established that in meeting anticipated energy demands, investor-owned utilities—like Edison—must prioritize the selection of renewable resources.

In the face of these dual mandates, almost the entirety of Edison's LCR procurement application relies on a new 262 MW gas-fired plant built and operated by NRG Energy Center Oxnard. That facility would be located on the City of Oxnard's coast, immediately adjacent to the open ocean and subject to present and escalating threats from coastal hazards and sea level rise. As a result, Edison's procurement is excessively large compared to the demonstrated need in the Moorpark subarea and relies almost exclusively on a power source that is both disfavored and subject to the same reliability issues that resulted in the LCR determination in the first place. Because

Edison's proposal is flawed in numerous respects, the Commission should deny it.

First, based on the record in this proceeding, Edison cannot meet its burden to show that its proposed resources selection will enhance safe and reliable operations of its service in the Moorpark subarea. The weight of the evidence shows that the site of the proposed NRG gas-fired plant faces significant coastal hazards that will only increase in severity with expected sea level rise. Given these natural hazards, it would be unreasonable to approve Edison's selection of over 95 percent of the LCR requirements located at this site.

Second, even if the Commission cannot definitively determine that the NRG plant will be subject to coastal hazards and sea level rise, at a minimum the record raises a substantial concern regarding the safety and reliability of the NRG site. Edison itself never addressed these issues prior to submitting its application. Therefore, a finding that the site is safe and reliable requires thorough site-specific environmental review, an analysis of project alternatives, and the implementation of mitigation measures. If the Commission is not willing to undertake this review, it should defer its decision until the California Energy Commission (CEC) conducts full environmental review under the California Environmental Quality Act (CEQA). That environmental review will allow the CEC to fully assess the existing and potential environmental hazards to a new gas-fired plant at the Mandalay site, and consider alternative projects, locations, and potential mitigation. Indeed, the undisputed record indicates that Commission approval of this application would prejudice the CEC's CEQA process by foreclosing that agency's consideration of alternative sites or technology to NRG's proposed project. Thus, as a

matter of law, if the Commission approves Edison's proposal to secure power from NRG's facility before the CEC completes its environmental review, the Commission must prepare an environmental impact report as required by CEQA.

Third, even if NRG's project did not face significant reliability issues, the Commission should not approve the resource portfolio selected by Edison. That portfolio unreasonably exceeds the currently modeled need in the Moorpark subarea, and is more expensive than other options available to Edison. In fact, the manner in which Edison conducted its RFO prevented a robust selection of more cost-efficient, preferred resources. Ultimately, the selected resource portfolio saddles the ratepayers—including the City's residents—with an LCR procurement plan that is unnecessarily large, expensive, and unreliable. For all of these reasons, the Commission should deny Edison's current application.

ARGUMENT

I. Edison's RFO Selection Does Not Solve Reliability Concerns for the Moorpark Subarea.

To obtain approval of its application, Edison must demonstrate that the results of its RFO "enhance the safe and reliable operation of SCE's electrical service."[1] The Commission's initial LTPP decision authorized Edison to procure new resources to ensure grid reliability after the Ormond Beach and Mandalay Bay once-through-cooling generating facilities go offline at the end of 2020.[2] Edison and the CAISO have identified two reliability constraints that Edison is attempting to remedy through its application.

[1] Assigned Commissioner's Ruling and Scoping Memo ("Scoping Memo") at 4.
[2] D.13-02-015, 2013 WL 652439.

First, CAISO modeling suggests the loss of all three Moorpark-Pardee 230 kv transmission lines could cause voltage collapse, representing a critical contingency in the Moorpark subarea.[3] Second, Edison has identified the loss of the two Goleta-Santa Clara transmission lines as an additional reliability concern in the Moorpark subarea.[4]

As Edison's application demonstrates, physical hazards constitute the primary threat to the reliability of Edison's transmission system in this subarea. For instance, Edison has acknowledged that wildfires and potential landslides threaten the two Goleta-Santa Clara lines, which share towers.[5] Edison has also testified that the Moorpark-Pardee 230 kv lines are similarly exposed to a simultaneous outage because they are in close proximity to one another within a single right-of-way.[6]

Yet the resources selected by Edison do not resolve the reliability concerns for the entire Moorpark subarea. The vast majority of Edison's procurement comes from a new gas-fired facility located on Oxnard's coast, NRG's proposed "Puente" plant. But NRG proposes to site Puente in an area at risk from current and future coastal hazards, creating an additional reliability concern in the Moorpark subarea. Moreover, even if the Commission approves Edison's separate Ellwood peaker refurbishment proposal, the Puente selection does nothing to remedy reliability issues that will remain in the Goleta subarea. The Puente site is still separated from Goleta by 50 miles of vulnerable transmission lines. Consequently, the resource portfolio presented in Edison's application

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[3] SCE-1 at 5-6.
[4] SCE-1 at 6-7.
[5] SCE-1 at 6-7, 44.
[6] Transcript, Vol. 2 at 219:1-11.

will not enhance safe and reliable operations in Edison's entire service area and should be denied.

A. Generation at the Puente Site Is Unreliable.

1. The Puente site will be increasingly exposed to coastal hazards.

Sea level rise associated with global warming is expected to exacerbate coastal erosion, flooding, and significant storm events along California's coast.[7] Climate change could also increase the frequency of the extreme storm events that California will face this century.[8] In response to the risks that such events pose to California's infrastructure, Governor Brown has ordered state agencies to "take climate change into account in their planning and investment decisions, and employ full life-cycle accounting to evaluate and compare infrastructure investments and alternatives."[9] California agencies must carefully consider the risks posed by climate change and sea level rise before approving applications for new critical infrastructure in areas exposed to those risks.

Edison's application proposes to obtain almost all of its LCR megawatts from a single gas-fired plant proposed by NRG.[10] This "Puente" facility would be located within the City of Oxnard at the existing Mandalay Generating Station, which is directly adjacent to the Pacific Ocean. Despite the site's proximity to the open ocean, Edison's application completely ignores reliability concerns that coastal hazards pose to siting new resources in this location.

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[7] CO-10 at 12.
[8] CO-10 at 31.
[9] Executive Order B-30-15.
[10] SCE-1 at 55.

Because Edison failed to consider the reliability concerns created by siting the Puente facility on the coast, the City submitted testimony from Dr. David Revell, which evaluates the coastal hazards that could impact this project site. Dr. Revell is a coastal geomorphologist who has extensive experience studying coastal processes in the Santa Barbara littoral cell—the section of open California coast that includes the proposed Puente site.[11] His doctorate focused on "climate change, shoreline evolution, storm response, and coastal monitoring in Santa Barbara and Ventura Counties," and he wrote his dissertation on sediment supply and beach evolution in the Santa Barbara littoral cell.[12] He has performed multiple coastal erosion and sea level rise studies in this area, including evaluations for the City of Goleta and models of climate change and erosion impacts along Ventura County's coast.[13]

Dr. Revell's evaluation of existing and increasing coastal hazards at the Puente site relied on mapping from the recently-completed Coastal Resilience Ventura report.[14] His evaluation revealed that during an El Nino-type storm event, the Puente site would be impacted by multiple coastal hazards—wave impacts, erosion, and coastal flooding—under existing conditions.[15] During such events, portions of Puente's proposed site would be flooded (identified by red figure in Exhibit A, attached hereto), as would almost the

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[11] CO-1, Attachment 1; Transcript, Vol. 3 at 564:13-565:15.
[12] CO-1, Attachment 1 at 1; Transcript, Vol. 3 at 568:20-22.
[13] CO-1, Attachment 1.
[14] CO-1, Attachment 2 at 2; *see* CO-4. The Coastal Resilience Ventura report has been cited by the Coastal Commission as a resource for evaluating beach and dune erosion, and NRG's own consultant, Philip Mineart, utilized this study for his evaluation of the Project site. NRG-2, Appendix B at 3-4, 6.
[15] CO-1, Attachment 2 at 10 (excerpt included as Exhibit A, attached hereto).

entire footprint of Edison's transmission substation (identified by yellow figure).[16]

Consistent with state guidance, Dr. Revell's analyzed risks to the site under a range of future sea levels. Even assuming a low sea-level rise scenario, the Puente site's exposure to coastal hazards would progressively worsen under modeled 2030, 2060, and 2100 conditions.[17] By 2060, the majority of the Puente site could be flooded under the lowest sea level rise projections.[18] Edison's entire transmission substation site could be flooded under that scenario as well.[19]

Dr. Revell's coastal hazard analysis assumed that the sediment supply that nourishes the beach in front of the Puente site would remain unchanged.[20] If that sediment supply decreased, however, rapid erosion in front of the Puente site would occur, leaving it even more exposed to coastal hazards.[21] Indeed, Dr. Revell observed that the beach in front of Mandalay "can't grow much wider" than the width shown in recent aerial photos.[22] And the long-term trend for beach conditions indicates diminished sediment supply and more erosion, exposing the Puente site to greater coastal hazards.[23]

To cast doubt on the long-term threats coastal hazards pose to the Puente site's viability, NRG presented testimony from its consultant, Phillip Mineart. This testimony purported to show that the Puente site would be protected from coastal hazards. Mr.

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[16] CO-1, Attachment 2 at 10 (excerpt included as Exhibit A, attached hereto).
[17] CO-1, Attachment 2 at 12-14.
[18] CO-1, Attachment 2 at 13.
[19] CO-1, Attachment 2 at 13.
[20] CO-1, Attachment 2 at 5-6.
[21] CO-1, Attachment 2 at 7-9.
[22] Transcript, Vol. 3 at 601:4-27.
[23] Transcript, Vol. 3 at 593:16-18.

Mineart contended that the 20 to 30-foot dune fronting the Puente site is high enough to protect the Puente facility from coastal hazards and storms, even when sea level rise is considered.[24] This opinion is unreliable.

Mr. Mineart's resume and testimony reveal that he lacks any experience evaluating the combination of sea level rise and potential erosion impacts on California's open coast, much less in the area surrounding the Project site.[25] Instead, the bulk of his experience relates to projects on bays and inland waterways.[26] Though he acknowledged that "[t]he waves are different" on the coast compared to more protected waterways, he could not identify "a difference in the mechanism[s]" between waves in those areas.[27]

The report prepared by Mr. Mineart was also improperly truncated so that it ignored potential coastal hazards to the Puente site after 2050.[28] Although he was aware that Mandalay Generating Station's existing once-through-cooling facilities have operated for roughly 60 years, Mr. Mineart testified that he ended his review at 2050 because "Thirty years is what I was told."[29] This limited time period is contrary to the Coastal Commission's most recent guidance on sea level rise. That guidance instructs that sea level rise planning should use a 100-year or greater lifespan for "critical infrastructure," which includes "power plants and energy transmission infrastructure." [30]

Mr. Mineart further relied on historic aerial photographs of the Mandalay

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[24] NRG-2, Appendix B at 1.
[25] Transcript, Vol. 2 at 364:11-365:18; *see* NRG-2, Appendix A.
[26] Transcript, Vol. 2. at 364:6-10.
[27] Transcript, Vol. 2 at 375:20-28.
[28] *See* NRG-2, Appendix B.
[29] Transcript, Vol. 2 at 371:13-24.
[30] CO-10 at 80, 99, 138.

Generating Station's site to argue that the dune at Mandalay has been stable for decades and the beach has seen a long-term trend of accretion.[31] Mr. Mineart simply assumed that beach accretion would keep up with sea level rise at the beach fronting Mandalay, but offered no analysis of how his projections of beach accretion would compare to projected rates of sea level rise.[32]

Mr. Mineart also evaluated a second scenario where the Mandalay beach diminished with sea level rise. Here, he performed an admittedly "back of the envelope calculation," which he used to conclude that the dune fronting the Mandalay site would protect the entire facility from the combination of future coastal storms and sea level rise during a 30-year time period.[33] Although, he relied on the Coastal Resilience Ventura report for potential erosion rates, he used the report's prediction of 130-feet of *dune erosion* near the project site as his report's estimate of potential *beach erosion* in front of the dune.[34] He simply assumed that this dune erosion rate was a "misprint" because he had not seen evidence that waves had ever impacted the dune at the Mandalay site.[35]

The photographic record directly rebuts Mr. Mineart's testimony. At the hearing, Dr. Revell reviewed the same aerial photographs that Mr. Mineart used in his report. Dr. Revell observed "evidence of actual erosion of the dune field in front of the [Puente] site" following the 1983 El Nino event.[36] The level of erosion in the aerial photograph

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[31] Transcript, Vol. 2 at 392:4-10; 408:9-25.
[32] Transcript, Vol. 2 at 377:28-378:11; *see* NRG-2, Appendix B.
[33] Transcript, Vol. 2 at 384:2-386:3.
[34] Transcript, Vol. 2 at 393:20-394:17; 397:6-11.
[35] Transcript, Vol. 2 at 381:2-7; 396:14-24.
[36] Transcript, Vol. 3 at 517:2-16.

identified by Dr. Revell corresponds to the Coastal Resilience Ventura modeling. From this photo, Dr. Revell measured approximately 150 feet of dune erosion at the site following the 1983 event. The observed erosion level is roughly equivalent to the Coastal Resilience Ventura report's modeling that indicates of 130 feet of dune erosion at that location.[37]

Thus, contrary to Mr. Mineart's testimony, the record shows significant erosion of the dune in front of the Mandalay site from just one large storm event from over 30 years ago. Moreover, Dr. Revell's testimony shows that with sea level rise and increasingly-frequent large storm events, the threat from coastal hazards at the Mandalay site will only worsen over time. Given the significant reliability threat that these coastal hazards and sea level rise pose to the proposed Puente location, it is unreasonable for Edison to procure over 95 percent of its LCR megawatts from new resources constructed there.

2. The Puente site is also exposed to tsunami hazards.

Tsunami-induced flooding and other potential damage also threaten critical power infrastructure sited on California's coast.[38] The City therefore offered testimony from David Cannon, P.E., who evaluated the site of the Mandalay Generating Station for potential tsunami impacts. Mr. Cannon's analysis considered tsunami-related impacts to the Puente site under two different tsunami scenarios: a recurrence of the 2011 Japanese tsunami, and a local tsunami triggered by the Goleta 2 landslide scenario.[39] Consistent with the most recent Coastal Commission guidance, this tsunami analysis considered site

[37] Transcript, Vol. 2 at 395:19-396:18; 556:24-557:11.
[38] CO-10 at 75.
[39] CO-2, Attachment 2 at 2-3.

impacts under current sea-level conditions as well as future sea level rise scenarios.[40]

Mr. Cannon's analysis reveals that under the Goleta 2 scenario, the Mandalay site is exposed to flooding from a tsunami even under existing sea levels.[41] During such an event, almost the entire Puente site would be flooded.[42] When combined with sea level rise projections, the Goleta 2 tsunami risk only worsens in model projections for years 2030, 2060, and 2100.[43]

The Goleta 2 landslide scenario is used for local emergency operations and evacuation planning in Oxnard and Ventura County, and is consistent with the California Geological Survey's tsunami guidance report.[44] Local source tsunamis like the Goleta 2 landslide present a heightened hazard because there is very little warning and time to evacuate or protect a site.[45] Projections for the Goleta 2 event indicate that it would produce waves around 12 feet above mean sea level (or 14.63 feet NAVD88).[46] That elevation is consistent with CalEMA tsunami mapping for the Oxnard coast, which anticipates a tsunami wave elevation between 10 and 15 feet.[47]

In contrast, NRG's witness Philip Mineart did not conduct a detailed evaluation of the site's potential tsunami risk. He simply relied on the CalEMA tsunami map, which

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[40] CO-10 at 126, fn. 44 (existing tsunami evacuation maps are only based on current sea level conditions and require updating).
[41] CO-2, Attachment 2 at 14.
[42] CO-2, Attachment 2 at 14.
[43] CO-2, Attachment 2 at 4, 15-17.
[44] CO-2, Attachment 2 at 3.
[45] Transcript, Vol. 3 at 639:26-640:8.
[46] CO-2, Attachment 2 at 4.
[47] NRG-2, Appendix B at 5.

indicated that the project site was not in a tsunami evacuation zone.[48] However, the statewide CalEMA mapping does not account for site-specific conditions, like hydraulic connections between the ocean and a facility.[49] Mr. Mineart never considered hydraulic connections that would expose the Puente project to tsunami hazards because they were not accounted for in the statewide CalEMA mapping. As Mr. Cannon testified, multiple hydraulic connections would allow a tsunami to bypass the dune and flood the site, including the Mandalay Generating Station's existing intake channel and outfall.[50]

Mr. Mineart also neglected to consider the potential for a tsunami to erode the dune that he believes will protect the project site.[51] He simply assumed that a tsunami event would run up against the dune and not cause erosion or increase the site's vulnerability to subsequent wave events. Yet, tsunamis often have several waves, so that an early wave could erode protective dunes and subsequent waves could flood the site.[52] Thus, his cursory investigation of potential tsunami impacts is unreliable.

Given the tsunami risk that the Puente site already faces, it makes little sense to locate new critical power generating infrastructure there. Doing so only creates a new reliability problem in the Moorpark subarea. It therefore undermines the central purpose of the LCR proceeding.

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[48] Transcript, Vol. 2 at 399:27-400:1.
[49] *See* NRG-2, Appendix B at 5-6, Attachment 2; CO-2, Attachment 2 at 6.
[50] Transcript, Vol. 3 at 637:27-638:17.
[51] Transcript, Vol. 2 at 398:27-399:2.
[52] CO-2, Attachment 2 at 6.

B. Edison's Resource Selection Does Not Remedy the Reliability Constraints in the Goleta Subarea.

Additionally, Edison's proposal to procure almost all of its resources from a new 262 MW plant in Oxnard does nothing to cure the reliability issue in Goleta. If the Goleta-Santa Clara transmission lines connecting a new Mandalay resource to Goleta fail, Edison faces a roughly 165 MW deficit in the Goleta-Santa Barbara area during peak periods.[53] Even after refurbishment, the 54 MW Ellwood facility would not be large enough to replace that loss.[54] For this reason as well, Edison's proposed procurement does not ensure reliability for the entire Moorpark subarea and is unreasonable.

II. The Commission Should Defer Any Approval of a Contract for Power from the Puente Plant Until the CEC Has Acted on that Project.

The Commission must also decide whether it should "approve [Edison's proposed] contracts prior to completion and a final decision by the California Energy Commission (CEC) of the California Environmental Quality Act (CEQA) review."[55] After the CEC conducts a full consideration of the environmental risks associated with the Puente project, the Commission can better evaluate the Puente plant's reasonableness and reliability. Moreover, NRG's own testimony and evidence establishes that the Commission's approval of the contract between Edison and NRG will prejudice the CEC's ability to fully assess the Puente plant's environmental risks in the first instance. Therefore, as both a legal and practical matter, the Commission should not approve the NRG contract before a final decision from the CEC and the completion of CEQA review.

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[53] Transcript, Vol. 2 at 227:28-228:6.
[54] D.13-02-015, 2013 WL 652439.
[55] Scoping Memo at 5, #4.

A. Complete Environmental Review Will Further Illuminate Any Reliability and Feasibility Concerns that the Puente Project Faces.

The current evidence before the Commission shows that Edison has not met its burden of demonstrating the reliability of the Puente project in the face of serious environmental hazards.[56] If the Commission does not deny the proposed contract based on this record, it cannot find that the Puente project is reliable, reasonable, and prudent for all purposes without considering a further analysis of these threats. NRG has also acknowledged that comprehensive environmental review that the CEC typically conducts will assess "the safety and reliability of a proposed power plant."[57] This CEC review would include the project's vulnerability to sea level rise, tsunamis, and other environmental hazards that could impair operation of either the Puente facility or Edison's substation.[58]

In the absence of this comprehensive review, any unresolved concerns about project viability should lead the Commission to deny the contract for the Puente project. For example, in Resolution E-4522 concerning Edison's application for approval of power purchase agreements for solar facilities, the Commission found that the viability of certain projects was threatened by their proximity to a military base and important habitat for the endangered desert tortoise.[59] Although the Commission did not conduct environmental review of these purchase agreements, it denied them because these viability issues had not been adequately resolved. Similarly here, the record demonstrates

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[56] *See* Section I.A, *supra*.
[57] NRG-1 at 5:23-24.
[58] NRG-1 at 5:24-27.
[59] Resolution E-4522, 2012 WL 5448427, at *13, *19, #7, *20, #20, #23.

that the Puente project is threatened by its location in an area subject to existing tsunamis and other coastal hazards that will only worsen with sea level rise. Until these issues are fully addressed and resolved, the Puente contract should also be denied.

B. NRG's Testimony and Evidence Show that Commission Approval of the Puente Contract Will Impair the CEC's Environmental Review.

If the Commission is not willing to deny the Puente contract outright, it should defer any action on the contract with NRG until the Puente project has undergone full environmental review. The record demonstrates that approval of the Puente contract will lock-in the technology and location of a gas-fired power plant to meet the identified resource need for the Moorpark subarea. This will prejudice the CEC's ability to consider a full range of alternatives and potential mitigation for the Puente project.

First, NRG's application to the CEC unequivocally states that the Commission's approval of the Puente contract will dictate construction of this particular project at the Mandalay site. In discussing the RFO process that lead to the selection of the proposed Puente project, NRG states: "Through the RFO process, the utility evaluates a range of alternatives and awards RAPAs that are technology-specific and location-specific . . . ."[60] Once the contract is approved by the Commission, "[i]t is then *incumbent upon the developer to deliver the project consistent with the terms of the RAPA [contract]. Therefore, this objective is not merely a goal or aspiration of the project developer, but a legal imperative*."[61] According to NRG, approval of the proposed contract will establish

[60] CO-3 at 5-2.
[61] CO-3 at 5-2 (emphasis added).

what constitutes a reasonable alternative for the project site, and projects that do not satisfy the contract terms are "neither reasonable nor feasible."[62]

In fact, as discussed further below [redacted]

NRG also asserts that once the contract is approved, "[i]t would not be feasible to meet most of the project objectives if [the Puente project] was constructed at an alternative site [because] the RAPA awarded by SCE is location-specific."[64] Not only that, approval of the contract precludes consideration of "alternative generating technology."[65] Thus, contract approval will not only limit the CEC's ability to *evaluate* alternatives to the Puente project, it will prevent the CEC from approving an alternative project technology or location.

Edison also claims that the material terms of the contract, including the per-kW contract price, cannot be modified.[66] Thus, even if the CEC did not consider a different technology or location for the Puente project, the Project's vulnerability to sea level rise or tsunamis will likely require changes in project design that might increase project costs. If the contract is approved, it is unclear whether CEC will be able to require changes in

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[62] CO-3 at 5-2.
[63] [redacted]
[64] CO-3 at 5-4.
[65] CO-3 at 5-5.
[66] Edison Reply to Protests at 6.

the Puente project that might substantially increase its costs—even if these changes are necessary to ensure reliability and address potential environmental impacts of the Puente project.

As a result, if the Commission does not defer a decision on the NRG contract until after the CEC has completed its review, the Commission's approval will set in place essential elements of the Puente project. NRG's documents and testimony show that this will impair the CEC's ability to account for Puente's potential environmental impacts and risks, and consider mitigation and alternatives to alleviate these risks (including alternative site designs and technology, as well as alternative locations). Thus, at the very least, the Commission should defer acting on the proposed NRG contract until the CEC completes its review of that project.

C. If Commission Approval Precedes CEC Environmental Review, the Commission Would Be Required to Act as a Lead Agency Pursuant to CEQA.

California law establishes that approval of the contract would constitute a discretionary decision that is subject to CEQA.[67] The California Supreme Court has emphasized that "before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in *a manner that forecloses alternatives or mitigation measures* that would ordinarily be part of CEQA review of that public project.'"[68] The

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[67] Cal. Code Regs., tit. 14, ("CEQA Guidelines") §§ 15352(b),15357; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 132, 138 (concluding that a contract for the sale of property constituted a project under CEQA).

[68] *Save Tara*, 45 Cal.4th 116 at 138 (emphasis added; quotation omitted); *see also* CEQA Guidelines § 15004(b)(2)(B) (a public agency shall not "take any action which gives impetus to a planned or

(footnote continued on next page)

California Court of Appeal similarly found that the California Air Resources Board's resolution approving adoption of proposed Low Carbon Fuel Standard regulations was a project because the action precluded alternatives or mitigation and gave the regulations "significant bureaucratic momentum."[69]

In addition to NRG's statements that approval of the NRG contract will significantly constrain the CEC's ability to consider project alternatives, NRG also testified that contract approval will provide significant financial momentum to the Puente project. Dawn Gleiter, NRG's Puente project manager, testified that the cost of going through the CEC process is estimated to be between $2 and $5 million.[70] According to Ms. Gleiter, the Commission's approval of the contract will provide sufficient financial incentive to proceed with that CEC process.[71] This financial incentive is so great, and NRG is so confident that contract approval will ensure approval by the CEC, that NRG is willing to risk payment of a $24 million contract termination fee if the CEC does not approve the Puente project.[72] If NRG simply applied to the CEC for approval first (without an Edison contract), the risk would only be the $2-5 million in costs to process its CEC application.[73] In fact, Ms. Gleiter testified that without a Commission approval, NRG could decline to pursue the Puente project at all because "it's very unlikely that

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(footnote continued from previous page)
foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project").

[69] *POET, LLC v. California Air Resources Bd.* (2013) 218 Cal.App.4th 681, 724-25.

[70] NRG-1 at 7:19-21.

[71] NRG-1 at 7:21-23.

[72] Transcript, Vol. 2 at 336:17-22.

[73] Transcript, Vol. 2 at 339:8-14.

someone's just going to build a multi—between [$]235 or $270 million project without an assertion that we're going to be able to recoup that investment."[74] NRG has therefore determined that a Commission contract approval makes it far more likely that the CEC will approve its project. Thus, approval of the contract between Edison and NRG is the "first step in taking this [Puente] project forward."[75]

Where an action is an essential "first step" in a project, the first agency to issue a project approval must conduct environmental review.[76] Any subsequent CEQA review by the CEC does not change this analysis. Under the Supreme Court's decision in *Save Tara,* project "approval" occurs when an agency *first* exercises its discretion to advance a project, not when the *last* discretionary decision is made.[77] A project may be approved even when further discretionary decisions will precede any environmental change caused by the project.[78]

Consequently, if it does not defer approval of the NRG contract until the CEC has completed its review of the Puente project, the Commission will be the first public agency to make a discretionary decision regarding key elements of the project and its potential environmental impacts. As such, the Commission will be acting as a lead agency for the Puente project.

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[74] Transcript, Vol. 2 at 335:5-9.
[75] Transcript, Vol. 2 at 341:21-27.
[76] *Fullerton Joint Union High School Dist. v. State Bd. of Educ.* (1982) 32 Cal.3d 779, 795; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 278-79 (where an action is a first step in a chain of events which would culminate in physical impact, it is a project subject to CEQA).
[77] *Save Tara*, 45 Cal.4th at 134; *see also* CEQA Guidelines § 15352(b) (agency approval is the "earliest commitment" to a discretionary approval for a project).
[78] *Save Tara*, 45 Cal.4th at 134-35.

In their previous submissions to the Commission, NRG and Edison have asserted that the Commission does not conduct environmental review when evaluating the reasonableness of purchase agreements.[79] In the cases Edison and NRG rely on, the Commission based its decision in part on the fact that its approval would not affect the consideration of impact mitigation or project alternatives by the CEC.[80] However, this finding cannot be made here—NRG itself has testified that contract approval will preclude the full consideration of project alternatives and mitigation measures.

At the same time it asserts the CEC cannot consider alternatives that deviate from the technology and location identified in its contract with Edison, NRG also argues the Commission should approve that contract without considering its environmental impacts or vulnerability to environmental hazards.[81] NRG and Edison cannot have it both ways. If Commission approval of the Puente contract forecloses project alternatives that the CEC may consider, then environmental review (by either the CEC or the Commission) must *precede* the Commission's approval. The Commission should reject NRG's attempt to prejudice the CEC's environmental review, either by deferring action on the contract, or by denying it outright.

III. The Size of the Puente Plant Is Unjustifiable.

The Commission authorized Edison to procure between 215 and 290 MW of new resources in the Moorpark subarea.[82] Although it falls within this range, Edison's

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[79] *See, e.g.*, Edison Reply to Protests at 4-5.
[80] *See, e.g.*, Resolution 4686, 2014 WL 5361967 at *11-12; Resolution E-4439 at 18.
[81] NRG-1 at 2:15-17, 7:5-7.
[82] D.13-02-015.

proposal to procure 262 MW from NRG's single gas-fired Puente facility is excessive.

The most recent CAISO modeling underscores this fact. At the time of the Commission's initial LCR authorization for the Moorpark subarea, the CAISO recommended that Edison should procure an additional 430 MW of generation for the Moorpark subarea.[83] The CAISO has since updated its need determination for Edison's Moorpark subarea. The most recent CAISO model indicates that Edison need only procure an additional 230 MW in the Moorpark area to address the deficiency that CAISO expects to exist by 2024.[84] Thus, even excluding refurbishment of the Ellwood peaker, Edison's proposal to purchase 274.16 MW of new capacity in Moorpark exceeds the need identified in CAISO's most recent modeling.

[83] *Id.*
[84] CAISO-1, Exhibit 1 at 90, 94 (noting a 230 MW deficiency in the Moorpark sub-area without LTPP in year 2024); Transcript, Vol. 2 at 216:9-217:9.

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Finally, as a matter of policy, the Commission should not allow Edison to procure more gas-fired resources than necessary to meet the minimum LCR requirement of 215

MW. As discussed further below, the record indicates that Edison's RFO process likely suppressed the number of preferred resource and energy storage offers it received. If the Commission believes that additional megawatts above this minimum procurement are necessary in the Moorpark area, it should order Edison to solicit additional preferred resources through a second RFO.

IV. Edison's RFO Process Foreclosed Selection of Additional Preferred Resources in the Moorpark Subarea.

The dearth of preferred resources that Edison selected in the Moorpark subarea is particularly stark when compared to Edison's Western LA Basin resources selection. Preferred resources and storage comprise only 4.5 percent of Edison's Moorpark application.[93] In contrast, Edison is proposing to procure 500.60 MW of energy storage and preferred resources in the West LA Basin (roughly 27 percent of the total 1,882.60 MW procured for that area).[94]

Edison's explanation for this disparity is that "anecdotal evidence" suggests that "the Moorpark area was less attractive to source bids from, given the much smaller load opportunity as compared to the Western LA Basin."[95] Indeed, the record indicates that conducting a single RFO for resources in both the Moorpark and Western LA areas drew preferred resource offers towards the Western LA Basin, handicapping potential procurement of non-gas resources in the Moorpark area. Moorpark's "smaller area" made if difficult for Edison to secure preferred resource offers there, in part because the

[93] SCE-1 at 3.
[94] *See* CO-7 at 10.
[95] SCE-7 at 14.

"market was focusing" on the LA Basin.[96]

Consequently, conducting a new RFO for Moorpark that is independent of the LA Basin process would allow preferred resource and energy storage providers to give greater focus to opportunities in the Moorpark subarea. A second RFO could also lead to better reliability across the entire subarea, including in Goleta and Santa Barbara. And it would allow Edison to use the information gathered from its unsuccessful preferred resource selection and revise its RFO process to make selection of preferred resources more likely.[97] Thus, the Commission should order Edison to conduct an additional RFO aimed at procuring more preferred resources and storage offers in the Moorpark subarea.

CONCLUSION

For the forgoing reasons, the Commission should deny Edison's application.

Date: July 22, 2015

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[96] Transcript, Vol. 1 at 69:27-70:4 (discussing limits on demand response offers in the Moorpark subarea); 80:12-28.

[97] Transcript, Vol. 1 at 145:6-146:2 (SCE witness Bryson acknowledging that he would change the preferred resource solicitation process if he had to do it over again).

Exhibit A
(Excerpted Testimony of Dr. David Revell – CO-1)

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area. Assigned Commissioner: Michel P. Florio Assigned ALJ: Regina M. DeAngelis	Application 14-11-016 (Filed November 26, 2014)

TESTIMONY OF DR. DAVID REVELL ON BEHALF OF THE CITY OF OXNARD

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Date: April 8, 2015

Mandalay Existing Wave Impact Hazards

The Nature Conservancy
Protecting nature. Preserving life.

Revell Coastal

Wave Conditions:
25 feet at 22 seconds from 279 degrees

1:9,475

0 0.075 0.15 0.3 mi

0 0.125 0.25 0.5 km

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and

Hazard mapping from ESA PWA 2013

Mandalay Existing Coastal Flooding

The Nature Conservancy
Protecting nature. Preserving life.

Revell Coastal

Wave Conditions:
25 feet at 22 seconds from 279 degrees

1:9,475

0 0.075 0.15 0.3 mi

0 0.125 0.25 0.5 km

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and

Hazard mapping from ESA PWA 2013

Mandalay Combined Hazards 2030

The Nature Conservancy
Protecting nature. Preserving life.

Revell Coastal

- 8.0inches of sea level rise with coastal erosion and flooding
- 5.2inches of sea level rise with coastal erosion and flooding
- 2.3inches of sea level rise with coastal erosion and flooding

1:9,475

0 0.075 0.15 0.3 mi

0 0.125 0.25 0.5 km

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and

Hazard mapping from ESA PWA 2013

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Exhibit B
Compiled Moorpark RFO Bid Data