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April 12, 2013

California Energy Commission
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VIA ELECTRONIC MAIL

Siting Committee
Raoul Renaud, Hearing Officer
Eric Solorio, Project Manager
California Energy Commission
1516 9th Street
Sacramento, California 95814
docket@energy.ca.gov

Re: Cogentrix Quail Brush Generation Project – Docket No. 11-AFC-03
Comments to Applicant's Request for Suspension

Docket Clerk:

On behalf of Pardee Homes, Sheppard, Mullin, Richter & Hampton LLP hereby submits Comments to Quail Brush Genco, LLC's Quail Brush Generation Project Request for Project Suspension. The Quail Brush Generation Project proposes a 100 megawatt natural gas fired electric generation peaking facility to be sited in the City of San Diego, California.

If you have any questions or concerns regarding this submittal, please contact the undersigned at (619) 338-6646.

Sincerely,

John Ponder

John E. Ponder
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:408288656.1
Enclosure

cc: Jimmy Ayala - jimmy.ayala@pardeehomes.com
Eric Solorio, Project Manager - Eric.solorio@energy.ca.gov
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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the matter of :	No. 11-AFC-03
QUAIL BRUSH GENERATION PROJECT	

COMMENTS OF PARDEE HOMES ON APPLICANT QUAIL BRUSH GENCO, LLC'S REQUEST FOR PROJECT SUSPENSION

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Dated: April 12, 2013

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the matter of:	No. 11-AFC-03
QUAIL BRUSH GENERATION PROJECT	

COMMENTS OF PARDEE HOMES ON APPLICANT QUAIL BRUSH GENCO, LLC'S REQUEST FOR PROJECT SUSPENSION

On behalf of Pardee Homes ("Pardee"), we respectfully submit the following comments on Quail Brush Genco, LLC's (the "Applicant") Request for Project Suspension to suspend the Quail Brush Generating Project (the "Project"), docket 11-AFC-03, for twelve months (the "Request").

In summary, Pardee strongly opposes the requested suspension because it is unnecessary and would unfairly burden the affected community – a community that has been deeply and actively involved in this proceeding at every opportunity for almost two years now. Additionally, the Applicant has failed to demonstrate good cause exists that supports suspending consideration of this matter.

The Applicant alleges the suspension is appropriate in light of the recent California Public Utilities Commission ("CPUC") decision, D.13-03-029, denying San Diego Gas and Electric's request to enter into a Power Purchase Tolling Agreement with the Applicant. However, the requested suspension will not rectify the flaws and deficiencies inherent in the Project. Specifically, the Project will continue to be incompatible with local laws, ordinances, regulations, or standards and will result in a number of environmental impacts previously identified in our letter dated January 18, 2013, and attached hereto as Exhibit A. Therefore,

Pardee strongly contends that a suspension of any length is inappropriate, and the matter should instead be withdrawn.

I. A Suspension Is Not Necessary

The Request notes that certain "commercial" issues must be addressed in light of the current or changed circumstances in San Diego Gas & Electric's service territory resulting from the CPUC decision. Pardee disputes the legitimacy of these concerns. However, even if it is conceded that these concerns must be addressed, it is not necessary, nor appropriate, to impose a suspension in order to do so. The existence of commercial concerns is not good cause to suspend the proceedings, as such concerns can be addressed while this matter continues before the Commission.

II. The Suspension Will Create An Undue Burden On The Affected Community

As the Commissioners well know, these proceedings are lengthy and costly, especially for members of the public and community organizations who must assume full responsibility for participating. This matter has been before the Commission for nearly two years, during which time the affected community and interested parties have zealously fought toward a final resolution. Suspending this matter will only require the local citizens and community organizations to expend more time and money unnecessarily. The consideration of the Project should not be delayed on the basis of an burdensome and unsupported request for suspension that will not resolve the issues.

III. The Suspension Would Not Rectify The Project's Deficiencies

As referenced above and explained in detail in Exhibit A, the Project contains a multitude of problems that render it unacceptable for siting at the proposed location specifically, the proposed siting would have significant air quality, biological, visual, noise and fire hazard impacts among others. Moreover, the CPUC decision, cited as the only justification for the

suspension, stated there is no evidence to support the allegation that a prolonged outage, or even retirement, of the San Onofre Nuclear Generating Station ("SONGS") would impact the local capacity requirement, resulting in a need for another power plant, like the Project, to come online. On Wednesday, April 10, the Nuclear Regulatory Commission issued a preliminary ruling that would have SONGS Unit 2 up and running by this summer. With Unit 2 operational, the local energy demand would not support the siting of the Project.

The Applicant's Request does not demonstrate that the suspension will allow Applicant to address any of the enumerated issues nor it will change the conclusion that Quail Brush's fossil fuel resources are not needed. Therefore, the project suspension is not an appropriate course of action. Instead, the Project should be withdrawn.is not an appropriate course of action. Instead, the Project should be withdrawn.

IV. Conclusion

Accordingly, Pardee respectfully requests that the Applicant's Request for Project Suspension is denied.

DATED: April 12, 2013

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: /s/ John E. Ponder
JOHN E. PONDER

Attorneys for Pardee Homes

EXHIBIT A

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File Number: 08C8-100238

January 18, 2013

VIA E-MAIL AND U.S. MAIL

Eric K. Solorio
Project Manager
Siting, Transmission and Environmental Protection (STEP) Division
California Energy Commission
1516 Ninth Street, MS-2000
Sacramento, California 95814

Re: Opposition to Siting of Quail Brush Power Plant

Dear Mr. Solorio:

On behalf of my client, Pardee Homes ("Pardee"), we appreciate the opportunity to express opposition to the Quail Brush Generation Project proposed by Cogentrix Energy in the City of San Diego near the City of Santee border (the "Project").

This project is fundamentally flawed because it is incompatible with its proposed location in the open space region of San Diego's East Elliott Community Planning Area. The City of San Diego has long-standing plans for open space and limited development in the East Elliott Community Plan, which is why the City of San Diego ("City") rejected Quail Brush's appeal to initiate the necessary proposed community plan amendment.

With offices in Los Angeles, San Diego, and the Inland Empire, Pardee has been developing and constructing homes in California since 1921, with a focus on environmental stewardship and corporate responsibility to the community. It has earned the National Association of Home Builders Green Building Corporate Advocate of the Year Award for green and sustainable building practices and grassroots activities that aim to help transform the home building industry, as well as Builder Magazine's America's Best Builder for overall performance by a homebuilding company and the Hearthstone Builder Humanitarian Award for a lifetime commitment to philanthropy.

Pardee has been working with the City for nearly ten years on the design and implementation of its proposed Castlerock project, which includes approximately 430 units and is located in the City just north of State Route 52 near the City of Santee border and adjacent to the proposed Quail Brush Power Plant. The Project's Draft EIR has been circulated and public hearings to approve the project are anticipated for the first quarter of 2013. The East Elliott Community Plan, adopted in 1971 and last updated in 2002, designates the 203-acre

Castlerock project site for residential development and Pardee is dedicating 90 of those acres to the City for the Mission Trails Regional Park. In contrast, the Quail Brush project is incompatible with the long-standing plans for open space and limited development in the East Elliott Community Plan.

I. Land Use and Environmental Problems with Quail Brush Make CEC Override Unsupportable

Pardee strongly opposes the Quail Brush Power Plant project because, as demonstrated below, the Quail Brush project's land use is incompatible with its proposed location in the open space region of San Diego's East Elliott Community Planning Area, a fact that caused the City Council to vote unanimously not to initiate Quail Brush's proposed community plan amendment.

As you are aware, under the Warren-Alquist Act, if the California Energy Commission ("CEC") wishes to approve a proposed project that does not conform to state or local laws, ordinances, regulations, or standards ("LORS"), the CEC cannot license the project unless it determines that (1) the project is required for "public convenience and necessity," and (2) there are not "more prudent and feasible means of achieving such public convenience and necessity". (Pub. Res. Code § 25525; 20 Cal. Code Reg., § 1752(k).) This determination must be based on the totality of the evidence of record and must consider environmental impacts, consumer benefits and electrical system reliability. In essence, a project's lack of conformity with LORS must be balanced against its anticipated benefits. All of the CEC's override findings must be supported by substantial evidence in the record. (14 Cal. Code Reg. §§ 15091(b), 15093(b).)

LORS overrides are rare. Out of approximately 70 applications since 1996, the CEC has only overridden LORS five times -- Metcalf (99-AFC-3), Los Esteros 2 (03-AFC-2), El Segundo (00-AFC-14), Morro Bay (06-AFC-6), and Carlsbad Energy Center (07-AFC-06). The CEC has repeatedly stated that it considers a LORS override "an extraordinary measure which... must be done in as limited a manner as possible." (Final Decision, Eastshore Energy Center, October 8, 2008, p. 453.) For the reasons listed below, an override of the City's decision regarding Quail Brush is not supported by substantial evidence.

A. Overrides Are Rare When There Are Other Projects That Can Enhance the Electrical System's Reliability.

Among the factors the CEC has used in the past to override LORS is when the project is the only identified project capable of providing the generation before the system requires the capacity to maintain its reliability. In the Metcalf project override, the CEC stated, "Moreover, the evidence shows that the area's supply-demand imbalance and the need to augment electrical system reliability in the south Bay and the greater Bay Area require prompt action. The evidence establishes that the MEC is a substantial positive step in this regard, and is in fact the only identified major generation project capable of becoming reality within the near-term future." (Metcalf Final Decision, September 24, 2001, page 468.) Quail Brush is not the only major generation project capable of becoming a reality in the near-term future. California

Energy Center Project ("CECP") and Encinitas have all been approved by the CEC without the need for an override and have capacity sufficient to meet the Local Capacity Requirements, even without energy efficiency, demand reduction, and distributive generation, or transmission system upgrades.

B. Overrides Are Rare Where A Land Use Plan Is Long Established.

In 1997, the Multiple Species Conservation Program identified the majority of East Elliott as Multiple Habitat Planning Area ("MHPA"), where preservation of the natural habitat would be pursued. The East Elliott Community Plan was amended at that time to designate the MHPA as open space. Areas outside of the MHPA and that are part of the East Elliott Community Planning Area include the 474-acre Sycamore Landfill, the 203.64-acre Castlerock project site and an 8-acre area at SR-52 and Mast Boulevard, designated for office use.

As part of the Castlerock project, Pardee has made a long-term commitment to the preservation of the Mission Trails Regional Park to help ensure that San Diegans of future generations will be able to continue to enjoy one of San Diego's premier natural habitats, through the planned dedication of more than 90 acres of open space to the City complete with multi-purpose trails. In addition, the Sycamore Landfill Project, which was approved by the City on September 17, 2012, includes a closure plan that will one day convert the landfill into recreational space for Mission Trails Regional Park. In contrast, the Quail Brush Power Plant is not identified in the East Elliott Community Plan and, if approved, will impact the current and future plans in East Elliott for the Mission Trails Regional Park, which violates San Diego's LORS.

The CEC has made override findings for projects that violate LORS where a project initially complied with LORS, but the local agency amended its LORS in an attempt to "block" the project. (CECP, 07-AFC-06, Finding 4.) In contrast, the Quail Brush project selected a project site and site alternatives that from the outset violated the City's long-term land use plan for East Elliott.

The project site, Alternative B site (366-070-31) and Alternative C site (366-031-11) are all located in the City's MHPA and were zoned RS-1-8. (See, Sycamore EIR at Figure 5.1-2.) The Alternative A site (366-080-57) was zoned RS-1-8 and proposed for rezoning to IH-2-1 and removal from the MHPA only as part of the Sycamore Landfill approval, which specifically limited the landfill's development of the Alternative A site to the already disturbed portions of the site, and whose landfill project description indicated the balance of the site would remain undisturbed. (See, Sycamore EIR at Figures 5.1-2, 5.5-5, 3-3.)

C. Biological Impacts

Review of the biological technical report and supporting documents completed for Quail Brush reveal that it requires extensive revisions to be considered adequate. As currently presented, the information and analysis is inconsistent, contradictory and confusing. Moreover, the nexus between impacts and mitigation is unclear. For these reasons, described

in more detail below and in a memorandum from RECON, attached hereto as Exhibit A, we believe it is unlikely that the CEC will override the City's decision not to initiate a community plan amendment to allow construction within the City's open space areas.

The application, while admitting it is required to comply with City's regulation, diverges from City Standards, which consequently resulted in underestimated biological impacts. Namely, the application utilized the County's definition of "native grassland" instead of the City's. This use underestimates native grassland (Tier I habitat) and undervalues the habitat as non-native grasslands (Tier IIIb habitat). The application also inconsistently identifies protected or special-status species and provides conflicting information regarding ecological factors.

The application also contains a number of inconsistent statements regarding biological impacts and mitigation measures such that any decision based upon the application would be arbitrary and capricious. Among other incorrect statements, the wildlife discussions are inconsistent and prohibit a meaningful discussion of the direct/indirect impacts. Additionally, the application's stated Jurisdictional Delineation does not cover the entire study area and is inconsistent with existing City-approved delineations.

The application also anticipates construction in mitigation land, which will result in a double biological impact. This construction will violate open space easements recorded over the mitigation parcels and eliminate the intended goal of conservation. Also, the application's format makes it impossible to verify if impacts to the MHPA will be mitigated. Specifically, the application focuses on primary impacts. Secondary impacts to threatened species that utilize plants in the region are not addressed. An adequate evaluation of the significance of the project impacts should not only determine at what thresholds impacts begin to occur, but should attempt to assess the degree and type of impact based on expected cumulative levels of operational nitrogen deposition. The application lacks information on the anticipated impact to plant species in the vicinity of the power plant, particularly species of concern which are already anticipated to experience significant project impacts requiring mitigation. Moreover, the application omits an analysis of the secondary impacts to animal species that rely on project site plant species likely to be impacted by nitrogen deposition.

Additionally, state and federally recognized plant and animal species of special concern ("SSC") exist within the East Elliott region but it is unclear the extent of the project's impacts on these species. Furthermore, it is unclear how proposed mitigations would reduce impacts to any SSCs. To be sufficient, Quail Brush should be required to conduct a population survey for each SSC at the proposed project site and any region potentially impacted by construction or operation. This survey should include a sighting report and density estimate for this species at the proposed project location.

The proposed project will impact plant and animal species that are federally and locally recognized as "threatened" or "endangered" State and federal take authorizations may have to be obtained. Other listed species, as well as vernal pool branchiopods, may be subject to "take" as a result of the project. The application lacks any evidence or supporting documents that the Quail Brush has obtained the necessary approval from the United States Fish and

Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG") regarding potential impacts to the state and federally listed species.

The Mission Trails Regional Park Master Plan Update ("TRPMPU") is in process and proposing inclusion of the entire East Elliott Community Planning Area within the park boundaries. The application does not explain how the project will be compatible with the TRPMPU.

Lastly, the mitigation measures are inadequate. Specifically, a number of the mitigation measures require a biologist but the application lacks (i) the criteria for selecting a qualified biologist and (ii) information relating to the biologist's responsibilities. Additionally, a number of the mitigation measures lack performance criteria, resulting in insufficient information to provide an adequate assessment of mitigation effectiveness.

D. Air Quality Impacts

The Quail Brush project inconsistently and inadequately analyzes it air quality impacts. This insufficient analysis consequently resulted in deficient mitigation measures. For these reasons, described in more detail below and in a memorandum from SRA, attached hereto as Exhibit B, we believe it is unlikely that the CEC will override the City's decision not to initiate a community plan amendment for Quail Brush.

Namely, Quail Brush used incorrect technical data and methodologies when addressing impacts and mitigation. Accordingly, the use of this information will lead to incorrect conclusions and will underestimate the necessary mitigation. First, meteorological data from the Kearny Mesa monitoring station was used to conduct the dispersion modeling analysis, which has appreciably different characteristics from the Quail Brush Project site. Second, the NO_2/NO_x ratio used in the modeling analysis for the Wartsila engines is 1.15 percent, while the USEPA database would indicate that the ratio should be higher for most internal combustion engines – ranging from 3 percent to 24 percent. This was subsequently revised in the analysis submitted to the CEC on October 31, 2012, where an 18.5% ratio was assumed. Third, given that Quail Brush stated NO_2 impact during commissioning and startup are close to the federal standard, and that the NO_2/NO_x ratio used in the analysis is very low, the impacts are underestimated.

Additionally, Quail Brush fails to identify or analyze significant impacts. For example, the application contains no analysis of PM_{10} and $PM_{2.5}$ impacts under commissioning or startup conditions. Moreover, the application does not include models of the annual average concentrations for the combustion portion of PM_{10} emissions from construction equipment or determine the carcinogenic risk for the construction period from these modeled emissions.

Lastly, Quail Brush determined that no significant health impacts are expected during construction despite omitting discussion of dust suppression and potential diesel particulate impacts on sensitive receptors or residents near the facility. This position is inconsistent with current protocols that require many facilities to include construction impacts in their health risk assessments.

E. Greenhouse Gas Impacts

The Quail Brush project estimates greenhouse gas emissions would be approximately 200,000 metric tons of carbon dioxide equivalents ("GHG"). Nevertheless, the applicant wrote to the City of San Diego that "[t]he proposed Project would 'reduce the City's overall carbon dioxide footprint by improving energy efficiency...and assist in the City's goal to 'be prepared for, and able to adapt to adverse climate change.'... The proposed Project would also help allow less efficient older power plants to operate less and ultimately retire. Thus, a failure to construct more efficient generation facilities such as the Project will likely result in continued reliance by San Diego and California on older, less efficient, less environmentally friendly facilities."

In *Center for Biological Diversity v. City of Desert Hot Springs* (Riverside Sup. Ct. Case No. RIC 464585 [August 6, 2008]), the Court rejected similar claims that a large subdivision project would have a "beneficial impact on CO2 emissions" because the homes would be more energy efficient and located near relatively uncongested freeways. The relative energy efficiency of a project does not determine whether or not a project makes a cumulatively considerable contribution to global warming. The existing condition at the site is the appropriate baseline for measuring a project's GHG impact. (Pub. Res. Code 15064.4(b)(1).) Therefore, unless the project proposes to be constructed on a site that is already emitting 200,000 metric tons of GHG or its project description specifically proposes to decommission a less efficient older power plant, then it does not "reduce the City's overall carbon dioxide footprint." For example, NRG could make such a claim with regards to decommissioning the Encina Power Station and repowering it into a more GHG-efficient facility because the Encina Power Station site currently produces GHG emissions.

F. Fire Hazard Impacts

The Quail Brush project is located in an area classified by the California Department of Forestry as a "Very High Fire Severity Zone." The project submitted a Fire Protection Plan ("FPP") that is deficient in protecting health and safety and the environment and violates San Diego LORS.

First, the project plans to create a future Emergency Action Program/Plan for its onside workers. This promise to provide a future plan without any commitment that the plan will achieve a particular performance standard fails to provide any enforceable mechanism to deliver fire hazard mitigation or EMS service that would allow the Commission to conclude the plan reduces these hazards to below a significant level. Furthermore, it denies the public the opportunity to participate in assessing the impacts of such a plan drafted behind closed doors.

Second, the application fails to discuss what mechanisms it must use to ensure there is no encroachment into sensitive biological areas during brush management operations, what protocol Quail Brush must follow if sensitive species are discovered, or whether or not barriers will be constructed to reduce noise levels to sensitive species that may be nesting near the site.

Third, evacuation routes are necessary to protect public safety, but the brush management exhibit on page 28 of the FPP does not show any brush management along the access road. With flame lengths reaching 33.6 feet and no brush management alongside the road, there is no safe escape from the plant outside the reach of the flames. The FPP clearly states that there is no plan for shelter-in-place safe room, only that one is being considered. That is not a commitment to mitigation the Commission can rely on.

Fourth, even if brush management were added along the road, there is no analysis of the new, secondary biological impacts such brush management would have on the environment. Therefore, the biological impacts of this unsafe project are underestimated.

Fifth, the FPP states that it cannot rely on fire service from Santee given that there is no long-term mutual aide agreement between Santee and San Diego. It also states that San Diego's area fire trucks cannot meet the City's fire response times stated in San Diego's General Plan. (FPP at p. 31.) Therefore, contrary to FPP's statement that the FPP satisfies San Diego's LORS (FPP at p. 37), it does not. The FPP attempts to salvage its analysis by stating that there is on-site fire suppression equipment the workers can use, but if the Emergency Response Plan is for the workers to evacuate the site (FPP at p. 30), then the plant will be left unprotected while San Diego's fire trucks take an extra-long time to try to reach the site. Therefore, without a commitment to use it until the San Diego Fire Service arrives, there is no evidence that the on-site fire suppression equipment provides a functional equivalent level of protection as a plant located within San Diego's response times.

Sixth, the brush management exhibit on page 28 of the FPP does not show the brush management zone around the perimeter of the site. It is only on one side. The western side has a fire protection wall, but there is no analysis whether such walls provide sufficient protection against 33.6 foot flames. There is only an analysis of how the brush management zone on one side of the project protects the plant from 33.6 foot flames. (FPP at p. 29.)

Finally, there is no detail in the FPP explaining why the plant is not subject to explosion from its storage of hazardous materials on site and/or from embers that can fly much farther than a 100-foot brush management zone. Accordingly, a decision to permit and construct a facility in this location creates an increased risk of the number and intensity of fire and explosions in a Very High Fire Severity Zone creating an significant impact on the environment.

For all these reasons, the FPP is inadequate and reveals additional reasons why the Project does not comply with San Diego LORS.

G. UXO Hazard Impacts

The Castlerock project is located in Sector 4 of the U.S. Army Corps of Engineers 1988 feasibility study, which analyzed the threat and clean-up of Unexploded Ordinance ("UXO") in East Elliott. According to the Quail Brush Application at page 4.9-11,

Sector 4 is the area with the highest concentration of UXO in East Elliott and there was a sweep to clean up the ordnance within eighteen inches of the surface.

However, Quail Brush has only provided minimal information on the maximum depth of excavation anticipated to construct the site or what standards and processes Quail Brush will use to comply with regulations for UXO clean-up. Essentially, for potentially explosive UXO, they have indicated their plan is to turn it over to the San Diego police for disposal, but this does not inform the public what standard of mitigation the San Diego police must follow. In short, the issue is not who is doing the mitigation, but how it is done.

H. Visual Impacts

Located near the Mission Trails Park, a well-recognized open space preserve, the construction of a power plant would have intense visual impacts on the area. These impacts are not adequately addressed or mitigated in the application. This is inconsistent with City guidelines and requirements. At the time of proposed project decommissioning, the application states that the project will not necessarily be dismantled and restored to existing conditions. It states that it might be "mothballed," but does not address the visual impacts from such an action. CEQA requires an analysis of the "whole of the action" to avoid understating the environmental impacts of project, which includes analyzing the impacts from all stages of the project – site preparation, construction, operation, and decommissioning. For these reasons, we believe it is unlikely that the CEC will override the City of San Diego's decision not to initiate a community plan amendment.

I. Noise Impacts

The Quail Brush project inconsistently and inadequately analyzes its noise impacts. This insufficient analysis results in deficient mitigation measures. For these reasons, described in more detail below, we believe it is unlikely that the CEC will override the City's decision not to initiate a community plan designation.

The project site is located adjacent to a large open space area that is home to endangered and threatened wildlife and plant species. The application focuses on noise impacts to residents, while largely ignoring noise impacts on wildlife in and around the proposed project site and the need to mitigate for such impacts. This omission creates an inadequate analysis of the project's noise impacts. The current description of the project's noise mitigation is insufficient to provide an adequate assessment of mitigation's effectiveness.

The application also largely fails to address impulsive sound sources (e.g. jack-hammers) associated with the construction or operation of the proposed project and the potential for flushing (birds) or site abandonment (all animals) as a function of distance from impulsive sources. The application should include a discussion of the mitigation required to ensure impacts to species of concern observed near the project location are insignificant.

Baseline ambient noise levels are measured over relatively short period of time (2 days). This does not adequately account for temporal variations in the ambient noise. Longer

term noise recordings are required to adequately evaluate baseline noise and variability. To be adequate, Quail Brush will need to collect additional noise data at previous receptor sites and extend the duration of the recordings.

II. The Quail Brush Power Plant Project is Unnecessary

The analysis that follows provides more details regarding (1) why Encina Power Station's retirement in 2018 is an overly conservative assumption; (2) how Governor Brown's Clean Energy Jobs Program and the loading order priorities of energy efficiency, demand reduction, distributed generation, and renewable energy make it unlikely Quail Brush's fossil-fuel resources will be needed; and (3) how pending improvements to San Diego's transmission system or transmission planning tools make it unlikely Quail Brush's resources will be needed.

A. Encina Power Station May Not Retire in 2018

Part of the push for the Quail Brush Power Plant is the belief that San Diego Gas & Electric ("SDG&E) will not be able to supply the local energy demand, in part because of the proposed retirement of the Encina Power Station. It is California ISO's ("CAISO") position that the Encina Power Station should not be retired until the site is repowered and that at least 150 MW of local power will be required from the site. Moreover, the proposed 558 MW Carlsbad CECP has also earned the CEC's approval earlier this year.

Even if the CECP is not constructed, NRG is actively pursuing an alternative compliance plan with the State Water Resources Control Board to allow it to continue generation into 2018. In contrast to NRG's considerable momentum for generating between 150 MW and 558 MW of power from the Encina site, the Quail Brush project has received no support from its regulators and faces an uphill battle to obtain a CEC override. Therefore, even though 558 MW is a strong possibility, if one makes a conservative estimate that the Encina site will generate only 150 MW of capacity, then Quail Brush's proposed 100 MW capacity is not needed to satisfy the Local Capacity Requirement identified by SDG&E.

In fact, even if one were to conclude that peaker plant-type technology that ramps up energy production is the preferred back up when intermittent renewable energy sources are unavailable, there is no reason to retire all generation at the Encina Power Station site and locate new peaker plants in San Diego's open space lands. As NRG testified in a California Public Utilities Commission ("CPUC") hearing on SDG&E's application for authority to enter into a Power Purchase Tolling Agreement ("PPTA") with three power plant projects, the CECP contains similar technology that can ramp up a wider range of electricity than the Quail Brush project. (NRG Opening Brief at 5-10.) Therefore, superior service can be provided at the Encina site without disturbing new open space lands.

B. Pending Improvements to San Diego's Transmission System or Transmission Planning Tools Make it Unlikely Quail Brush Will be Needed.

As the Division of Ratepayer Advocates ("DRA") points out in its brief to the CPUC on the PPTA application, the prospects San Diego will need Quail Brush's 100 MW is

further diminished by improvements to San Diego's transmission system or small changes to CAISO's planned forecasts. For example, there is no need for the 100 MW facility if (1) the CPUC follows its legal requirement to implement the loading order, which CAISO's forecast failed to implement; (2) a 230 to 500 KV line connecting the SDG&E system to the Southern California Edison system is constructed; (3) a moderate level of distributed generation facilities were constructed; (4) CAISO implements other upgrades to San Diego's transmission lines that CAISO predicts are likely to occur; or (5) SDG&E receives approval of its Special Protection System for controlled load dropping in the next year. (DRA Opening Brief at 22 – 35.) The magnitude of Local Capacity Requirement reductions produced by any one of the above measures would make construction of the Quail Brush project unnecessary.

C. Governor Brown's Clean Energy Jobs Program and the Loading Order Priorities of Energy Efficiency, Demand Reduction, Distributed Generation, and Renewable Energy Make it Unlikely Quail Brush Will be Needed.

Governor Brown has articulated an aggressive Clean Energy Jobs Program that will make development of the Quail Brush Project unnecessary. At the heart, of the Clean Energy Jobs Program is the Governor's commitment that the 33% Renewable Portfolio Standard set for 2020 "is a floor, not a ceiling" and the statewide goal to develop 12,000 MW of distributed renewable electricity generation, 6,500 MW of Combined Heat and Power systems, along with 8,000 MW of large scale renewables and related transmission using expedited permitting. (See, http://gov.ca.gov/docs/Clean_Energy_Plan.pdf.) Also important to the Local Capacity Requirement calculation and determination of whether the Quail Brush project is needed is the Clean Energy Jobs Program goal to address five percent (5%) of utilities peak loads through peak load management techniques and energy storage, to require zero net energy new homes by 2020 and new commercial buildings by 2030, and develop stronger appliance efficiency standards. (Id.) In recent years, the Commission has approve budgets of $278 million for energy efficiency and $117 million for demand response. (D.09-09-047; D.12-040-045.) Accordingly the funding and commitment are there to implement the plan.

Consistent with Governor Brown's commitment to expanding the state's energy conservation, distributed generation and renewable energy portfolio, the CPUC and state legislature have already determined that the priority for energy procurement plans must be energy efficiency, demand response, and renewables, before efficient fossil-fuel resources. (D.07-12-052 at 9; D.12-04-045 at 206; PUC Sec. 454.5(b)(9)(C).) As the CPUC has clarified, the loading order priorities apply to "all procurement," with no exception for procurement to satisfy Local Capacity Requirements. (D.12-01-033 at 17.) If an exception were made, then it would render the loading order requirement in PUC Section 454.5 meaningless because the highest priorities in the order (energy efficiency, demand response, and distributed generation forms of renewable energy), by definition, are locally driven and directly affect the Local Capacity Requirements. In order to avoid over-procurement, the loading order priorities must be taken into account in establishing San Diego's Local Capacity Requirements.

As the Division of Ratepayer Advocates ("DRA") points out in its brief to the CPUC, SDG&E assumed a zero percent probability that any future additional renewable or distributed resources will appear within SDG&E's service territory except one Commission-

approved distributed generation contract. (DRA Opening Brief at 16.) Governor Brown's statewide commitment to developing additional distributed generation is 12,000 MW by 2020, and the San Diego region's share is 1,180 MW (708 MW peak load). (DRA Opening Brief at 16-17.) While SDG&E has testified it will meet whatever goal is adopted in the Governor's plan, in this proceeding, SDG&E projects only a 321 MW peak load reduction from distributed generation. (DRA Opening Brief at 16-17.) Because SDG&E 321 MW reduction significantly underestimates the reductions from distributed generation by 387 MW, Local Capacity Requirements in 2018 will not require the Quail Brush project.

Denying the Quail Brush project would foster more investments in energy efficiency and demand reduction programs signaling to SDG&E that its planning efforts to meet the Local Capacity Requirement should not be wasted on procurement programs for fossil-fuel projects that will probably not be approved by the CPUC.

III. The California Public Utilities Commission Will Likely Deny All or Part of SDG&E's Application for Authority to Enter Into A Power Purchase Tolling Agreement.

In addition to the reasons listed above to deny the Quail Brush application for certification, the CPUC is also not in support of the siting of this project. As discussed briefly above, the CPUC is currently considering SDG&E's application for authority to enter into PPTAs with Quail Brush, Escondido Energy Center and Pio Pico. While a final determination has yet to be made, it appears that the CPUC will likely deny the authority for SDG&E to enter into a PPTA with the 100 MW Quail Brush Power Plant or the 305 MW Pio Pico Energy Center, as demonstrated by Administrative Law Judge Yacknin ("ALJ Yacknin") and Commissioner Ferron's recommendations.

We note ALJ Yacknin and Commissioner Ferron agreed on there was a potential need for SDG&E to procure 343 MW by 2018 (the "Local Capacity Requirement") to meet the local capacity requirement and that SDG&E could reapply for authority to enter into a PPTA with Quail Brush or Pio Pico. However, if the PPTA for the 35 MW Escondido Energy Center is approved as Commissioner Ferron recommends, then there are many other ways the Commission can meet the total 343 MW procurement need without the Quail Brush Project. The CEC has already approved the Escondido Energy Center. In contrast, the CEC would have to grant a rare override, as discussed above.

The prospects San Diego will need more than 343 MW is minimal given that it is based on the assumption that the Encina Power Station will retire by 2018 and that the CPUC is currently reviewing the type of power sources needed to support intermittent renewable energy sources. The recommendations correctly state that SDG&E should not assume carbon-emitting, gas-fired peaker plants are needed to provide such support, particularly ones constructed on open space lands rather than existing generation sites.

SDG&E has rebutted the proposed decisions of ALJ Yackin and Commissioner Ferron. However, it's arguments in support of the PPTA are unfounded and in accurate.

Conclusion

In conclusion, for all the reasons discussed above, we respectfully request that the CEC deny the Application for Certification of the Quail Brush Generation Project and call for the applicant to identify a more suitable location the best way to advance San Diego's energy debate.

Sincerely,

John Ponder

John E. Ponder
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:407914006.2
Enclosures

cc: Jimmy Ayala