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September 10, 2019

10.620.01

VIA EMAIL

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Re: Expiration of Major Use Permit for the Rugged Solar Project (PDS2012-3300-12-007 (MUP))

Dear Mr. Neufeld, Mr. Koutoufidis and Ms. Brown:

On behalf of Backcountry Against Dumps and Donna Tisdale (collectively, "Backcountry"), we respectfully submit the following comments on San Diego County Planning and Development Services' (the "County's") purported extensions of the major use permit ("MUP") for the Rugged Solar Project (the "Project;" PDS2012-3300-12-007), owned by the Hamann Company and/or Clean Focus Renewables (collectively, the "Permittee"). Please include these comments in the public record for the Project, including any and all MUP extension or modification proceedings.

I. The MUP for the Project Expired and Was Not Properly Extended

The County Board of Supervisors (the “Board”) originally approved the Project on or about February 4, 2015. The San Diego County Superior Court subsequently set aside the Board’s approvals because the County failed to comply with the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.* The Board thereafter reapproved the Project MUP on or about October 14, 2015. The MUP provided that it “shall expire on October 14, 2017 at 4:00 p.m. (or such longer period as may be approved pursuant to Section 7376 of The Zoning Ordinance of the County of San Diego prior to said expiration date) unless construction or use in reliance on this Major Use Permit has commenced prior to said expiration date.” Zoning Ordinance § 7374 (same). None of the conditions required to prevent permit expiration have occurred.

Section 7376(a) of the Zoning Ordinance provides that “[i]f prior to the expiration of the use permit, the applicant files a written application for extension, the period within which construction or use of the property in reliance on the use permit must be commenced may be extended by order of the Director, or Planning Commission, whichever has original jurisdiction over said use permit, at any time within 90 days of the date of expiration.” The extension application must also “be made on the prescribed form” and “be accompanied by the fee referenced in Section 7602.” Zoning Ordinance § 7376(a). Pursuant to section 7352(a), “[a]pplications for granting or modifying the conditions of a permit for one or more uses, structures or actions, any one of which requires a Major Use Permit, shall require Major Use Permits and shall be under the original jurisdiction of the Planning Commission.”

Here, the MUP has expired for at least three reasons. First, the purported MUP extensions have not been timely. *See Mumaw v. City of Glendale* (“*Mumaw*”) (1969) 270 Cal.App.2d 454, 457-460. As confirmed by a January 11, 2019 email from Permittee representative James Whalen to Ms. Brown (cc’ing Tyler Martin), the first time the County purported to extend the MUP was for a 6-month period ending on February 2, 2019. But the MUP had already expired before the County purported to first extend the MUP in the latter half of 2018. While the Permittee submitted a time extension application prior to the October 14, 2017 expiration date provided in the permit, the County failed to make a final decision on that application within 90 days of the original expiration date as required by section 7376(a) of the Zoning Ordinance. That means neither the first purported extension nor any subsequent extensions were valid. Furthermore, even had that extension been valid, the Permittee’s third extension request came after the second purported extension deadline and was therefore untimely. In a January 11, 2019 email to Mr. Whalen, Mr. Martin and Benjamin Mills, Ms. Brown purported to extend the permit expiration deadline to July 2, 2019. But the Permittee failed to respond by July 2. It was not until July 22 that the Permittee’s representative, Mr. Whalen, emailed Ms. Brown and Mr. Koutoufidis to apologize for not responding by July 2 and to request another extension. Nonetheless, on July 29, 2019 Mr. Koutoufidis purported to grant an extension until October 29, 2019.

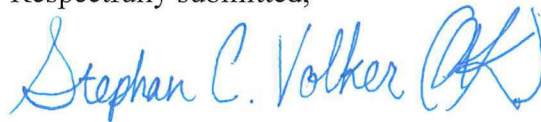
Second, the Permittee's second and third extension requests were not made on the "prescribed form," as required by Zoning Ordinance section 7376(a). Instead, they were made respectively via informal email requests to Ms. Brown on January 11, 2019, and to Ms. Brown and Mr. Koutoufidis on July 22, 2019.

Third, the County's purported extensions have not been made by the body with original jurisdiction over the MUP – the Planning Commission – as required by Zoning Ordinance section 7376(a). For example, the second and third purported time extensions were granted via email by Ms. Brown and Mr. Koutoufidis, respectively.

II. Because the MUP Expired It Is Void and May Not Be Extended or Modified

Because the MUP for the Project has expired, it is null and void, may not be extended or modified, and cannot justify approval of any development on the Rugged Solar site. Zoning Ordinance § 7374 ("Each valid unrevoked and unexpired use permit shall expire and become null and void at the time specified in the permit" unless it is extended before the expiration date or construction or use in reliance on the permit has been commenced prior to that date); *Mumaw*, 270 Cal.App.2d at 460. The Permittee must therefore apply for a new MUP if it wishes to construct and operate a solar energy generation facility on the Rugged Solar site. Any application for a new MUP would also require additional CEQA review, as previously detailed in the October 30, 2017 letter submitted to the County by this office on behalf of Backcountry (attached hereto as Attachment 1) and in the November 15, 2017 letter submitted to the County by the Boulevard Planning Group (attached hereto as Attachment 2).

Respectfully submitted,



Stephan C. Volker
Attorney for Backcountry Against Dumps
and Donna Tisdale

SCV:taf

Attachments:

Attachment 1 – October 30, 2017. Letter from the Law Offices of Stephan C. Volker to Bronwyn Brown re: Comments of Backcountry Against Dumps and Donna Tisdale on Rugged Solar LLC's Application for Extension of the Reliance Period of Major Use Period PDS 2012-3300-12-007 (PDS 2017-MUP-12-007TE) for the Clean Focus/Rugged Solar Project.

Neufield, Koutoufidis & Brown
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Attachment 2 – November 15, 2017. Letter from Donna Tisdale, Chair of the Boulevard Planning Group, to Bronwyn Brown, PDS Planner, Supervisor Dianne Jacob and Adam Wilson re: RUGGED SOLAR MUP PDS2012-3300-12-007; CLEAN FOCUS.

ATTACHMENT

1

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10.620.01

October 30, 2017

VIA EMAIL

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Bronwyn Brown
Project Planner
San Diego County Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123

Re: Comments of Backcountry Against Dumps and Donna Tisdale on Rugged Solar LLC's Application for Extension of the Reliance Period of Major Use Permit PDS 2012-3300-12-007 (PDS 2017-MUP-12-007TE) for the Clean Focus/Rugged Solar Project

Dear Ms. Brown:

On behalf of Backcountry Against Dumps and Donna Tisdale (collectively, "Backcountry"), we respectfully submit the following comments opposing Clean Focus/Rugged Solar LLC's ("Rugged Solar's") application for extension of the reliance period of Major Use Permit ("MUP") PDS 2012-3300-12-007 (PDS 2017-MUP-12-007TE) for the Clean Focus/Rugged Solar Project ("Rugged Solar"), which was formerly part of the failed Soitec Solar project. Please include these comments in the public record for the Planning Commission's consideration and decision on Rugged Solar's requested time extension.

We respectfully request that Planning and Development Services ("PDS") recommend that the Planning Commission *deny* Rugged Solar's time extension request, for the three reasons discussed below.

1. The Rugged Solar Application Is Technically Inadequate and Fails to Demonstrate a Reasonable Rationale Justifying the Requested Time Extension.

Rugged Solar's discretionary permit application and accompanying documents provide no reasons whatsoever – let alone evidence to support those nonexistent reasons – for granting an MUP time extension. Rugged Solar's application fails to even state whether the Project would remain the same, or change, and if the latter, how. And what little information there is about the project in the application and accompanying documents is often conflicting or otherwise deficient.

For example, the Project is variously described as covering 400 acres on 10 lots (Project Facility Availability – Sewer), 400 acres on 9 lots (Project Facility Availability – Water), 740 acres (Notice to Property Owners) and 793.73 acres on 9 lots (Discretionary Permit Application). The Project’s sewage treatment facilities – an important consideration for neighboring residents – are likewise unclear. The outdated Application for an Environmental Initial Study (p. 7) states that the Project does *not* “propose to have septic or an on-site sewage treatment facility,” while the Discretionary Permit Application and Project Facility Availability – Sewer forms both state that the Project *would* be served by an on-site septic system.

The application is also defective in other significant respects. For example, despite the bolded and italicized instruction on the first page of the Discretionary Permit Application that “an Authorized Agent signing below must attach a signed Letter of Authorization,” no such letter of authorization is attached.

Without a complete, internally consistent and informative application, it is impossible for the public and the County to give any serious consideration to this request. Certainly, there is no reason for the Planning Commission to approve – or PDS to recommend approval of – Rugged Solar’s application. Time extensions should only be granted for good cause, but Rugged Solar’s application shows no such good cause. Indeed, as discussed in the next section, changed circumstances since the Board of Supervisors originally approved the Rugged Solar MUP demonstrate that there are more reasons than ever to reject the Rugged Solar project.

2. Project Modifications and Changed Circumstances Demonstrate that the Rugged Solar Project Is Not Needed and that No Time Extension Is Warranted.

At least five changed circumstances since the Project was originally approved as part of the overarching Soitec Solar project render the Rugged Solar Project not only unnecessary, but plainly harmful.

First, statewide, Californians are “using less electricity.”¹ As reported by the *Los Angeles Times*, and as evidenced by data compiled by the U.S. Energy Information Administration (“EIA”) and California Energy Commission (“CEC”), California’s “power plants are on track to be able to produce at least 21% more electricity than it needs by 2020.” Exhibit 1 at 2 (quote);

¹ Penn, I. and R. Menezes, February 5, 2017, “Californians are paying billions for power they don’t need,” *Los Angeles Times* (attached hereto as Exhibit 1, and also available here: <http://www.latimes.com/projects/la-fi-electricity-capacity/>).

EIA, 2017, California Electricity Profile 2015;² CEC, 2017, Installed In-State Electric Generation Capacity by Fuel Type (MW).³ With California's electricity usage flatlining, and rooftop solar and other distributed generation capacity increasing rapidly, there is less need than ever for industrial-scale projects like the proposed Rugged Solar Project - and much less justification for the Project's massive environmental impacts. *Id.*

Second, wildfire risk in the County is higher than previously estimated, and getting worse with global warming. This risk would both impact and be exacerbated by the Project, which would be located in an area with "high potential for wildland fire risk." RFPEIR at 3.1.4-2 (quote); 3.1-4.39 to 3.1-4.40 (Rugged Solar would increase wildfire ignition risk during construction, operation and decommissioning). As reported in the August 2017 Climate Change Vulnerability Assessment for San Diego County,⁴ CalAdapt's wildfire tool estimates that under both a low-GHG-emissions scenario and a high-emissions scenario, substantially more land in the County will burn due to wildfire by 2099. San Diego County, Draft Climate Action Plan, Appendix D, p. 12. Under the low-emissions scenario, over 3,500 more acres are expected to burn *every year* by 2099. *Id.* Under a high-emissions scenario, the additional annual acreage scorched by wildfire increases to nearly 8,500. *Id.*

As we have learned from San Diego's catastrophic Witch Creek Fire in 2007, which burned 197,990 acres and 1,650 structures and killed two people, and the recent devastating Northern California wildfires (primarily) in Sonoma, Napa and Mendocino counties that have burned over 245,000 acres, destroyed approximately 8,900 structures, and killed at least 43 people,⁵ wildfires triggered by downed or arcing power lines in rural areas such as East County cause catastrophic losses of lives and property, not to mention wildlife, habitat and scenery. The Project would increase the risk of devastating wildfires in San Diego County. This risk grows each year with the increased temperatures, aridity and severe winds caused by global warming. Such wildfires, in turn, exacerbate global warming by increasing carbon emissions and reducing the shade and moisture that the burned vegetation would have provided.

² Available here: <https://www.eia.gov/electricity/state/california/>

³ Available here:
http://www.energy.ca.gov/almanac/electricity_data/electric_generation_capacity.html/

⁴ Available here:
<http://www.sandiegocounty.gov/content/dam/sdc/pds/advance/cap/publicreviewdocuments/CAPfilespublicreview/Appendix%20D%20Climate%20Change%20Vulnerability%20Assessment.pdf>

⁵ See CAL FIRE's October 30, 2017 "California Statewide Fire Summary," available here:
http://calfire.ca.gov/communications/communications_StatewideFireSummary

Third, water supplies are now more limited and unreliable in the Project area. This is due to growing water demand from development, and increasing summer temperatures and resulting aridity. The Project, which would rely on both on-site and off-site private wells (Project Facility Availability – Water), would unnecessarily exacerbate the strain on declining groundwater supplies.

Fourth, the County’s previous approval of this Project in its prior incarnation as part of the Soitec Solar Project was based in part on the former owner Soitec’s proposed concentrated photovoltaic (“CPV”) manufacturing facility and the creation of jobs associated with use of that facility. Soitec’s CPV manufacturing facility has closed and the local manufacturing jobs that Soitec had promised will never materialize. Instead, the new Project will likely utilize a different manufacturing process in a different location involving different materials and workforce. Without those promised but nonexistent local benefits, there is much less reason for extending or otherwise re-approving the Project. Relatedly, due to those changes in the Project and its benefits, the Project no longer qualifies as an “environmental leadership project” under Chapter 6.5 of the Public Resources Code, and therefore none of the state policies favoring expedited approval of such projects apply.

Fifth, as a result of the likely change in electrical generation technology from the originally approved project, the new Project would likely require much more surface grading than originally estimated and studied for the Soitec CPV project. The reason is that solar photovoltaic (“PV”) arrays generally require more ground surface area than CPV projects to generate the same amount of electricity. For example, the newly proposed Boulevard Solar Project would require 29 inverter blocks each consisting of 7336 standard photovoltaic modules” (212,744 total modules), while the project originally proposed for that same site – Rugged Solar’s sister project, Tierra del Sol (also part of the larger Soitec project) – would have only required 2,657 total trackers. Soitec Solar Revised Final Program Environmental Impact Report (“RFPEIR”), p. S.0-2.⁶

3. Project Modifications and Changed Circumstances Necessitate Supplemental Environmental Review Prior to Any Additional Discretionary Project Approval.

Because neither the original Soitec project major use permit holder, nor the current Rugged Solar Project applicant commenced construction activities within the time required by the original permit, the Rugged Solar Project may not proceed without discretionary approval by the County, including the requested time extension. Because additional discretionary approval is

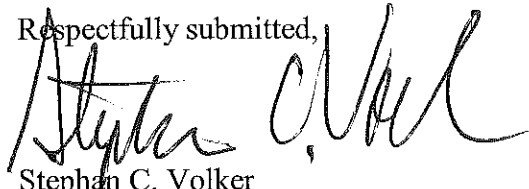
⁶ The Soitec Solar RFPEIR is available here:
<http://www.sandiegocounty.gov/content/sdc/pds/ceqa/Soitec-Solar-RFPEIR.html>

Bronwyn Brown
Project Planner
San Diego County Planning & Development Services
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required and because, as discussed in the preceding section, project changes, changed circumstances and new information reveal new or more severe significant environmental impacts, the County must prepare a subsequent or supplemental EIR (collectively, "SEIR") before issuing any additional discretionary permits for the Project. CEQA Guidelines §§ 15162(a)(1)-(3), 15163.

For each of these reasons, we respectfully request that PDS recommend that the Planning Commission *deny* Rugged Solar's time extension request.

Respectfully submitted,



Stephan C. Volker
Attorney for Backcountry Against Dumps
and Donna Tisdale

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Attachment: Exhibit 1 - Penn, I. and R. Menezes, February 5, 2017, "Californians are paying billions for power they don't need," *Los Angeles Times*

EXHIBIT 1

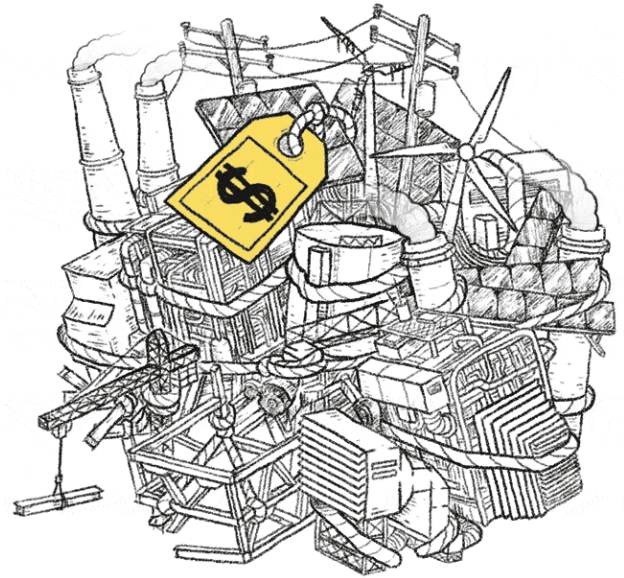



Californians are paying billions for power they don't need

We're using less electricity. Some power plants have even shut down. So why do state officials keep approving new ones?

By IVAN PENN (HTTP://WWW.LATIMES.COM/LA-BIO-IVAN-PENN-STAFF.HTML) and RYAN MENEZES (HTTP://WWW.LATIMES.COM/LA-BIO-RYAN-MENEZES-STAFF.HTML) | Reporting from Yuba City, Calif.

FEB. 5, 2017



Read the story 

View the graphic (/projects/la-fi-electricity-capacity-graphic/)



The bucolic orchards of Sutter County north of Sacramento had never seen anything like it: a visiting governor and a media swarm — all to christen the first major natural gas power plant in California in more than a decade.

At its 2001 launch, the Sutter Energy Center was hailed as the nation's cleanest power plant. It generated electricity while using less water and natural gas than older designs.

A year ago, however, the \$300-million plant closed indefinitely, just 15 years into an expected 30- to 40-year lifespan. The power it produces is no longer needed — in large part because state regulators approved the construction of a plant just 40 miles away in Colusa that opened in 2010.



“We are building more power plants in California than ever before. Our goal is to make California energy self-sufficient.” - Gov. Gray Davis at the opening of Sutter Energy Center in 2001. (Carolyn Cole / Los Angeles Times)



Sutter Energy Center has been offline since 2016, after just 15 years of an expected 30- to 40-year lifespan. (David Butow / For The Times)

Two other large and efficient power plants in California also are facing closure decades ahead of schedule. Like Sutter, there is little need for their electricity.

California has a big — and growing — glut of power, an investigation by the Los Angeles Times has found. The state’s power plants are on track to be able to produce at least 21% more electricity than it needs by 2020, based on official estimates. And that doesn’t even count the soaring production of electricity by rooftop solar panels that has added to the surplus.

To cover the expense of new plants whose power isn’t needed — Colusa, for example, has operated far below capacity since opening — Californians are paying a higher premium to switch on lights or turn on electric stoves. In recent years, the gap between what Californians pay versus the rest of the country has nearly doubled to about 50%.

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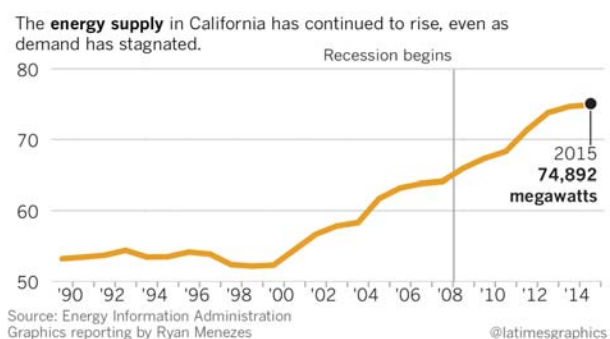
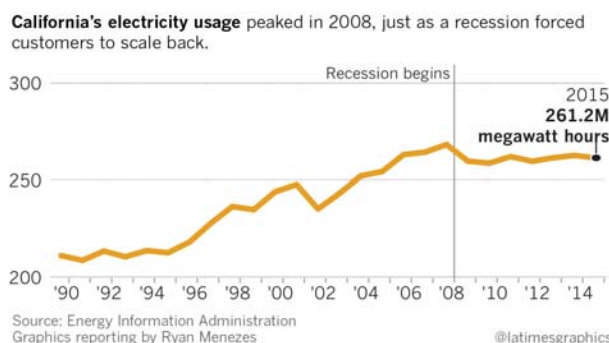
This translates into a staggering bill. Although California uses 2.6% less electricity annually from the power grid now than in 2008, residential and business customers together pay \$6.8 billion more for power than they did

then. The added cost to customers will total many billions of dollars over the next two decades, because regulators have approved higher rates for years to come so utilities can recoup the expense of building and maintaining the new plants, transmission lines and related equipment, even if their power isn't needed.

How this came about is a tale of what critics call misguided and inept decision-making by state utility regulators, who have ignored repeated warnings going back a decade about a looming power glut.

“In California, we’re blinding ourselves to the facts,” said Loretta Lynch, a former president of the California Public Utilities Commission, who along with consumer advocacy groups has fought to stop building plants. “We’re awash in power at a premium price.”

California regulators have for years allowed power companies to go on a building spree, vastly expanding the potential electricity supply in the state. Indeed, even as electricity demand has fallen since 2008, California’s new plants have boosted its capacity enough to power all of the homes in a city the size of Los Angeles — six times over. Additional plants approved by regulators will begin producing more electricity in the next few years.



The missteps of regulators have been compounded by the self-interest of California utilities, Lynch and other critics contend. Utilities are typically guaranteed a rate of return of about 10.5% for the cost of each new plant regardless of need. This creates a major incentive to keep construction going: Utilities can make more money building new plants than by buying and reselling readily available electricity from existing plants run by competitors.

Regulators acknowledge the state has too much power but say they are being prudent. The investment, they maintain, is needed in case of an emergency — like a power plant going down unexpectedly, a heat wave blanketing the region or a wildfire taking down part of the transmission network.

“We overbuilt the system because that was the way we provided that degree of reliability,” explained Michael Picker, president of the California Public Utilities Commission. “Redundancy is important to reliability.”

Some of the excess capacity, he noted, is in preparation for the retirement of older, inefficient power plants over the next several years. The state is building many new plants to try to meet California environmental standards requiring 50% clean energy by 2030, he said.

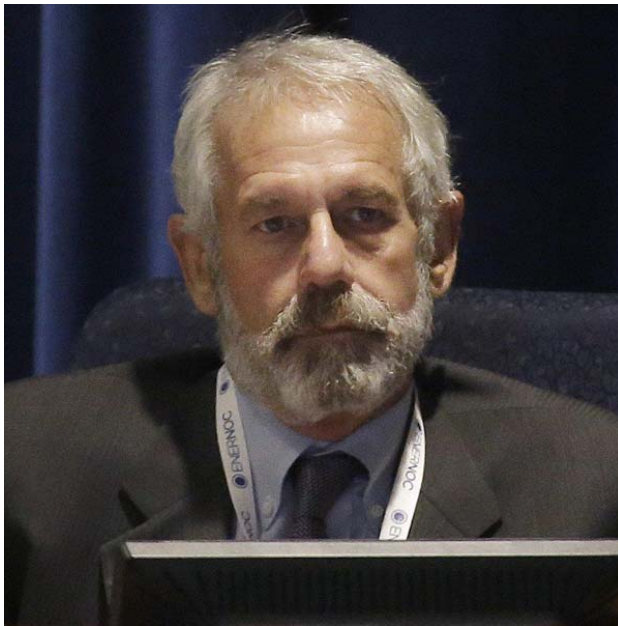
In addition, he said, some municipalities — such as the Los Angeles Department of Water and Power — want to maintain their own separate systems, which leads to inefficiencies and redundancies. “These are all issues that people are willing to pay for,” Picker said.

Critics agree that some excess capacity is needed. And, in fact, state regulations require a 15% cushion. California surpasses that mark and is on pace to exceed it by 6 percentage points in the next three years, according to the Western Electricity Coordinating Council, which tracks capacity and reliability. In the past, the group has estimated the surplus would be even higher.

Michael Picker, current president of California's Public Utilities Commission, said the state's excess power supply is a strategic decision to ensure reliability. Loretta Lynch, who held the same position from 2002 to 2005, has been a critic of overbuilding since she chaired the regulatory agency. (Associated Press)

Even the 15% goal is “pretty rich,” said Robert McCullough of Oregon-based McCullough Research, who has studied California's excess electric capacity for both utilities and regulators. “Traditionally, 10% is just fine. Below 7% is white knuckle. We are a long way from white-knuckle time” in California.

Contrary to Picker's assertion, critics say, customers aren't aware that too



much capacity means higher rates. “The winners are the energy companies,” Lynch said. “The losers are businesses and families.”

The over-abundance of electricity can be traced to poorly designed deregulation of the industry, which set the stage for blackouts during the energy crisis of 2000-2001.

Lawmakers opened the state’s power business to competition in 1998, so individual utilities would no longer enjoy a monopoly on producing and selling electricity. The goal was to keep prices lower while ensuring adequate supply. Utilities and their customers were allowed to buy electricity from new, unregulated operators called independent power producers.

The law created a new exchange where electricity could be bought and sold, like other commodities such as oil or wheat.

Everyone would benefit. Or so the thinking went.

In reality, instead of lowering electricity costs and spurring innovation, market manipulation by Enron Corp. and other energy traders helped send electricity

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prices soaring.

That put utilities in a bind, because they had sold virtually all their natural gas plants. No longer able to produce as much of their own electricity, they ran up huge debts buying power that customers needed. Blackouts spread across the state.

State leaders, regulators and the utilities vowed never to be in that position again, prompting an all-out push to build more plants, both utility-owned and independent.

“They were not going to allow another energy crisis due to a lack of generation,” said Alex Makler, a senior vice president of Calpine, the independent power producer that owns the Sutter Energy plant not far from Sacramento.

But the landscape was starting to change. By the time new plants began generating electricity, usage had begun a decline, in part because of the economic slowdown caused by the recession but also because of greater energy efficiency.

The state went from having too little to having way too much power.

“California has this tradition of astonishingly bad decisions,” said McCullough, the energy consultant. “They build and charge the ratepayers. There’s nothing dishonest about it. There’s nothing complicated. It’s just bad planning.”



California has this tradition of astonishingly bad decisions.

— Robert McCullough, energy consultant

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The saga of two plants — Sutter Energy and Colusa — helps explain in a microcosm how California came to have too much energy, and is paying a high price for it.

Sutter was built in 2001 by Houston-based Calpine, which owns 81 power plants in 18 states.



Sutter Energy Center, now closed, made money only if Calpine Corp. found customers for the plant's power. Other large, natural gas plants in the state also face early closures. (David Butow / For The Times)



Colusa Generating Station opened in 2010. Pacific Gas & Electric will charge ratepayers more than \$700 million over the plant's lifespan, to cover its operating costs and the profit guaranteed to public utility companies. (Rich Pedroncelli / AP)

Independents like Calpine don't have a captive audience of residential customers like regulated utilities do. Instead, they sell their electricity under contract or into the electricity market, and make money only if they can find customers for their power.

Sutter had the capacity to produce enough electricity to power roughly 400,000 homes. Calpine operated Sutter at an average of 50% of capacity in its early years — enough to make a profit.

But then Pacific Gas & Electric Co., a regulated, investor-owned utility, came along with a proposal to build Colusa.

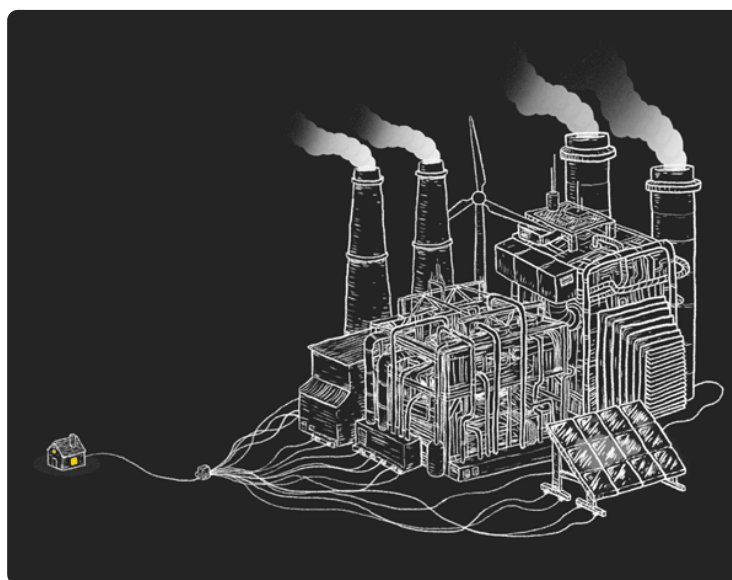
It was not long after a statewide heat wave, and PG&E argued in its 2007 request seeking PUC approval that it needed the ability to generate more power. Colusa — a plant almost identical in size and technology to Sutter — was the only large-scale project that could be finished quickly, PG&E said.

More than a half-dozen opponents, including representatives of independent power plants, a municipal utilities group and consumer advocates filed objections questioning the utility company. Wasn't there a more economical alternative? Did California need the plant at all?

They expressed concern that Colusa could be very expensive long-term for customers if it turned out that its power wasn't needed.

That's because public utilities such as PG&E operate on a different model.

If electricity sales don't cover the operating and construction costs of an independent power plant, it can't continue to run for long. And if the independent plant closes, the owner — and not ratepayers — bears the burden of the cost.



In contrast, publicly regulated utilities such as PG&E operate under more accommodating rules. Most of their revenue comes from electric rates approved

by regulators that are set at a level to guarantee the utility recovers all costs for operating the electric system as well as the cost of building or buying a

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[\(/projects/la-fi-electricity-capacity-graphic/\)](/projects/la-fi-electricity-capacity-graphic/) California's energy supply: From blackouts to glut [\(/projects/la-fi-electricity-capacity-graphic/\)](/projects/la-fi-electricity-capacity-graphic/)

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power plant — plus their guaranteed profit.

Protesters argued Colusa was unnecessary. The state's excess production capacity by 2010, the year Colusa was slated to come online, was projected to be almost 25% — 10 percentage points higher than state regulatory requirements.

The looming oversupply, they asserted, meant that consumers would get stuck with much of the bill for Colusa no matter how little customers needed its electricity.

And the bill would be steep. Colusa would cost PG&E \$673 million to build. To be paid off, the plant will have to operate until 2040. Over its lifetime, regulators calculated that PG&E will be allowed to charge more than \$700 million to its customers to cover not just the construction cost but its operating costs and its profit.



Pacific Gas & Electric's Colusa Generating Station has operated at well below its generating capacity — just 47% in its first five years. (Rich Pedroncelli / AP)

The urgent push by PG&E “seems unwarranted and inappropriate, and potentially costly to ratepayers,” wrote Daniel Douglass, a lawyer for industry groups that represent independent power producers.

The California Municipal Utilities Assn. — whose members buy power from public utilities and then distribute that power to their customers — also complained in a filing that PG&E's application appeared to avoid the issue of how Colusa's cost would be shared if it ultimately sat idle. PG&E's "application is confusing and contradicting as to whether or not PG&E proposes to have the issue of stranded cost recovery addressed," wrote Scott Blaising, a lawyer representing the association. ("Stranded cost" is industry jargon for investment in an unneeded plant.)

The arguments over Colusa echoed warnings that had been made for years by Lynch, the former PUC commissioner.

A pro-consumer lawyer appointed PUC president in 2000 by Gov. Gray Davis, Lynch consistently argued as early as 2003 against building more power plants.

"I was like, 'What the hell are we doing?' " recalled Lynch.

She often butted heads with other commissioners and utilities who pushed for more plants and more reserves. Midway through her term, the governor replaced her as president — with a former utility company executive.

One key battle was fought over how much reserve capacity was needed to guard against blackouts. Lynch sought to limit excess capacity to 9% of the

state's electricity needs. But in January 2004, over her objections, the PUC approved a gradual increase to 15% by 2008.

"We've created an extraordinarily complex system that gives you a carrot at every turn," Lynch said. "I'm a harsh critic because this is intentionally complex to make money on the ratepayer's back."

With Lynch no longer on the PUC, the commissioners voted 5-0 in June 2008 to let PG&E build Colusa. The rationale: The plant was needed, notwithstanding arguments that there was a surplus of electricity being produced in the market.

PG&E began churning out power at Colusa in 2010. For the nearby Sutter plant, that marked the beginning of the end as its electricity sales plummeted.

In the years that followed, Sutter's production slumped to about a quarter of its capacity, or just half the rate it had operated previously.

Calpine, Sutter's owner, tried to drum up new business for the troubled plant, reaching out to shareholder-owned utilities such as PG&E and other potential buyers. Calpine even proposed spending \$100 million to increase plant efficiency and output, according to a letter the company sent to the PUC in February 2012.

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PG&E rejected the offer, Calpine said, "notwithstanding that Sutter may have been able to provide a lower cost."

Asked for comment, PG&E said, "PG&E is dedicated to meeting the state's clean energy goals in cost-effective ways for our customers. We use competitive bidding and negotiations to keep the cost and risk for our customers as low as possible." It declined to comment further about its decision to build Colusa or on its discussions with Calpine.

Without new contracts and with energy use overall on the decline, Calpine had little choice but to close Sutter.

During a 2012 hearing about Sutter's distress, one PUC commissioner, Mike Florio, acknowledged that the plant's troubles were "just the tip of the proverbial iceberg." He added, "Put simply, for the foreseeable future, we have more power plants than we need."

Colusa, meanwhile, has operated at well below its generating capacity — just 47% in its first five years — much as its critics cautioned when PG&E sought approval to build it.

Sutter isn't alone. Other natural gas plants once heralded as the saviors of California's energy troubles have found themselves victims of the power glut. Independent power producers have announced plans to sell or close the 14-year-old Moss Landing power plant at Monterey Bay and the 13-year-old La Paloma facility in Kern County.



Put simply, for the foreseeable future, we have more power plants than we need.

— Mike Florio, former PUC commissioner

Robert Flexon, chief executive of independent power producer Dynegy Inc., which owns Moss Landing, said California energy policy makes it difficult for normal market competition. Independent plants are closing early, he said, because regulators favor utility companies over other power producers.

"It's not a game we can win," Flexon said.

Since 2008 alone — when consumption began falling — about 30 new power plants approved by California regulators have started producing

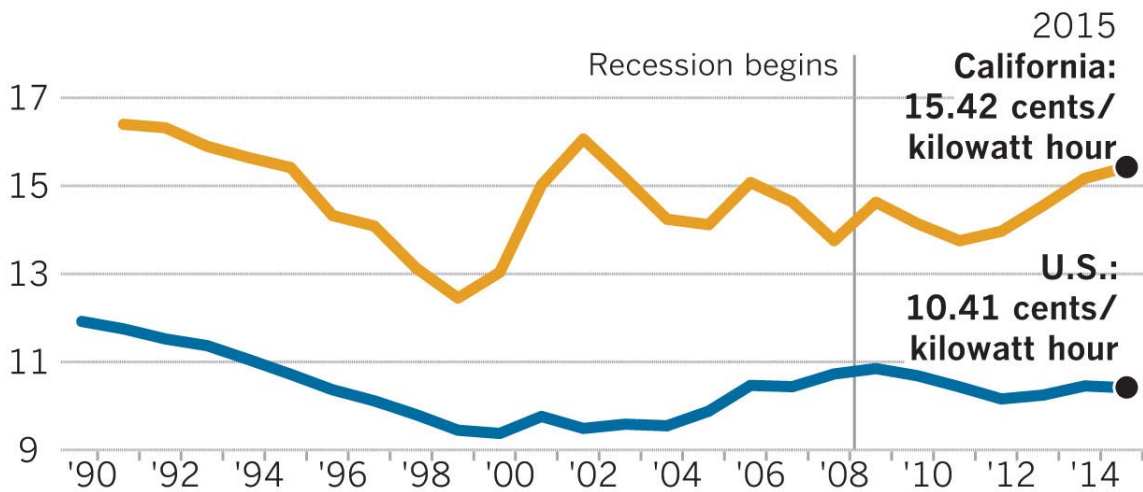
electricity. These plants account for the vast majority of the 17% increase in the potential electricity supply in the state during that period.

Hundreds of other small power plants, with production capacities too low to require the same level of review by state regulators, have opened as well.

Most of the big new plants that regulators approved also operate at below 50% of their generating capacity.

So that California utilities can foot the bill for these plants, the amount they are allowed by regulators to charge ratepayers has increased to \$40 billion annually from \$33.5 billion, according to data from the U.S. Energy Information Administration. This has tacked on an additional \$60 a year to the average residential power bill, adjusted for inflation.

Another way of looking at the impact on consumers: The average cost of electricity in the state is now 15.42 cents a kilowatt hour versus 10.41 cents for users in the rest of the U.S. The rate in California, adjusted for inflation, has increased 12% since 2008, while prices have declined nearly 3% elsewhere in the country.



Note: cost of power figures are adjusted for inflation.
 Source: Energy Information Administration
 Graphics reporting by Ryan Menezes

@latimesgraphics

California utilities are “constantly crying wolf that we’re always short of power and have all this need,” said Bill Powers, a San Diego-based engineer and consumer advocate who has filed repeated objections with regulators to try to stop the approval of new plants. They are needlessly

trying to attain a level of reliability that is a worst-case “act of God standard,” he said.

Even with the growing glut of electricity, consumer critics have found that it is difficult to block the PUC from approving new ones.

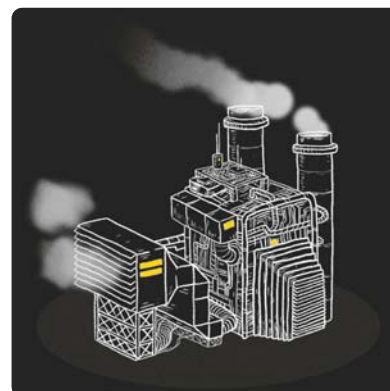
In 2010, regulators considered a request by PG&E to build a \$1.15-billion power plant in Contra Costa County east of San Francisco, over objections that there wasn't sufficient demand for its power. One skeptic was PUC commissioner Dian Grueneich. She warned that the plant wasn't needed and its construction would lead to higher electricity rates for consumers — on top of the 28% increase the PUC had allowed for PG&E over the previous five years.

The PUC was caught in a “time warp,” she argued, in approving new plants as electricity use fell. “Our obligation is to ensure that our decisions have a legitimate factual basis and that ratepayers' interest are protected.”

Her protests were ignored. By a 4-to-1 vote, with Grueneich the lone dissenter, the commissioners approved the building of the plant.

Consumer advocates then went to court to stop the project, resulting in a rare victory against the PUC. In February 2014, the California Court of Appeals overturned the commission, ruling there was no evidence the plant was needed.

Recent efforts to get courts to block several other PUC-approved plants have failed, however, so the projects are moving forward.



(/projects/la-fi-electricity-capacity-California's energy supply: From blackouts to glut (/projects/la-fi-electricity-capacity-graphic/) graphic/)

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Contact the reporters (mailto:ivan.penn@latimes.com; ryan.menezes@latimes.com?subject=The Power Boom). For more coverage follow @ivanlpenn (https://twitter.com/ivanlpenn) and @ryanvmenezes (https://twitter.com/ryanvmenezes)

Times data editor Ben Welsh contributed to this report. Illustrations by Eben McCue. Graphics by Priya Krishnakumar and Paul Duginski. Produced by Lily Mihalik

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ATTACHMENT
2

BOULEVARD PLANNING GROUP

PO Box 1272, BOULEVARD, CA 91905

DATE: 11-15-17

TO: Bronwyn Brown, PDS Planner; via Bronwyn.brown@sdcounty.ca.gov ; Supervisor Dianne Jacob; Adam Wilson.

FROM: Donna Tisdale, Chair, Boulevard Planning Group, PO Box 1272, Boulevard, CA 91905; tisdale.donna@gmail.com ; 619-766-4170 & as an individual.

RE: RUGGED SOLAR MUP PDS2012-3300-12-007; CLEAN FOCUS

At our November 2nd meeting, the Group voted 5-0-0 (one absent & Seat 6 vacant) to *Recommend denial and authorize the Chair to submit appropriate comments.*

Here is an initial list of requests/concerns/comments that mirror those submitted for BOULEVARD SOLAR:

1. This project is not needed and it represents disproportionate adverse impacts to our predominantly low-income and groundwater dependent rural community.
2. A Supplemental EIS and public review is required prior to any MUP Modification approval due to changed circumstances and new information.
 - a. Most information relied in the previous EIR is now outdated.
 - b. Change of ownership for both former Soitec Solar projects that were the subject of one EIR.
 - c. There are now two separate developers for Soitec's former Rugged Solar and Tierra Del Solar projects.
3. Updated community benefits / mitigation package is needed from Boulevard Solar developers:
 - a. Soitec's previous inadequate agreements with the Mountain Empire Schools Foundation, for \$1,000 per MW are now void as are other agreements.
 - b. Our group agreed that a onetime donation of \$1,000 per MW is not enough. We would like to see an annual contribution to the foundation in addition to the initial amount.
 - c. We would also like to see some form of contribution towards the new Boulevard Community Resource Center to help upgrade the facility after the pending transfer from the County. The Jacumba-Boulevard Revitalization Alliance has a current goal of \$100,000 for initial upgrades, with annual maintenance needs.
 - d. Previously approved Biological mitigation lands may have also changed ownership. Current ownership and approval or participation must be verified.
4. Change from CPV to PV technology requires new updated studies based on changed circumstances:
 - a. Plot plan, glare, noise, grading, and storm runoff management.
 - b. Tables are needed, comparing impacts related to the old and new plans.

- c. **Groundwater use:** Conversion from CPV to PV equipment will likely require much more clear-grading and groundwater use than Soitec's previous 80MW project planned for approximately 765 acres. Soitec repeatedly claimed that their CPV technology required less grading than PV.
 - d. Updated groundwater monitoring data related to Rough Acres water use for Tule Wind construction
 - e. Quantification of all sources of water used for Tule Wind construction from wells located on Rough Acres Ranch land.
 - f. If they seek new water contracts with Rough Acres, Jacumba, Live Oak Springs, and other providers, how will bulk water sales to Tule Wind, now under construction, impact any new contracts?
5. Will post for PV units be vibrated in our set in concrete? If vibration is used, what are the related impacts for on-site wells and adjacent groundwater users?
 6. A new detailed plot plan is required for Rugged Solar to see if new setbacks from adjacent properties should be required along with any other potential recommendations.
 7. Need to determine if the new project complies with pending Climate Action Plan, the selected Environmentally Superior Alternative, and the pending Comprehensive Renewable Energy Plan
 8. New economic impact study is needed based on lack of a local manufacturing facility and related manufacturing job promises that Soitec had relied on to help secure previous project approval.
 9. Explanation is needed on whether or not Rugged Solar qualifies as a Preferred Development Project. AB900 status had been provided to Soitec due to their allegedly unique dual tracking CPV technology and promises to build a manufacturing facility in San Diego. Soitec's facility closed in 2015. PV is not cutting edge. It is the prevalent technology.

The letter from Clean Focus, dated 10/10/17, refers to revised (redlined) plot plans, a revised project description, and an updated biological resources assessment report.

Please forward those documents via tisdale.donna@gmail.com and mail full sized hard copies of the revised plot plans to our PO Box 1272, Boulevard, CA 91905.

Thank you for your consideration...