

**DOCKETED**

<b>Docket Number:</b>	17-SPPE-01
<b>Project Title:</b>	McLaren Backup Generating Facility
<b>TN #:</b>	226222
<b>Document Title:</b>	Vantage Data Centers' Response to Intervenor's Petition For Reconsideration
<b>Description:</b>	N/A
<b>Filer:</b>	Scott Galati
<b>Organization:</b>	DayZenLLC
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	1/4/2019 2:55:48 PM
<b>Docketed Date:</b>	1/4/2019

Scott A. Galati  
**DAYZEN LLC**  
1720 Park Place Drive  
Carmichael, CA 95608  
(916) 441-6574

STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application For Small Power Plant  
Exemption for the **McLAREN BACKUP  
GENERATING FACILITY**

**DOCKET NO: 17-SPPE-01**

**VANTAGE DATA CENTERS'  
RESPONSE TO INTERVENOR  
HELPING HAND TOOLS PETITION  
FOR RECONSIDERATION**

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**INTRODUCTION**

Vantage Data Centers (Vantage) in accordance with the Committee Notice of Hearing, dated December 19, 2018, for the Helping Hand Tools (Petitioner) Petition For Reconsideration (Petition), hereby files its Response in support of its Application for a Small Power Plant Exemption (SPPE) for the McLaren Backup Generating Facility (MBGF). For the reasons articulated by Staff in its Response to the Petition (Staff Response)<sup>1</sup> and summarized below, the Commission should summarily reject the Petition because it is not allowed by statute or regulation for a SPPE Decision. The Commission should also reject the Petition it fails to raise any new factual or legal issues or errors. All of the issues raised by the Petition were thoroughly adjudicated by the Committee and the Commission. Simple disagreement with the legal and factual conclusions made by the Committee in its Proposed Decision and the Commission in its Final Decision are not grounds for reconsideration.

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<sup>1</sup> TN226162.

## **REBUTTAL OF PETITIONER'S CONTENTIONS**

### **I. Petitioner has no right to file a Petition for Reconsideration under Section 1720 of the CEC Regulations**

As articulated in the Staff Response, Section 1720 allows the filing of a Petition For Reconsideration only for Commission Orders or Decisions for either a Notice of Intent (NOI) or Application For Certification (AFC) proceedings. This interpretation is entirely consistent with the “permissive” language contained in Public Resources Code Section 25530. The Commission’s exercise of the “permissive” language of the statute authorized it to adopt Section 1720 and apply it only to NOI and AFC proceedings. Evidence that the Commission intended Section 1720 to apply only to NOI and AFC proceedings include the placement of the section in Article 1 and the specific language in Section 1701 that Article 1 governs NOI and AFC proceedings and specifically excludes SPPEs which are governed by a different section (Article 5 of the regulations). Article 5 does not include any provision for filing a Petition For Reconsideration for a decision on a SPPE.

### **II. Petitioner has failed to raise any new evidence or errors of facts or laws.**

Petitioner has not alleged that the Committee excluded relevant evidence or did not consider evidence in the record. Petitioner has not proffered new evidence that could not have been considered during the SPPE proceedings. The Petition simply disagrees with the ultimate conclusions articulated in the Final Decision. Disagreement after a fair opportunity to be heard is not grounds for the Commission to reconsider the Final Decision. Doing so would set a harmful precedent for eliminating the burden of proof that is properly based on a Petitioner. Petitioner bears the burden to bring specific evidence of errors of fact or law that could not have been brought to the Committee’s attention prior to its proposed decision or brought to the Commission’s attention prior to its approval of the Final Decision. The limitations on Petitions For Reconsideration are not only clearly articulated to prevent a “rehashing” of the same arguments, such limitations serve a very important public policy of encouraging parties to fairly make all arguments and bring all relevant evidence to the decision makers at the hearing stage. This enables a Final Decision to be based on the record. Allowing another opportunity to make the same arguments and pointing to the same facts after the Commission reaches a Final Decision unnecessarily prolongs the Commission’s rigorous process and is fundamentally unfair to those parties that have followed the rules.

Petitioner has participated fully in this proceeding, filing documentary evidence, oral testimony, conducting cross-examination of Staff and VDC witnesses, and filing briefs containing legal argument. Petitioner made oral argument to the Committee, provided comments on the Proposed Decision, and urged the Commission to reject the Proposed Decision. For each issue raised in the Petition, we have provided specific citations to the record documenting that the issue, fact, or argument was already considered, is not new, and is not an error as the Petition contends.

A. Generating Capacity and Commission Jurisdiction

The methodology for calculation of generating capacity for the McLaren Petitioner consistently urged the Committee to calculate the generating capacity by simply multiplying the nameplate capacity of each generator times the number of generators. Also, the Petitioner consistently, and incorrectly, cited the Santa Clara Data Center Project as precedent in support of the simplified calculation. However, the Committee and Commission considered and rejected these arguments. Petitioner has simply repeated these same arguments in its Petition, often copying verbatim the arguments contained in previous filings. To document to the Commission that the Petitioner has had a fair opportunity to be heard throughout this proceeding, we have provided the following summary of Petitioner's comments, evidence and arguments regarding generating capacity.

- TN 224284, Petitioner's comments on the Initial Study – claims the Commission should calculate generating capacity using the nameplate rating only and cites to the Santa Clara SPPE proceeding.
- TN 224402, Petitioner's motion to dismiss the proceeding where Petitioner alleges that the Commission is bound by Section 2003 to multiply the nameplate rating by the total number of generators and again cites to the Santa Clara proceeding.
- TN 224462, Petitioner' comments on evidentiary hearing in which Petitioner includes a copy of documents in the Santa Clara proceeding and again contends nameplate rating must be used to calculate generating capacity.
- TN 224636, Petitioner's Response to Committee Questions seeking information about methodology to calculate generating capacity. Petitioner repeated the same argument made in previous filings – identical to the argument made in the current Petition.
- TN 224681, Petitioner's Closing Argument at pages 7-10, where the same argument contained in the Petition is made.

- Exhibit 304 was provided by the Petitioner and the Committee entered into the evidentiary record. It is the Executive Director's jurisdictional determination for the Santa Clara SPPE mentioned in the Petition. While it does not address methodology specifically, it does calculate generating capacity using nameplate capacity.
- TN 224912, Petitioner's Comments and Answers to Committee Questions concerning generating capacity and other issues. This document included the exact argument made by Petitioner in its Petition and included references to the Santa Clara project and Exhibit 304.
- TN 225014, Exhibit 307, Petitioner's Supplemental Reply Testimony after the Committee Status Conference and further evidentiary hearing, noticed specifically to address generating capacity and Petitioner's contentions.
- TN 225008, Exhibit 308 and TN 225007, 309, which are letters estimating Power Utilization Equivalent efficiency factors (PUE) proposed by Petitioner and entered into the evidentiary record. The Committee considered Petitioner's claims that Vantage had incorrectly allocated the electrical demand of the data center and rejected them.
- TN 225830, Petitioner's Comments on the Proposed Decision, where Petitioner reproduces the exact argument contained in the Petition at pages 2-4.

In addition to the written arguments the Petitioner filed above, the Petitioner made the same argument concerning generating capacity to the Committee on two separate occasions. They are documented in the following transcripts.

- TN 224793, Transcript of PreHearing Conference and Evidentiary Hearing conducted on August 30, 2018. Petitioner's argument is located at pages 24, 32-34.
- TN 225108, Transcript of Status Conference and Further Evidentiary Hearing conducted to address generating capacity on October 10, 2018. Petitioner made the exact arguments contained in the current Petition and was afforded the opportunity to cross-examine witnesses; pages 23-24; 29-31; and 36.

Petitioner has made the argument contained in the Petition challenging the generating capacity methodology proposed by Applicant and Staff, in eight separate written documents and orally at two evidentiary hearings and at the Commission Business Meeting on November 7, 2018. The Final Decision, at pages 7-9, includes an accurate discussion of Petitioner's argument and ultimately rejects it on well-reasoned legal and factual grounds. The Final Decision concludes that the generating capacity of the

MBGF is best calculated using the maximum demand of the data center buildings it would serve during times that Silicon Valley Power was unable to supply it with electricity. The Final Decision recognizes that simply multiplying the number of generators times the nameplate rating of the each generator overestimates the generating capacity because many of the generators are redundant. Due to this redundancy in design, all of the generators cannot be operated at maximum generating capacity of each generator because the MBGF is not connected to the transmission grid and the data center buildings are not designed, nor will be constructed to receive electricity in a quantity more than Vantage's customers can use.

The Commission should reject the generating capacity argument contained in the Petition on the grounds that Petitioner has failed to provide any new information or identify an error of law of fact.

B. NO<sub>x</sub> and Diesel Particulate Matter Impacts

The Commission should reject the argument that it made an error of fact related to NO<sub>x</sub> and Diesel Particulate Matter (DPM) emissions impacts. Petitioner argued consistently throughout the proceedings that the Commission needed to conduct a specific type of modeling in order to determine whether the MBGF would result in significant impacts. Petitioner made these arguments in the following written documents and orally at hearings and the Commission Business Meeting.

- TN 224284, Petitioner's comments on the Initial Study, pages 2 and 3.
- TN 224462, Petitioner's comments on evidentiary hearing at pages 3-6.
- TN 224536, Petitioner's Reply Testimony, pages 2-4.
- TN 224681, Petitioner's Closing Argument at pages 1-6.
- TN 225014, Exhibit 307, Petitioner's Supplemental Reply Testimony after the Committee Status Conference and further evidentiary hearing, pages 1 and 2.
- TN 224793, Transcript of PreHearing Conference and Evidentiary Hearing conducted on August 30, 2018. Petitioner's cross examination and argument is located at pages 107-114.
- TN 225108, Transcript of Status Conference and Further Evidentiary Hearing conducted to address air quality impacts on October 10, 2018. Petitioner's argument is located at pages 39 and 40.
- TN 225830, Petitioner's Comments on the Proposed Decision, where Petitioner reproduces the exact argument contained in the Petition at pages 5-6.

Petitioner has been heard on the modeling issue several times. Petitioner's sole ground for reconsideration is that the Commission "mistakenly" misunderstood the extent of the NOx modeling performed by Vantage and Staff experts. Petitioner offers proof of this mistake by referring to Staff's responses to Committee questions (TN 224909) which was filed by Staff ***prior to the last evidentiary hearing***, making it clear that the modeling proposed by Petitioner was not performed. The Committee clearly considered this fact as the Final Decision does not include any statement that the Committee mistakenly thought Petitioner's proposed NOx and DPM modeling were performed by either Vantage or Staff. In fact, as evidenced during the discussion at the evidentiary hearing (10/10/18:RT:39-45), it was made clear that the Committee could rely on the modeling that had been performed combined with the fact that NOx emissions will be offset are sufficient to conclude the project will not result in significant NOx impacts. Petitioner has failed to meet its burden that the Final Decision contains an error of fact or law with respect to the air quality modeling issues and therefore the Petition should be rejected.

C. Greenhouse Gas Emissions

Petitioner has also failed to meet its burden that the Final Decision contains an error of law or fact or that there is new evidence relating to Greenhouse Gas Emissions (GHGs) that could not have been presented prior to the granting of the SPPE. Petitioner similarly reiterates arguments it made in the documents cited above that were considered by the Commission and rejected. Therefore, the Commission should reject the Petition.

D. Public Participation and Environmental Justice

The Petition simply reiterates verbatim arguments made by Petitioner in earlier filed documents. The majority of Petitioner's objections are that the SPPE process conducted by the Commission must follow the process the Commission conducts for an AFC for projects over which the Commission is performing the equivalent of an EIR and conducting a thorough analysis of the laws, ordinance, regulations and standards that are preempted by the Commission's authorizing statute. The Commission regulations contained in Article 1 are not applicable to SPPE proceedings, presumably because for SPPE proceedings the Commission is complying with the California Environmental Quality Act (CEQA) requirements.

Staff addresses the public outreach and analyses conducted in its Response to the Petition. However, the Committee should also note that City of Santa Clara conducted public notices during the preparation of its Initial Study/Mitigated Negative Declaration pursuant to CEQA. Attached is a list of addresses used by the City of Santa Clara to send notices including the latest meeting of the Architectural Review Committee concerning the McLaren Data Center.<sup>2</sup>

It is important to note that two members of the public have provided comments on the Petition.<sup>3</sup> Mr. Nordmo is the owner of Off The Wall Soccer, whose address is 700 Mathews Street. Ms. Benassi is the manager of Off The Wall Soccer. According to the City record of notices<sup>4</sup>, Mr. Nordmo received the City notices at Off The Wall Soccer at 700 Mathews Street.

There has been no violation of any public outreach or Environmental Justice requirement, as the Committee concluded after hearing Petitioner's earlier procedural arguments.

E. Notice of Determination

Any comment the Petitioner may have on the Notice of Determination is not subject to a Petition For Reconsideration. Even if the Commission believes Section 1720 would apply to an SPPE, the Notice of Determination is not such a Decision by the Commission.

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<sup>2</sup> Provided by City of Santa Clara on January 3, 2019.

<sup>3</sup> TN 226201, Comments by Jan Eric Nordmo; TN 226200, Comments by Janet Benassi.

<sup>4</sup> See yellow highlight on attached City of Santa Clara mailing list.



## **CONCLUSION**

The Commission should dismiss the Petition on the grounds that regulations or statute do not allow the Petition for a SPPE decision. Notwithstanding, The Petitioner has failed to raise any error of law or fact or provide new evidence which support reconsideration. We request the Commission dismiss the Petition with prejudice and include a firm statement that such Petitions are inappropriate for SPPE proceedings.

Dated: January 4, 2019

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Scott A. Galati", with a stylized flourish at the end.

Scott A. Galati  
Counsel to Vantage Data Centers

APN	OWNER	MAIL1	MAIL2
224-03-085	2045-2055 LAFAYETTE STREET LLC	16600 WOODRUFF AV 200	BELLFLOWER, CA 90706
224-40-006	ANTHONY ERLUND	4386 MILLER CT	PALO ALTO, CA 94306
224-40-010	BOWLES, ECKSTROM & ASSOCIATES LLC	2290 10TH ST	SAN JOSE, CA 95112
230-03-069	CALVIN AND JEAN MCGILLIS TRUSTEE	100 LYELL ST	LOS ALTOS, CA 94022
224-67-040	CHESTER AND MARLENE O'DONNELL TRUSTEE	2318 LAFAYETTE ST	SANTA CLARA, CA 95050
	CITY OF SANTA CLARA, PLANNING DIVISION (PLN2016-11732 - 917 WARBURTON AVENUE/JEFF)	1500 WARBURTON AVE	SANTA CLARA, CA 95050
224-40-005	CLAUDIA BRADEN ET. AL.	835 MATHEW STREET	SANTA CLARA, CA 95050
224-35-014	D&R MILLER PROPERTIES LLC	630 MARTIN AV	SANTA CLARA, CA 95050
224-40-001	DIANA LAND COMPANY, LTD.	651 MATHEW ST	SANTA CLARA, CA 95050
224-03-086	JAN ERIC NORDMO	700 MATHEW ST	SANTA CLARA, CA 95050
224-03-081	JITENDRA AND SHASHI PATEL TRUSTEE	800 MATHEW ST	SANTA CLARA, CA 95050
224-40-008	JUDITH AND BRUCE WHITNEY TRUSTEE	2311 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-03-087	KAN FAN CHEUNG AND YIM HO LEUNG	2201 LAFAYETTE ST	SANTA CLARA, CA 95050
230-03-071	LONG RICHARD D AND DOROTHY A LONG REV	17810 FOSTER RD	LOS GATOS, CA 95030
230-03-022	LONG RICHARD D AND DOROTHY A REVOCAB	17810 FOSTER RD	LOS GATOS, CA 95032
224-40-002	MATHEW STREET PROPERTY LLC	5911 VISTA LP	SAN JOSE, CA 95124
224-40-011	MATHEW STREET PROPERTY LLC	5911 VISTA LP	SAN JOSE, CA 95124
224-35-020	MIRACLE HOME INVESTMENT LLC	2435 LAFAYETTE STREET	SANTA CLARA, CA 95050
230-03-090	NEWARK GROUP INDUSTRIES INC.	525 MATHEW ST	SANTA CLARA, CA 95050
224-03-080	OWNER/RESIDENT	2265 LAFAYETTE STREET	
224-03-085	OWNER/RESIDENT	2055 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-03-085	OWNER/RESIDENT	2045 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-03-085	OWNER/RESIDENT	2199 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-03-087	OWNER/RESIDENT	650 MATHEW STREET	SANTA CLARA, CA 95050
224-03-087	OWNER/RESIDENT	2201 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-35-017	OWNER/RESIDENT	650 MARTIN AVENUE	SANTA CLARA, CA 95050
224-35-017	OWNER/RESIDENT	680 MARTIN AVENUE	SANTA CLARA, CA 95050
224-35-017	OWNER/RESIDENT	640 MARTIN AVENUE	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	785 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	765 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	705 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	795 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	715 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	775 MATHEW STREET	SANTA CLARA, CA 95050

224-40-002	OWNER/RESIDENT	725 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	745 MATHEW STREET	SANTA CLARA, CA 95050
224-40-002	OWNER/RESIDENT	765 MATHEW STREET	SANTA CLARA, CA 95050
224-40-006	OWNER/RESIDENT	855 MATHEW STREET	SANTA CLARA, CA 95050
224-67-041	OWNER/RESIDENT	2304 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-67-041	OWNER/RESIDENT	2314 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-67-041	OWNER/RESIDENT	2314 LAFAYETTE STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	555 REED STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	535 REED STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	504 MATHEW STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	512 MATHEW STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	520 MATHEW STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	500 MATHEW STREET	SANTA CLARA, CA 95050
230-03-104	OWNER/RESIDENT	505 REED STREET	SANTA CLARA, CA 95050
224-40-009	RICHARD & DOROTHY LONG REVOCABLE	17810 FOSTER RD	LOS GATOS, CA 95030
230-03-070	RICHARD AND DOROTHY LONG	17810 FOSTER RD	LOS GATOS, CA 95030
224-03-080	SEW LLC	2156 O'TOOLE AV	SAN JOSE, CA 95131
230-03-047	SOUTHERN PACIFIC TRANSPORTATION CO.	65 CAHILL ST	SAN JOSE, CA 95110
230-03-094	SOUTHERN PACIFIC TRANSPORTATION CO.	65 CAHILL ST	SAN JOSE, CA 95110
230-03-095	SOUTHERN PACIFIC TRANSPORTATION CO.	65 CAHILL ST	SAN JOSE, CA 95110
224-35-017	SUNSET PROPERTIES, INC.	160 PACIFIC AV 200	SAN FRANCISCO, CA 94111
224-67-041	TONY AND REBECCA GARZA	2304 LAFAYETTE ST	SANTA CLARA, CA 95050
224-40-007	WILLIAM AND ANN MEUSER TRUSTEE	2301 LAFAYETTE STREET	SANTA CLARA, CA 95050
224-67-006	WILLIAM CAVALIERI ET. AL.	675 CLARA VISTA AV	SANTA CLARA, CA 95050
230-03-104	XERES VENTURES LLC	1212 NEW YORK AV NW 900	WASHINGTON, DC 20005