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**STATE OF CALIFORNIA
 ENERGY RESOURCES CONSERVATION
 AND DEVELOPMENT COMMISSION**

In the Matter of: Laurelwood Data Center)))))	Docket No. 19-SPPE-01 STAFF’S RESPONSE IN OPPOSITION TO INTERVENOR ROBERT SARVEY’S MOTION TO DISMISS
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INTRODUCTION

On August 19, 2019, Intervenor Robert Sarvey filed a Motion to Dismiss the Small Power Plant Exemption (SPPE) Application filed by MECP1 Santa Clara 1, LLC (Applicant) for the Laurelwood Data Center (LDC).¹ Mr. Sarvey’s lone argument in the motion is that LDC is not eligible for an SPPE because the 56 backup generators proposed to be installed as part of the project would exceed the 100-megawatt (MW) maximum for SPPEs when their generating capacity is estimated under Title 20, California Code of Regulations, section 2003 (Section 2003). Because section 2003, the Warren-Alquist Act, and the Energy Commission’s (CEC) past decisions do not support Mr. Sarvey’s conclusion, the Presiding Member and Committee should deny the motion in its entirety.

LEGAL BACKGROUND

Under the Warren-Alquist Act, the CEC is responsible for reviewing, and ultimately approving or denying, all applications for thermal electric power plants, 50 MW and greater, proposed for construction in California (Pub. Resources Code, § 25500). The SPPE process allows applicants with projects between 50 and 100 MW to seek an exemption from the CEC’s certification process and proceed with local approval rather than requiring CEC certification. The CEC can grant an exemption if it finds that (a) the proposed project would not have a generating capacity of greater than 100 MW and (b) the proposed project would not create a substantial adverse impact on the environment or energy resources (Pub. Resources Code, § 25541). The Warren-Alquist

¹ Title 20, California Code of Regulations, section 1211.5(a) states “[a]ny party may request the presiding member to issue orders or rulings, including but not limited to requests to require another person to act or to refrain from acting, or requests for adjudication of procedural or substantive issues.” Staff files this response to Mr. Sarvey’s motion in accordance with section 1211.5’s requirement that “[i]n the absence of [a schedule established by the presiding member], responses to motions shall be filed within 14 days of the service of the motions.”

Act further defines a "thermal power plant" as "any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto" (Pub. Resources Code, § 25120).

Title 20, California Code of Regulations, section 2003 is a CEC regulation, enacted in 1993 without any subsequent revision, which seeks to define "generating capacity" as used in the Warren-Alquist Act and CEC regulations when referring to turbine generators. Subdivision (a) states "[t]he 'generating capacity' of an electric generating facility means the maximum gross rating of the *plant's turbine generator(s)*, in megawatts ('MW'), minus the minimum auxiliary load" (emphasis added). Subdivision (b) defines the meaning of "maximum gross rating" as used in subdivision (a) for different types of turbine generators such as steam and combustion turbine generators. Subdivision (c) defines "minimum auxiliary load" as used in subdivision (a), also for turbine generators.

FACTUAL BACKGROUND

The LDC would include 55 diesel-fired standby generators that would provide an emergency backup power supply for the LDC project. The project would also include a 56th diesel-fired backup generator to provide essential services (for fire monitoring and other emergency operations). Each generator would have a maximum output capacity of 3.0 MW and continuous steady-state output capacity of 2.725 MW. The backup generators would be electrically isolated from the Silicon Valley Power electrical transmission grid with no means to deliver electricity to anywhere other than the LDC. (Updated Project Description, Laurelwood Data Center (June 21, 2019) 19-SPPE-01, TN 228823 [Updated Project Description], p. 2-1.)

The maximum LDC facility load requirements are 99 MW under peak summer-time ambient conditions. This 99 MW figure includes the critical information technology load of the servers and server bays, the cooling load of the information technology servers and bays, and the facility's ancillary electrical and telecommunications equipment operating loads to support the data customers and campus. The applicant also has agreed to a contractual limitation in its service agreement with Silicon Valley Power stating that the amount of electricity available for delivery to the LDC shall not exceed 99 MW at any point. (Updated Project Description, p. 2-1, 2-2.)

DISCUSSION

The backup generators used by the LDC use diesel-fueled engines to convert the thermal energy in the diesel fuel into electricity from a rotating generator. Thus, the backup generators are electrical generating devices that rely on thermal energy, but the diesel generators are not "turbine generators" within the meaning of section 2003. (See Appendix A to Initial Study and Proposed Mitigated Negative Declaration, Laurelwood

Data Center (Aug. 28, 2019) 19-SPPE-01, CEC Pub. No. CEC-700-2019-002, TN 229584.) Mr. Sarvey's motion does not allege otherwise.

This leaves staff and the Committee in a familiar position. The sole CEC regulation governing the calculation of "generating capacity" does not consider or apply to non-turbine electrical generating facilities; yet as in the McLaren Backup Generating Facility SPPE proceeding, staff and the Committee are faced with a motion to dismiss an SPPE application that centers on this issue. (See Motion of Helping Hand Tools to Dismiss the Proceeding, McLaren Backup Generating Facility (Aug. 3, 2018) Docket No. 17-SPPE-01, TN 224402; see also Staff's Response to Comments, Response to Motion to Dismiss, Response to Motion for New Schedule, McLaren Backup Generating Facility (Aug. 13, 2018) Docket No. 17-SPPE-01, TN 224479.)

Staff's position is essentially unchanged. Staff agrees with the conclusion of the CEC in the McLaren Backup Generating Facility Final Decision which found that "the demand of the Backup Project is equal to the maximum load of the servers in the Data Center plus the cooling and ancillary load of the building" (Final Commission Decision with Corrected Publication Number, McLaren Backup Generating Facility (Nov. 27, 2018) Docket No. 17-SPPE-01, CEC Pub. No. CEC-800-2018-003-CMF, TN 225970 [McLaren Decision] p. 8). This method of calculation for generating capacity in no way conflicts with section 2003 and recognizes that, unlike grid-connected power plants, a data center backup generation facility can never exceed the demand of the building to which it is connected. As with McLaren, backup generation at the LDC "will not deliver electricity for general consumption but will be restricted to providing power exclusively for the Data Center" (McLaren Decision, p. 8). Thus, when calculating the generating capacity of a data center backup generation facility, "the demand of the Data Center is the critical inquiry" (McLaren Decision, p. 8).

Mr. Sarvey's motion contains no reference to the CEC's discussion of generating capacity for a similar data center in the McLaren Decision, despite his participation in that proceeding as a representative for the sole intervenor, Helping Hand Tools (See, e.g., Reply Testimony of Robert Sarvey for Helping Hand Tools, McLaren Backup Generating Facility (Aug. 20, 2018) 17-SPPE-01, TN 224536, p. 1). More importantly, Mr. Sarvey's motion fails to allege that, if generating capacity is calculated for LDC by considering the "the maximum load of the servers in the Data Center plus the cooling and ancillary load of the building," it will exceed 100 MW (McLaren Decision, p. 8). Nor does Mr. Sarvey's motion offer any argument that the method used by the CEC to calculate generating capacity in McLaren is arbitrary, unreasonable, or that section 2003 is directly applicable to thermal power plants utilizing non-turbine generators.

CONCLUSION

For the forgoing reasons, Mr. Sarvey's motion lacks support in the law and should be dismissed in its entirety. Staff respectfully requests that the Committee issue an order dismissing Mr. Sarvey's motion within the standard 30-day timeline under Title

20, California Code of Regulations, section 1211.5 to resolve the important jurisdictional issues raised by this motion to dismiss.

DATED:

Respectfully submitted,



NICOLAS OLIVER
Staff Counsel