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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

APPLICATION FOR SMALL POWER PLANT EXEMPTION FOR THE: **SEQUOIA BACKUP GENERATING FACILITY (SBGF)**	**Docket No. 19-SPPE-03** **Staff's Response to Intervenor Robert Sarvey's Motion to Compel**

On February 21, 2020, Intervenor Robert Sarvey filed a motion to compel the applicant to provide information that California Energy Commission (CEC) staff (staff) originally requested on September 13, 2019 in Data Request number 14 (TN 229737)[1]. On February 25, 2020, the Applicant, C-1 Santa Clara, LLC, filed a Reply to the motion to compel asking the Committee to reject the motion on procedural grounds. For the reasons discussed below, staff recommends the Committee deny Mr. Sarvey's motion to compel and proceed to evidentiary hearing on the exemption application.

1. Staff agrees that, in general, the procedural deficiencies identified in applicant's reply are sufficient to support a decision by the Committee to deny the motion to compel.

In its reply, the applicant cites several reasons for the Committee to deny the motion to compel, including that a party cannot compel the production of information it did not itself request, and that if the motion were to be treated instead as a new data request, the time for discovery has long since passed. Staff agrees that the former argument is an accurate interpretation of California Code of Regulations, title 20, section 1716(g)[2], but notes that a motion filed pursuant to section 1211.5 suffers from no such constraint. Mr. Sarvey did not indicate under what authority he relied on in filing his motion, so presumably it is left to the Committee's discretion whether to treat it as a section 1716(g) motion or a more general section 1211.5 motion. Nevertheless, a party seeking to avoid the constraints of 1716(g) by filing a 1211.5 motion targeted at the same

[1] The subject data request is provided as attachment A for ease of reference, along with the cross-referenced data requests it refers to and background information, which are included for context.

[2] Unless otherwise noted, all subsequent section references will be to Title 20 of the California Code of Regulations.

subject matter encompassed by 1716(g) should make a showing as to why the constraints of section 1716(g) should not apply; not only with regard to standing, but also to the requirement that motions to compel be filed within 30 days of when the data responses were due. Mr. Sarvey makes no such showing and his motion should therefore be denied.

If the Committee seeks to avoid the procedural problems with Mr. Sarvey's motion and instead treat it more like a data request, it should similarly deny the request based on failure to present his request during the period of time allotted for discovery, and failure to show why discovery should be extended for this request. Staff notes that the data request Mr. Sarvey relies on for his motion was issued on September 13, 2019, more than five months ago and Mr. Sarvey's motion comes to the Committee more than four months after the applicant provided its response on October 2, 2019. By all measures, this is a very long amount of time to have elapsed before beginning action to require the information. Staff understands that applicant's initial response was that it was seeking the information from the Bay Area Air Quality Management District (BAAQMD) and would file a supplemental response when such information was received, so perhaps a motion to compel filed at that time would have been considered premature. However, when additional time had passed and it became clear that no supplemental response was forthcoming and the deadline for staff's Initial Study was looming, it became incumbent on Mr. Sarvey to timely raise the issue.

Nowhere in Mr. Sarvey's motion does he provide a reason for the tardiness of his request. As applicant notes in its reply, section 1941 establishes the period for discovery as 60 days from submittal of the application; pursuant to section 1716(e), any extension of the discovery period must demonstrate good cause. The application was filed on August 12, 2019, and, except for a set of follow-up requests precipitated by project modifications, discovery closed on October 11, 2019. Mr. Sarvey has failed to show good cause for the delay and, as discussed below, the information is unnecessary for an evaluation of the potential for the project to result in significant, adverse cumulative impacts to air quality; therefore, the motion should be denied.

2. <u>While staff originally asked the applicant to prepare a cumulative modeling analysis for the facility and the surrounding sources, it ultimately concluded the information was not necessary.</u>

Staff submitted its first round of multi-disciplinary data requests to the applicant on September 13, 2019[3], including Data Requests 11 through 14 on Cumulative Air Quality Impacts (see attached). Data Requests 11, 12, and 13 asked for information about those sources nearby, including projects that have received construction permits but are not yet operational and those that are either in the permitting process or can be expected to be in permitting in the near future. Data Request 14 asked the applicant to perform the cumulative modeling analysis, assuming that the information from 11, 12, and 13 would be available and of reasonable quality.

[3] TN 229737

In general, cumulative modeling analyses ensure that the project impacts are not only added to current background, but to the background conditions that would be in place once other concurrent permits and projects are up and operating. Generally, staff and the applicant work with the local permitting agencies and the local air district to identify those projects, including those that are in the planning stage and, thus, might come online in a similar time frame as the proposed project.

In acknowledgement of the effort required by the applicant, air district, and local jurisdictions to cull through the actual and potential permits and proposals that may emit at greater than 5 tons per year of criteria pollutants and within a 6 mile radius, which can be legion, staff generally asks for the cumulative modeling input information and the modeling early in every power plant licensing case, before the bulk of staff's analysis has begun. Staff's approach for the project at issue, Sequoia Backup Generating Facility (SBGF), was no different; the request was made before staff fully embarked on its analysis. Further, based on the August 30, 2019, Walsh Committee status conference, staff believed that the Committee was interested in staff obtaining information of this sort for these types of projects.

Staff attempted to obtain this information through Data Requests 11 – 14 and, in response, the applicant indicated it had requested the information from BAAQMD and would file a supplemental response when it was received. No supplemental response was ultimately provided. Staff has had difficulty in obtaining this information in the past. Given the relatively high urban density and economic activity in the South Bay, there are myriad pending permits and proposals solely accessible to the air district that would need to be pulled, many of which are likely to be poorly defined and, thus, of questionable value. Doing so would require a large expenditure of time and resources, and in hindsight, it is not surprising that the applicant may have had difficulty obtaining this information.

As staff embarked on its analysis, concerns over using a traditional cumulative modeling approach for SBGF, and similar backup generating facilities, became apparent, leading staff to conclude that such an approach could lead to speculative results, and may not be the best fit for these types of projects, especially where an alternative methodology is approved by the air district.

Given the nature of the majority of projects that come before the CEC for review, staff is most familiar using its traditional cumulative modeling approach for projects with a few very large stacks. These few large stacks have the potential to disperse pollutants over a much larger range and, because there are only a few and they have a very simplistic and predictable operating profile, the variables concerning plant operation that would need to be taken into consideration in the model are few. This is not the case for backup generators co-located with data centers, such as is present in SBGF. SBGF would use 54 diesel-fired generators, each with a separate stack location. Adjacent data centers, existing and proposed, would similarly have multiple stack locations, and each facility would be capable of operating in innumerable combinations of generators. It would be complicated, to say the least, to determine with any degree of specificity the exact

combination of an on-site engine and each off-site engine or emission source location to model that would be likely to operate simultaneously and that might result in cumulative contributions to an off-site receptor. The existence of so many decision points and variables involved in the modeling render the end result of the modeling exercise somewhat speculative and of questionable value in concluding whether a backup generating facility would realistically have the potential to result in a significant, adverse impact to air quality. It turns out, however, that such potentially speculative modeling is unnecessary here, as the BAAQMD has established thresholds of significance that establish a far better parameter for determining whether a project will result in a cumulatively considerable air quality impact. This is discussed further below.

As an information gathering exercise, staff did perform modeling to identify the "worst" SBGF engine (highest impacts) during readiness testing and the "worst" engine testing during readiness testing from McLaren and Walsh and found no overlap in impacts. However, since this was not an inclusive cumulative modeling assessment (which would require all the sources that might contribute to a change in the setting or background), this modeling provided little analytical value and staff did not include a discussion of this exercise in the Initial Study (IS).

Instead, as mentioned above and discussed in more detail below, staff concluded that the best method for determining impacts in this situation would be to use district thresholds to determine whether a project had the potential to result in a cumulatively considerable air quality impact. Due to the short amount of time allowed for discovery, the data requests were issued before staff had concluded that the thresholds of significance analysis was sufficient to conclude the project would not cause a cumulatively considerable adverse impact.

3. <u>The IS/PMND contains substantial evidence that the project would not result in any significant, adverse cumulative air quality impacts.</u>

BAAQMD is the agency charged with preparing, adopting, and implementing emission control measures, conducting source permitting, and evaluating a project's compliance with standards for stationary sources of air pollution pursuant to delegated state and federal authority for all projects located within their jurisdiction[4]. Additionally, BAAQMD publishes its own CEQA Guidelines to assist lead agencies in evaluating a project's potential to result in impacts to air quality[5,6]. SBGF would be within BAAQMD jurisdiction. BAAQMD has adopted project-level emissions rate thresholds of significance in units of pounds per day and tons per year to determine the significance of a project's impact which is subject to BAAQMD permitting[7]. These thresholds of significance are for directly-emitted, non-attainment criteria pollutants and non-

[4] Initial Study (IS) p. 5.3-10.
[5] These Guidelines can be found here: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines
[6] IS p. 5.3-10.
[7] *Id.* at 5.3-13.

attainment precursor criteria pollutant emissions, to help agencies determine whether a proposed project would have a cumulatively considerable impact on air quality[8]. A lead agency is allowed to rely on an air district's adopted thresholds of significance[9]. As shown in the Initial Study, with the NOx emissions offsets proposed by the applicant, the project would not exceed any of the BAAQMD emissions significance thresholds[10].

In addition to the thresholds of significance discussed above, BAAQMD has adopted thresholds of significance to evaluate local community risk and hazard impacts resulting from emissions of toxic air contaminants and particulate matter[11]. The project's emissions would be below these thresholds of significance as well[12].

Pursuant to the BAAQMD Guidelines, if a project's emissions are below the thresholds of significance, staff concludes that the project would not result in a significant adverse cumulative air quality impact and no further analysis is necessary. The IS shows that, with the NOx emissions offsets proposed, SBGF's emissions are below all relevant thresholds of significance established by BAAQMD and no further analysis is necessary; therefore the data requested in Attachment A is no longer needed.

4. <u>The requested information would not alter staff's conclusion that the project would not cause a cumulatively considerable air quality impact and would not provide any useful information to the public or decision makers.</u>

As discussed above, staff initially requested the information for three reasons: 1) it generally requests this type of information for application for certification proceedings; 2) it believed the Committee requested this information be provided in a similar data center application proceeding; and 3) the analysis had not yet been performed showing the project did not exceed BAAQMD's significance thresholds.

And as discussed above, staff completed its analysis using BAAQMD Guidelines, concluding the project would not result in a significant adverse cumulative air quality impact. According to those guidelines, if a source's modeled impact at any offsite location does not exceed the thresholds of significance, no further modeling or analysis is needed, including multi-source or cumulative air quality modeling of the type requested in Data Request 14. Therefore, after comparing the project's emissions to the thresholds of significance staff concluded that the data requested in Appendix A to this response was no longer needed.

Attempting to obtain the requested information would not provide important additional data on which the CEC could base a decision, or which would further inform the public about the project's potential impacts. Firstly, because the request was one staff

[8] *Id* at p. 5.3-12.
[9] *see, Rialto Citizens for Responsible Growth v. City of Rialto,* (2012) 208 Cal. App. 4th, 899 [upholding an air quality assessment based on the project's emissions alone in compliance with an air district's thresholds of significance].
[10] IS p. 5.3-19.
[11] BAAQMD Guidelines, p. 5-1.
[12] IS p. 5.3-27.

normally issued for all standard power plant proceedings, it used a default distance of 6 miles from the project, which may need to be reconsidered given that the generators associated with data centers are much smaller than the ones associated with traditional power generating facilities and their emissions are unlikely to travel as far. Secondly, as discussed above, as staff gains more experience with backup generating facilities, it becomes more aware of how speculative it can be to try to model and predict operations and emissions from these facilities. So many variables must be juggled concerning how the facility itself would operate (e.g., which engine is the "worst" to model cumulatively; with what other "worst" engines from other facilities should it model cumulatively?) and what other potential sources to include in the analysis (e.g., how many of the multitude of possible pending permits would actually likely get constructed) and what assumptions to make about the operation of those facilities. In the end one might obtain a truly worst-case data point, but if the worst-case situation is unrealistic, this does not provide information upon which to base a conclusion on the likelihood that the project may result in significant adverse cumulative air quality impacts. If this were the only data upon which staff had to rely, then perhaps it would be necessary to contemplate such imprecision. But there is no need to do so here, where BAAQMD has provided a much more straightforward analytic pathway.

5. Conclusion

For the reasons discussed above, staff recommends the Committee deny Mr. Sarvey's motion to compel.

DATED: March 6, 2020

Respectfully submitted,

/S/
Lisa DeCarlo
Senior Attorney

ATTACHMENT A

BACKGROUND: CUMULATIVE AIR QUALITY IMPACTS

During the status conference for the Walsh Data Center (19-SPPE-02) held on August 30, 2019, that Committee expressed interest in finding out more information regarding other data centers currently operating on the same Silicon Valley Power (SVP) 60-kilovolt (kV) loop that would supply the Walsh Data Center. The co-located data centers would be part of a potential cumulative impacts analysis. A cumulative analysis should include all reasonably foreseeable new projects with a potential to emit 5 tons per year or more and located on the same SVP 60-kV loop as SDC. This includes all projects that have received construction permits but are not yet operational and those that are either in the permitting process or can be expected to be in permitting in the nearfuture.

DATA REQUESTS

11. Please provide a list of data centers that operate on the SVP 60-kV loop that would feed SDC.

12. Please provide clear identifying information on each data center including:
    a) Owner(s);
    b) Date of operation of each building or phase;
    c) Critical IT load;
    d) Building loads;
    e) Cooling technologies;
    f) Cooling unit plume characteristics;
    g) Uninterruptible power supply (UPS) type and sizing;
    h) Number of standby generation units, model number(s), sizing, emissions, scope of monthly and annual readiness testing and any use of the engines during emergency operations.

13. Please provide the list of sources to be considered in the cumulative air quality impact analysis:
    a) Within 6 miles of SDC and having greater than 5 tons per year of criteria air pollutants;
    b) In the planning phase;
    c) Permitted but not under construction; and,

d) Permitted and under construction.

14. Please provide the cumulative impact modeling analysis, including SDC, existing data centers collocated on the SVP 60-kV loop and those sources identified above.