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**State of California
State Energy Resources Conservation and
Development Commission
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**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

***SEQUOIA BACKUP GENERATING
FACILITY***

Docket No. 19-SPPE-03

ORDER DENYING INTERVENOR SARVEY'S MOTION TO COMPEL

On February 21, 2020, Intervenor Robert Sarvey (Sarvey) filed a "Motion to Compel the Applicant to Perform a Cumulative Impact Analysis" (Motion).¹ In his Motion, Sarvey sought an order compelling the Applicant for the Small Power Plant Exemption for the Sequoia Backup Generating Facility (Applicant) to provide the cumulative impact modeling analysis identified in Energy Commission staff's (Staff's) Data Request #14, part of Data Request Set 1 filed on September 13, 2019.² Applicant's response to Data Request #14 indicated that Applicant had requested information necessary to perform the requested analysis from the Bay Area Air Quality Management District (BAAQMD) and would file a supplemental response.³ However, no subsequent response to Data Request #14 was provided by Applicant.

Applicant filed a reply to the motion on February 25, 2020, arguing that Sarvey lacks standing to compel Applicant to reply to Staff's information request, that he cannot propound discovery because the deadline for discovery has passed, and that his motion is essentially summary of his testimony.⁴ Staff filed a response to the motion on March 6, 2020, agreeing with the procedural deficiencies identified by Applicant, and also providing an explanation as to why Data Request # 14 was issued, and why Staff no longer believed it needs the information that was originally requested.⁵ Sarvey filed a response on March 9, 2020, reiterating his argument about the importance of

¹ TN 232187.

² TN 229737.

³ TN 229938-1.

⁴ TN 232220.

⁵ TN 232332.

additional analysis of potentially cumulative impacts on air quality.⁶ A hearing on the Motion was held on March 11, 2020, with Sarvey, Applicant, and Staff all appearing.⁷

The Committee⁸ hereby **DENIES** the Motion.

Sarvey lacks standing to enforce a data request on behalf of another party. Pursuant to California Energy Commission (CEC) regulation, only the party requesting information that has not been provided may petition the Committee for an order directing the responding party to supply such information.⁹ Here, Staff requested Data Request # 14, so only Staff has standing to petition the Committee for an order to provide the requested information.

To the extent the Motion can be construed as a request by Sarvey for the information in Data Request # 14, the request is untimely. Requests for information in a Small Power Plant Exemption proceeding must be submitted no later than 60 days from the application for exemption's filing date.¹⁰ Since the application was filed August 13, 2019, the last day to issue data requests in this proceeding was October 14, 2019.¹¹ Sarvey's motion was filed almost four months later. The fact that Sarvey became a party after this date¹² does not extend the time for him to request information, without an order of the Presiding Member upon a showing of good cause.¹³ Sarvey did not present any argument or discussion on the topic of good cause, or explain the untimeliness of this request for information.

Nonetheless, the Committee wishes to ensure a complete and robust record on potential air quality, greenhouse gas emissions, and public health impacts. To that end, the Committee will issue questions for the parties to address, and invite the Bay Area Air Quality Management District to address them as well.

⁶ TN 232341.

⁷ TN 232271.

⁸ The CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Patty Monahan, Commissioner and Associate Member, on September 11, 2019 (TN 229721).

⁹ Cal. Code Regs., tit. 20, § 1716(g), the provisions of which are made applicable to this proceeding by Cal. Code Regs., tit. 20, § 1941.

¹⁰ Cal. Code Regs., tit. 20, § 1941.

¹¹ Since last day for submitting requests for information in this proceeding fell on Sunday, the deadline was extended to the next business day. See Cal. Code Regs., tit. 20, § 1001.

¹² Sarvey filed a Petition to Intervene on December 16, 2019 (TN 231245). The Committee granted the petition on January 16, 2020 (TN 231546).

¹³ Cal. Code Regs., tit. 20, § 1211.7(d).

IT IS SO ORDERED.

Dated: March 20, 2020

Approved by:

Karen Douglas
Commissioner and Presiding Member
Sequoia Backup Generating Facility SPPE Committee