

DOCKETED

Docket Number:	19-SPPE-01
Project Title:	Laurelwood Data Center (MECP I Santa Clara I, LLC)
TN #:	232547
Document Title:	Opposition of Laurelwood to Petition for Reconsideration
Description:	N/A
Filer:	Deric Wittenborn
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant
Submission Date:	3/26/2020 9:13:07 AM
Docketed Date:	3/26/2020

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

In the Matter of:

Application for Small Power Plant Exemption
for the Laurelwood Data Center.

Docket No. 19-SPPE-01

**OPPOSITION OF MECP1 SANTA CLARA 1, LLC
TO
ROBERT SARVEY'S REQUEST FOR RECONSIDERATION**

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In the Matter of:

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**OPPOSITION OF MECPI SANTA CLARA 1, LLC
TO
ROBERT SARVEY’S REQUEST FOR RECONSIDERATION**

MECPI Santa Clara 1, LLC (the “Applicant”) files this *Opposition of MECPI Santa Clara 1, LLC to Robert Sarvey’s Request for Reconsideration* (“Opposition”). On March 5, 2020, at 6:18 p.m., Robert Sarvey (the “Intervenor”) late-filed “Robert Sarvey’s Request for Reconsideration” (the “Petition”¹). Because the Petition is untimely, the Petition should be denied. Even assuming the Commission excuses the untimely filing, the Petition still fails to satisfy the applicable legal standard for reconsideration, and the Petition must be denied.²

I. THE PETITION SHOULD BE DENIED AS UNTIMELY FILED

Intervenor has asked the Committee to consider him an “expert.”³ Accordingly, the Committee should forego the discretion appropriately afforded to non-professional intervenors, and members of the public, and deny the Petition for not being timely filed.

Staff’s Opposition to Intervenor Robert Sarvey’s Petition for Reconsideration (the “Staff Opposition”)⁴ is clear, concise, articulate, and supported by applicable authorities. The

¹ TN # 232325. Rather than a “Request,” assuming without agreed or admitting that the Intervenor is entitled to “Reconsideration”, we refer to his “Request” as a “Petition” herein.

² 20 CCR 1720(b), states, in pertinent part, “In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied.”

³ TN #: 230999; RT 11-1-19, pp. 87-91.

⁴ TN #: 232472.

Applicant associates itself with and adopts the arguments in the Staff's Opposition related to denial of the Petition as untimely⁵ as well as Staff's substantive arguments for dismissal.⁶

Intervenor's filing was due on March 5, 2020, at 5:00 p.m. as required by the *General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters*, docketed in this proceeding⁷. The Intervenor is obligated to comply with the Commission's rules regarding filings⁸ and the Committee's order granting his Intervenor status.⁹ The Intervenor inexplicably failed to make the 5:00 p.m. March 5, 2020 deadline.

Participation in the Commission's processes provides certain benefits, like the rights to request information from other parties, present evidence, and cross examine witnesses. These benefits carry related duties and obligations, and chief among these is compliance with the Commission's rules and procedures, including timely filing.

In addition to advocating for denial of the late filing, CEC Staff also makes compelling and reasoned arguments explaining why no right to reconsideration exists in a SPPE proceeding in the first instance.¹⁰ We concur. Even assuming, *arguendo*, that a right to reconsideration exists, the Intervenor failed in his duties and responsibilities to make a timely filing. The Petition must be denied.

⁵ *Id.*, pp. 1-4.

⁶ *Id.*, pp. 4-7.

⁷ TN #: 227867, p. 2: "All filings received after 5:00 p.m. on business days, any time on a Saturday, Sunday, holiday, or other day when the Energy Commission is closed, will be marked as filed the next business day."

⁸ Cal. Code Regs., tit. 20, § 1208 (a)(2) states, "Documents filed after 5:00 p.m. on a business day, or at any time on a Saturday, Sunday, or holiday, or other day when the commission is closed, shall be deemed filed the next business day."

⁹ TN # 228376, p. 2: Committee Order Granting Petition to Intervene, May 23, 2019.

¹⁰ Staff Opposition, Section IV.A, p. 4.

II. ON THE MERITS, THE PETITION FAILS TO STATE A CLAIM FOR RECONSIDERATION AND THUS SHOULD BE DENIED

Assuming the Commission wishes to entertain the late-filed Petition on the merits, the Petition fails to satisfy the legal requirements for reconsideration and thus must be denied.

Section 1720(a) of the Commission's Regulations requires that a petition for reconsideration of a Commission decision or order "...set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law." The Petition fails to clear both hurdles.

A. The Petition Does Not Set Forth Any New Evidence

The Petition does not present new evidence that despite the diligence of the petitioning party could not have been raised during evidentiary hearings. Instead, the Petition focuses on alleged "...factual and legal errors which lead [*sic*] to the approval of the SPPE."¹¹ There are no allegations, let alone proof, of new evidence, and thus the Petition must be denied for failure to satisfy this first prong of the test set forth in Section 1720(a).

B. The Petition Does Not Demonstrate An Error Or Change Of Law Or An Error In Fact In The Decision

The second prong of the Commission's regulations on Reconsideration requires the demonstration of "an error or change of law or an error in fact in the decision or order."¹² Instead, the Petition confuses (1) the lack of substantial evidence in the record for the positions advocated with (2) a factual or legal error.

The Petition mistakenly argues that the Commission incorrectly *weighed* the evidence. The Petition routinely claims evidence was "ignored." What is meant by "ignored" instead goes

¹¹ Petition, p. 1.

¹² 20 CCR 1720(b).

to the weight accorded Intervenor’s opinions, not to any legal or factual errors. For example, the Petition states, “The PD then conveniently *ignores* the commission’s jurisdictional decision in [another proceeding].”¹³ “The decision *ignores* the project’s other significant environmental impacts which require the filing of an AFC for this project.”¹⁴ “The decision and the IS/MND *ignore* [Intervenor’s arguments on] ... seven other data centers.”¹⁵

There are also examples demonstrating that the Petition is simply re-litigating issues previously “raised.” “I *raised* several issues in that petition...,”¹⁶ and “I *raised* the issue...in my opening testimony.”¹⁷ The Petition solely focuses on re-litigating issues already raised in the proceeding and decided in the Commission’s Decision. Thus, the Petition is arguing the weight that should be accorded to Intervenor’s arguments, not alleged legal or factual error in the Commission Decision.

The arguments, documents, and materials supplied by the Intervenor during the proceeding were appropriately considered by the Commission and were not ignored. Instead, the Commission found that they did not constitute substantial evidence in support of the Intervenor’s theories of the case. It is not legal or factual error for the Commission to receive the arguments and materials and reach a sound judgement other than the judgment advocated by the Intervenor.

The overwhelming majority of the Petition re-states and thus re-litigates arguments duly considered and rejected by the Commission. The following are just a few representative examples of the re-arguments presented in the Petition:

¹³ Petition, p. 1.

¹⁴ Petition, p. 1.

¹⁵ Petition, p. 6.

¹⁶ Petition, p. 5.

¹⁷ Petition, p. 15.

1. **Generating Capacity**: The calculation of generating capacity in the Petition simply restates the same arguments made in Intervenor's (1) Opening Testimony¹⁸, (2) Rebuttal Testimony¹⁹, and (3) Comments on the Proposed Decision.²⁰
2. **Circulation of the IS/MND**: Intervenor's restates arguments made in his Comments on the Proposed Decision.²¹
3. **Energy Impacts**: The Petition simply restates the same arguments made in Intervenor's (1) Opening Testimony²², (2) Rebuttal Testimony²³, and (3) Comments on the Proposed Decision.²⁴
4. **Greenhouse Gas Emissions**: The Petition simply restates the same arguments made in Intervenor's (1) Opening Testimony²⁵, (2) Rebuttal Testimony²⁶, and (3) Comments on the Proposed Decision.²⁷
5. **Air Quality and Public Health**: The Petition simply restates the same arguments made in Intervenor's (1) Opening Testimony²⁸, (2) Rebuttal Testimony²⁹, and (3) Comments on the Proposed Decision.³⁰
6. **Public Participation and Environmental Justice**: The Petition simply restates the same arguments made in Intervenor's Comments on the Proposed Decision.³¹

The Petition repeatedly restates arguments, in many instances verbatim, made throughout the proceedings. On these issues, the Intervenor was given notice, opportunity to be heard, and was heard. And in every instance, the Commission's Decision is based on substantial evidence drawn from the record as a whole. The Petition must therefore be denied.

¹⁸ TN #: 229959: Testimony of Robert Sarvey on the Initial Study, Ex. 300, pp. 17-18.

¹⁹ TN #: 230314: Rebuttal Testimony of Robert Sarvey, Ex. 303, pp. 2-3.

²⁰ TN #: 231928: PD comments, Unnumbered PDF pp. 4-7 and pp. 13-14.

²¹ TN #: 231928: PD comments, Unnumbered PDF pp. 7, 8, and 13.

²² TN #: 229959: Testimony of Robert Sarvey on the Initial Study, Ex. 300, pp. 11-12.

²³ TN #: 230314: Rebuttal Testimony of Robert Sarvey, Ex. 303, pp. 10-12.

²⁴ TN #: 231928: PD comments, Unnumbered PDF pp. 32-27.

²⁵ TN #: 229959: Testimony of Robert Sarvey on the Initial Study, Ex. 300, pp. 15-18.

²⁶ TN #: 230314: Rebuttal Testimony of Robert Sarvey, Ex. 303, pp. 12-13.

²⁷ TN #: 231928: PD comments, Unnumbered PDF pp. 3, 11-12, and 35-40.

²⁸ TN #: 229959: Testimony of Robert Sarvey on the Initial Study, Ex. 300, pp. 2-9.

²⁹ TN #: 230314: Rebuttal Testimony of Robert Sarvey, Ex. 303, pp. 4-5, 7-8, and 19-20.

³⁰ TN #: 231928: PD comments, Unnumbered PDF pp. 8-12, and 25-31.

³¹ TN #: 231928: PD comments, Unnumbered PDF pp. 13-14.

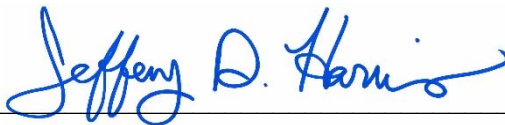
CONCLUSION

The Commission should deny the Petition. Even assuming a right to seek reconsideration, the Petition by an experienced Intervenor was late-filed. If the Commission determines it will entertain the contents of the late-filed Petition, the Commission should deny the Petition for failing to meet the standards for reconsideration set forth in Section 1720 of the Commission's Regulations.

For the reasons set forth herein, the Petition should be denied.

DATED: March 26, 2020

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