

DOCKETED

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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:**

LAURELWOOD DATA CENTER

Docket No. 19-SPPE-01

ORDER ON PETITION FOR RECONSIDERATION

I. INTRODUCTION AND PROCEDURAL HISTORY

On or about March 5, 2019, MECP1 Santa Clara 1, LLC, (Applicant) submitted an application for a small powerplant exemption for the proposed Laurelwood Data Center Project (Laurelwood) in Santa Clara, California, to the California Energy Commission (CEC).¹ The CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea A. Scott, Vice Chair and Associate Member, at the April 10, 2019, CEC Business Meeting.² On May 6, 2019, Robert Sarvey petitioned to intervene in the case;³ his petition was granted on May 23, 2019.⁴ California Unions for Reliable Energy (CURE) filed a petition to intervene on May 21, 2019;⁵ CURE was granted intervenor status on June 10, 2019.⁶ CEC staff (Staff) was party to the proceeding pursuant to California Code of Regulations, title 20, section 1937.

The Committee issued its Proposed Decision on January 24, 2020.⁷ Mr. Sarvey submitted comments on the Proposed Decision on February 3, 2020.⁸ The Committee filed Errata to the Committee Proposed Decision on February 4, 2020.⁹

¹ TNs 227273-1, 227273-2, 272273-3.

² TN 227638.

³ TN 228057.

⁴ TN 228376.

⁵ TN 228341-1.

⁶ TN 228730.

⁷ TN 231721.

⁸ TN 231928.

⁹ TN 231933.

The CEC held a public hearing on the Committee Proposed Decision on February 4, 2020; Mr. Sarvey participated in that public hearing.¹⁰ At the conclusion of the public hearing, the CEC made minor, non-substantive changes to the Committee Proposed Decision and adopted an Order granting the Small Power Plant Exemption for Laurelwood.¹¹

Mr. Sarvey filed “Robert Sarvey’s Request for Reconsideration” (Petition) on March 5, 2020.¹² The Petition, citing to Public Resources Code section 25530, requested that the CEC overturn the “Adoption Order, Findings and Order.”¹³

On March 26, 2020, we provided “Notice of California Energy Commission Hearing on Request for Reconsideration” (Notice). In the Notice we indicate that we will accept oral and written comments until and at the hearing and we invited, but did not require, that comments be submitted by the parties by April 3, 2020.¹⁴

CEC staff (Staff)¹⁵ filed an opposition to the Petition on March 20, 2020. MECP1 Santa Clara 1 (Applicant) filed its opposition¹⁶ to the Petition on March 26, 2020.

Mr. Sarvey filed a motion to strike Applicant’s opposition (Motion to Strike) as being untimely on March 26, 2020.¹⁷ Mr. Sarvey subsequently withdrew this Motion to Strike on April 6, 2020.¹⁸

II. ANALYSIS

A. Timeliness of Applicant’s Opposition

As set forth above, Applicant filed its opposition to the Petition on March 26, 2020. As Mr. Sarvey withdrew the Motion to Strike, we do not need to issue a ruling on the Motion to Strike.

B. Timeliness of the Petition

California Public Resources Code section 25530 (Section 25530) states:

¹⁰ TN 232554, pp. 16-18, 26.

¹¹ TN 231950. The Commission Final Decision, a compilation of the Committee Proposed Decision, the Errata, and changes made during the February 4, 2020, CEC Business Meeting, was filed on March 13, 2020. (TN 232394)

¹² While entitled “Request,” for purposes of this Order we use the word “Petition.”

¹³ TN 232325.

¹⁴ TN 232549.

¹⁵ TN 232472.

¹⁶ TN 232547.

¹⁷ TN 232556.

¹⁸ TN 232674.

The commission may order a reconsideration of all or part of a decision or order on its own motion or on petition of any party.

Any such petition shall be filed within 30 days after adoption by the commission of a decision or order. The commission shall not order a reconsideration on its own motion more than 30 days after it has adopted a decision or order. The commission shall order or deny reconsideration on a petition therefor within 30 days after the petition is filed.

A decision or order may be reconsidered by the commission on the basis of all pertinent portions of the record together with such argument as the commission may permit, or the commission may hold a further hearing, after notice to all interested persons. A decision or order of the commission on reconsideration shall have the same force and effect as an original order or decision.

(Emphasis added.)

The Order was adopted on February 4, 2020. Under Section 25530, the deadline to file a petition for reconsideration would be 30 days after that date, or March 5, 2020.

Both Staff and Applicant argued that the Petition was not timely filed under the “General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters” (General Orders).¹⁹ The General Orders stated that the deadline for all documents to be filed was no later than 5:00 p.m.; if filed after 5:00 p.m., the document would not be deemed filed until the following business day.²⁰ Thus, because Mr. Sarvey did not submit the Petition until after 5:00 p.m., Applicant and Staff argued that it would be deemed filed the next business day.

Regardless of the applicability of the General Orders, California Code of Regulations, title 20, section 1208 states:

(b) A document will be accepted as of the day of its receipt by the Docket Unit or by the automated electronic filing or commenting system, except that:

(2) 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.²¹

¹⁹ TN 227867.

²⁰ *Id.* at p. 2.

²¹ Cal. Code Regs., tit. 20, § 1208.

In his Motion to Strike, Mr. Sarvey outlines his attempts to file the Petition, as well as his having provided copies to the Chief Counsel, the Public Advisor, and the Project Manager for the Laurelwood project before the 5:00 p.m. deadline.

We thus find that Mr. Sarvey substantially complied with the filing requirements of either the General Orders or our regulations and therefore address the merits of the Petition.

C. Standard to Grant Reconsideration

As set forth above, Section 25530 does not contain any specific criteria to guide our decision of whether to grant or deny a petition for reconsideration. In the Petition, Mr. Sarvey does not propose any specific standard or criteria for us to address his request.

While conceding that Section 1720 applies only to Applications for Certification and Notices of Intent, Staff argued that we should look to Section 1720 for guidance.²² Section 1720 provides in pertinent part:

A petition for reconsideration must specifically 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 must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision.²³

In its opposition, Applicant does not analyze the applicability of Section 1720, but relies on it in making arguments advocating for denial of the Petition.²⁴

Given the broad discretion afforded to us under Section 25530, we agree that the standards set out in Section 1720 provide useful guidance for us in resolving the current Petition.

After considering the Petition and the information presented at the April 8, 2020, Business Meeting, we **DENY** the Petition and find that it is a reassertion and re-argument of previous matters already raised and considered by the Commission prior to the issuance of the Order. In fact, Mr. Sarvey states in the Petition that he submitted the information in his comments on the Initial Study/Proposed Mitigated Negative Declaration, Opening Testimony, Reply Testimony, and his written and oral comments before the CEC at the February 4, 2020, Business Meeting.²⁵

²² TN 232472, p. 4.

²³ Cal. Code Regs., tit. 20, §1720(a).

²⁴ TN 232547, p. 3.

²⁵ TN 232325, pp. 9 (“As I pointed out in my comments on the initial study and rebuttal testimony...”)15-16 (“I raised the issue...in my opening testimony and also in my rebuttal testimony.”)

In the Petition, the facts are unchanged. Mr. Sarvey attempts to present new legal argument and theories.²⁶ Moreover, Mr. Sarvey has not shown any error or change of law in the time since the Commission adopted the Order.

In sum, Mr. Sarvey is asking us to reweigh the evidence—which is beyond the scope of a motion for reconsideration when applying Section 1720.

We therefore conclude that Mr. Sarvey has made no showing that there are new facts, evidence, or changed circumstances, or alleged factors that warrant reconsideration of the Order.

III. CONCLUSION

For the reasons stated above, Intervenor Robert Sarvey's Request for Reconsideration is hereby **DENIED**.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the CEC held on April 8, 2020.

AYE: Hochschild, Scott, Douglas, McAllister, Monahan
NAY: None
ABSENT: None
ABSTAIN: None

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Cody Goldthrite
Secretariat

²⁶ See, for example, his citation to Appendix F of the CEQA Guidelines (Cal. Code Regs., tit. 14, App. F) in his arguments about the analysis of energy impacts and impact to utilities and utility services. (TN 232352, pp. 5-8)