

DOCKETED

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Scott A. Galati
DAYZEN LLC
1720 Park Place Drive
Carmichael, CA 95608
(916) 441-6574

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application For Small Power Plant
Exemption for the **SEQUOIA BACKUP
GENERATING FACILITY**

DOCKET NO: 19-SPPE-03

**C1-SANTA CLARA, LLC'S PETITION
FOR RECONSIDERATION AND
APPEAL OF COMMITTEE RULING**

C1-Santa Clara, LLC (C1) hereby files this Petition For Reconsideration and/or Appeal of Committee Ruling made at the September 9, 2020 Commission Business Meeting to remand the Sequoia Backup Generating Facility (SBGF) SPPE Application proceeding back to the Committee for further adjudication. This motion is brought as a Petition For Reconsideration pursuant to Section 1720 of the Commission Regulations¹ and a Petition For Appeal pursuant to Section 1215 (b) of the Commission Regulations because it is unclear exactly which action was taken at the Commission Business Meeting. Counsel was muted on the video conference and not allowed to question which action was taken at the September 9, 2020 Commission Business Meeting and therefore has file this Petition seeking both forms to obtain the relief of either vacating or modifying the order to remand to proceed directly to a vote on the SPPE Application Proposed Decision.

The grounds for this Petition are that the Commission failed to allow the applicant and Staff, parties to the proceeding, to provide oral argument against any potential order to remand the proceedings which was not announced except during a motion. Applicant and Staff were allowed to comment on the Proposed Decision but not on the suggestion

¹ The term Commission Regulations used in this Petition shall refer to Title 20, Division 2 of the California Code of Regulations.

from a representative of the California Air Resources Board (CARB) suggestions that they could provide additional evidence in the proceeding. This violated Section 1210 of the Commission Regulations because it did not adhere to its mandated compliance with the Administrative Adjudication Bill of Rights in section 11425.10 of the Government Code. Further it denied the opportunity for Staff and Applicant to refute the assertions of the CARB representative, none of which were based on the evidentiary record in the proceeding. CARB failed to participate in the proceeding even though it had actual notice of the proceeding, interacted with Staff during the proceedings, and chose to participate during the last five minutes of the a year long process. CARB failed to submit its concerns and comments in writing prior to the Commission Business Meeting as directed by the Presiding Member² instead choosing to strategically surprise the parties.

While difficult to ascertain from the CARB representative's non-technical comments, it appears CARB is basing its late participation on the recent Heat Storm and Extreme Heat Event addressed in the latest Governor's Executive Orders issued on August 16, 2020 and on September 3, 2020, attached. CARB representative claims that these events caused data centers to shed load and engage emergency generation, but provided no facts on how such events occurred. CARB alleges that based on these facts, such events are more frequent and therefore should be the subject of additional analyses.

Additionally, CARB alleges, with no support, that the SBGF is not using Best Available Control Technology (BACT), which is determined by the Bay Area Air Quality Management District (BAAQMD) rules.

Lastly, CARB provided cryptic comments about other technologies it believes are available that could replace the generators proposed in the SBGF.

If allowed to address the Commission as required by Section 11425.10 at the Business Meeting, Applicant and Applicant's counsel would have provided the following specific factual information:

1. California Energy Commission personnel contacted Applicant's counsel and requested that he contact all data center clients to see if any of the data center clients could assist the Commission and the State of California by shedding load voluntarily during both the first heat event. Applicant's counsel did so, provided contact information to CEC Staff, and arranged at least one meeting with an existing data center owner.

² TN 234595

2. Applicant does not own or operate any existing data center in California and therefore did not participate in any load shedding request during any California extreme heat event.
3. The SDC and SBGF were scheduled and noticed by the City of Santa Clara to consider approval of its master plan on September 16, 2020. Applicant has worked closely with the City of Santa Clara for over a year and had agreement with its Staff supporting approval. The Commission's remand has postponed the City's action indefinitely.
4. Applicant would have proposed the following Condition of Exemption to prevent it from participating in a voluntary demand response and/or load shedding program that would require operation of the emergency backup generators even if requested by a State Agency or utility.

Condition of Exemption PD 3

The granting of the Small Power Plant Exemption for the Sequoia Backup Generating Facility is specifically conditioned on the provision that at no time shall the Project owner of the Sequoia Data Center participate in a load shedding and/or demand response program that would allow it to voluntarily use electricity generated by the Sequoia Backup Generating Facility in order to participate in any load shedding and/or demand response request from the CEC, any utility, or any State agency.

5. The SBGF's emergency generators meet BAAQMD BACT as demonstrated in the evidentiary record. They are also equipped with Diesel Particulate Filters, not required BACT, which reduce diesel emissions by 85 to 90 percent. The facility also complies with CARB's own rules.
6. Chapter 5 of the SPPE Application includes a discussion of other technologies considered by the Applicant with sound and unrefuted reasoning demonstrating that none of them would meet the project objectives. The CARB representative provided no acknowledgement that it read that portion of the record, nor compared any of its purported replacement technologies with the project objectives.

If Applicant's Counsel had not been muted and if Staff were allowed to participate in the discussion, Applicant firmly believes that any potential request to remodel voluntary emergency operations that were alleged to be more frequent during heat events would be easily deemed irrelevant in light of the proposed Condition of Exemption PD-3

because the SBGF would simply not operate during such events. Therefore, the SBGF would be prevented from contributing any emissions related impact during these alleged more frequent events.

It is indeed perplexing and ironic that that some in the data center industry heeded the request of the CEC to voluntarily operate their emergency generators to avoid rolling blackouts that would affect other users, has been met with a request for delay from CARB and a remand of the SBGF. No good deed goes unpunished. However, the punishment inflicted on this Applicant in the SBGF proceeding certainly is not deserved and not warranted by any information in the record. Clearly the Commission was operating on information outside the record. Simply stated, emergency backup generation is utilized by data centers not to shore up an unreliable electric system, but to operate during those unforeseen emergency conditions that this proceeding has thoroughly addressed. The record demonstrates that in the SVP service territory those conditions rarely exist and unlike other areas of the State, the SVP system is not in need of any “shoring up” of its reliability. The Condition of Exemption proposed above removes any attempt by the State to manage the reliability of the grid using the SBGF and therefore, any potential analysis of operating during such events is irrelevant. The solution to the recent crisis is related to energy procurement on a state-wide basis and clearly outside the purview of the SBGF SPPE proceeding.

In addition CARB’s request to perform modeling of which data centers would participate in any future State request to help avoid rolling blackouts to other users should incorporate the fact that the SBGF would not even be included. Further in light of the recent punitive Commission decision to remand the SBGF and its chilling effect, it is much more likely that few, if any, existing data centers would heed the call to participate in a State requested voluntary load shedding program during an extreme heat event.

CARB is clearly using the SBGF as an opportunity to engage in a much broader policy discussion. Such discussions and information should not take place in the SBGF proceeding, but should instead take place in the Integrated Energy Policy Report (IEPR) proceeding, load forecasting forums, and procurement forums at the Public Utility Commission (PUC). There is no place for such policy discussion in the SBGF SPPE process, which should focus only on compliance with the California Environmental Quality Act (CEQA) to ultimately answer the question of whether the City of Santa Clara or the Commission should have permitting jurisdiction.

In addition to being fundamentally unfair and a denial of the basics of due process, the following is provided as legal authority as to why the Commission erred when it did not allow the Applicant or Staff to participate on the motion to remand.

Section 11425.10 of the Government Code states:

- (a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to **all** of the following requirements:
 - (1) The agency shall give the person to which the agency action is directed notice and **an opportunity to be heard, including the opportunity to present and rebut evidence.**
 - (2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding.
 - (3) The **hearing shall be open to public observation** as provided in Section 11425.20.
 - (4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.
 - (5) The presiding officer is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.40.
 - (6) The **decision shall be** in writing, **be based on the record**, and include a statement of the factual and legal basis of the decision as provided in Section 11425.50.
 - (7) A decision may not be relied on as precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.
 - (8) Ex parte communications shall be restricted as provided in Article 7 (commencing with Section 11430.10).
 - (9) Language assistance shall be made available as provided in Article 8 (commencing with Section 11435.05) by an agency described in Section 11018 or 11435.15.
- (b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to

Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.
(Emphasis Added.)

At the September 9, 2020 Commission Business Meeting, after taking public comment from a representative of CARB that suggested opening the evidentiary record and delaying the proceedings, the Commission adjourned to close session instead of conducting its deliberations in public with input from the parties. The Commission then reconvened into open public session, but it was clear that the Commission had already decided it was going to allow CARB to conduct an analysis and remand the proceedings to the Committee. The Commission should have conducted such deliberations in public and should have allowed the Applicant and Staff to provide citations to the record and argument on the motion to remand. Ultimately after the parties participated the Commission should have rejected CARB's late participation because the information it promised to provide is irrelevant to the proceeding and would unnecessary delay approval of an essential service project at the 11th hour. The Commission should have then directed CARB to participate in the broader policy forums where grid management is determined.

We therefore, request the Commission vacate its order to remand the proceeding to the Committee, modify its Proposed Decision with an erratum to include Condition of Exemption PD-3 above, and immediately reschedule a Special Business Meeting to grant the Small Power Plant Exemption.

Dated: September 10, 2020.

Respectfully Submitted,



Scott A. Galati
Counsel to C1-Santa Clara, LLC

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS beginning on August 14, 2020, a significant heat wave struck California and the surrounding Western states, bringing widespread temperatures well in excess of 100 degrees throughout the state (the "Extreme Heat Event"); and

WHEREAS as a result of this Extreme Heat Event, the National Weather Service issued multiple Excessive Heat Warnings and Red Flag Warnings within the State; and

WHEREAS the Extreme Heat Event has put a significant demand and strain on California's energy grid as well as limiting energy imports from surrounding states; and

WHEREAS the California Independent Service Operator (CAISO) has, to date, issued multiple Stage 2 and Stage 3 System Emergencies during the Extreme Heat Event, the first Stage 3 Emergencies issued due to heat in two decades, resulting in rolling blackouts for customers throughout the State; and

WHEREAS the Extreme Heat Event is expected to last through at least August 20, 2020, and CAISO has advised that additional Stage 2 and Stage 3 System Emergencies are likely unless action is taken to conserve power and increase output; and

WHEREAS it is necessary to take action to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8558, subd. (b), I find that conditions of extreme peril to the safety of persons and property exist due to the Extreme Heat Event throughout California; and

WHEREAS under the provisions of Government Code section 8625, subd. (c), I find that local authority is inadequate to cope with the magnitude and impacts of the extreme heat event; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the Extreme Heat Event.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, 8625 and 8627, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

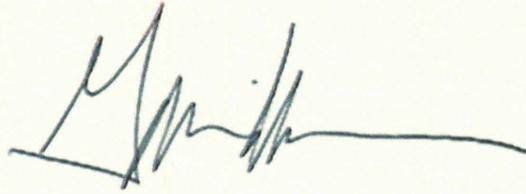
1. In preparing for and responding to the Extreme Heat Event, all agencies of state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. For purposes of regulations concerning stationary generators, the Extreme Heat Event shall be deemed an "emergency event" under California Code of Regulations (CCR), title 17, section 93116.1, subd. (b)(14), and a loss of electrical service shall be deemed "beyond the reasonable control of the owner or operator" under CCR, title 17, section 93116.2, subd. 2(a)(12)(A)(2). In addition, use of stationary generators during the Extreme Heat Event shall be deemed an "emergency use" under CCR, title 17, section 93115.4, subd. (a)(30).
3. In regulations concerning portable generators, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 13, section 2452, subd. (j), and interruptions caused by the Extreme Heat Event shall be deemed an "unforeseen interruption of electrical power from the serving utility" under CCR, title 13, section 2453, subd. (m)(4)(E)(i).
4. In regulations concerning the use of auxiliary engines by ocean-going vessels berthed in California ports, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 17, section 93118.3, subd. (c)(14).
5. This Order shall be deemed to provide notice to reduce use of grid-based electrical power under CCR, title 17, section 93118.3, subd. (c)(14)(C), and notice under that same section that reduction is no longer necessary at 11:59 p.m. on August 20, 2020. Ships that initially berthed at California ports between August 17, 2020 and August 20, 2020 shall not be required to use shore power until August 24, 2020.
6. A ship operating on auxiliary engines pursuant to an "emergency event" under Paragraph 4 of this Order shall be deemed to qualify for an exemption under CCR, title 17, section 93118.3, subd. (d)(1)(E)(1)(a), and any visit occurring during the period described in Paragraph 5 of this Order shall be counted towards compliance under CCR, title 17, section 93118.3, subd. (d)(1)(F)(1).
7. The Air Resources Board shall exercise maximum discretion to permit the use of stationary and portable generators or auxiliary ship engines to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event.
8. Any permit, regulation or law prohibiting, restricting or penalizing the use of stationary or portable generators or auxiliary ship

engines allowed by this Order during the Extreme Heat Event is suspended.

9. The provisions in paragraphs 3-7 shall expire at 11:59 p.m. on August 20, 2020.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 16th day of August 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS beginning on September 2, 2020, a significant heat wave struck California, bringing widespread near-record temperatures well in excess of 100 degrees throughout the State (the “Extreme Heat Event”); and

WHEREAS as a result of this Extreme Heat Event, the National Weather Service issued multiple Excessive Heat Warnings within the State; and

WHEREAS the Extreme Heat Event has and will continue to put significant demand and strain on California's energy grid; and

WHEREAS on September 3, 2020, the California Independent Service Operator (CAISO) issued a Flex Alert, calling for voluntary electricity conservation from September 5, 2020 through September 7, 2020 to mitigate impact to energy supplies during this Extreme Heat Event; and

WHEREAS the Extreme Heat Event is expected to last through at least September 7, 2020; and

WHEREAS it is necessary to take action to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event; and

WHEREAS it is critical that power plants in the State generate as much power as possible to satisfy the increased demand created by the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8558, subd. (b), I find that conditions of extreme peril to the safety of persons and property exist due to the Extreme Heat Event throughout California; and

WHEREAS under the provisions of Government Code section 8625, subd. (c), I find that local authority is inadequate to cope with the magnitude and impacts of the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the Extreme Heat Event.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, 8625, and 8627, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to the Extreme Heat Event, all agencies of state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, all residents are to obey the direction of emergency officials with regard to this emergency in order to protect their safety.
2. For purposes of regulations concerning stationary generators, the Extreme Heat Event shall be deemed an "emergency event" under California Code of Regulations (CCR), title 17, section 93116.1, subd. (b)(14), and a loss of electrical service shall be deemed "beyond the reasonable control of the owner or operator" under CCR, title 17, section 93116.2, subd. 2(a)(12)(A)(2). In addition, use of stationary generators during the Extreme Heat Event shall be deemed an "emergency use" under CCR, title 17, section 93115.4, subd. (a)(30).
3. In regulations concerning portable generators, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 13, section 2452, subd. (j), and interruptions caused by the Extreme Heat Event shall be deemed an "unforeseen interruption of electrical power from the serving utility" under CCR, title 13, section 2453, subd. (m)(4)(E)(i).
4. In regulations concerning the use of auxiliary engines by ocean-going vessels berthed in California ports, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 17, section 93118.3, subd. (c)(14).
5. This Order shall be deemed to provide notice to reduce use of grid-based electrical power under CCR, title 17, section 93118.3, subd. (c)(14)(C), and notice under that same section that reduction is no longer necessary at 11:59 p.m. on September 8, 2020. Ships that initially berthed at California ports between September 4, 2020 and September 8, 2020 shall not be required to use shore power until September 11, 2020.
6. A ship operating on auxiliary engines pursuant to an "emergency event" under Paragraph 4 of this Order shall be deemed to qualify for an exemption under CCR, title 17, section 93118.3, subd. (d)(1)(E)(1)(a), and any visit occurring during the period described in Paragraph 5 of this Order shall be counted towards compliance under CCR, title 17, section 93118.3, subd. (d)(1)(F)(1).
7. The Air Resources Board shall exercise maximum discretion to permit the use of stationary and portable generators or auxiliary ship engines to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event.
8. The provisions of Water Code section 13385, subdivision (i)(1)(A) as they pertain to daily average and instantaneous temperature

limitations in waste discharge requirements for thermal power plants are suspended for any thermal power plant that maintains operations to abate the effects of the Extreme Heat Event. Any exceedance of the daily average or instantaneous temperature limitations resulting from maintaining operations during this time shall not constitute a violation for purposes of calculating mandatory minimum penalties under Water Code section 13385, subdivision (i).

9. Permitting requirements or conditions of certification adopted by the Energy Commission pursuant to section 25216.5, subd. (a), and sections 25500 et seq. of the Public Resources Code, as well as related permitting requirements adopted by local air quality management districts, that restrict the amount of power that a facility may generate, restrict the amount of fuel that a facility may use, or impose air quality requirements that prevent the facility from generating additional power during peak demand hours, from 3:00 p.m. to 10:00 p.m. or as otherwise needed to respond to the Extreme Heat Event, are suspended.
10. Any facility that operates in violation of permitting requirements or conditions of a certificate suspended by Paragraph 8 shall:
 - (i) notify the relevant local air quality management district, the Energy Commission, and the Air Resources Board of its actions within 48 hours; and
 - (ii) report additional fuel use, additional hours of operation, and energy produced by that additional use and operation to the relevant local air quality management district, the Energy Commission, and the Air Resources Board within 30 days of this Order.
11. Any permit, regulation or law prohibiting, restricting or penalizing the use of stationary or portable generators or auxiliary ship engines or other conduct allowed by this Order during the Extreme Heat Event is suspended.
12. The provisions in Paragraphs 2-9 of this Order shall expire at 11:59 p.m. on September 8, 2020, with the exception that, as provided in Paragraph 5, ships that initially berthed at California ports between September 4, 2020 and September 8, 2020 shall not be required to use shore power until September 11, 2020.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 3rd day of September 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State