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**APPLICATION FOR SMALL POWER PLANT  
EXEMPTION FOR THE:**

***WALSH BACKUP GENERATING  
FACILITY***

**Docket No. 19-SPPE-02**

## **STAFF'S OPPOSITION TO INTERVENOR ROBERT SARVEY'S PETITION FOR RECONSIDERATION**

### **I. Introduction**

On August 12, 2020, after a public hearing held at a Business Meeting, the California Energy Commission (CEC) issued an order granting a small power plant exemption (SPPE) for the Walsh Data Center (Walsh). The exemption allows the local municipality with land use authority, in this case the City of Santa Clara, to proceed with review and approval of the project. On September 10, 2020, Intervenor Robert Sarvey filed a petition for reconsideration (petition) under Title 20, section 1720, of the California Code of Regulations, requesting that the CEC reverse its exemption of the project from the CEC's jurisdiction and deny the SPPE application. The CEC has set a hearing date on the petition of October 14, 2020. Parties are to file responses to the petition by September 25, 2020. The following is CEC Staff's opposition to the petition.

Title 20, California Code of Regulations, section 1720 requires a petition for reconsideration to 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.

Because the Commission's decision on exemption must rest on findings that "no substantial adverse impact on the environment or energy resources will result from the

construction or operation of the proposed facility,”<sup>1</sup> the “new evidence” presented must be such that it would undermine or call into question a key point or fact on which the Commission’s findings have relied, thereby having an “effect on a substantive element of the decision.”<sup>2</sup> As discussed below none of these requirements have been met.

## **II. No New Evidence Has Been Produced that Changes any Substantive Element of the Decision**

In dramatic fashion, the petition identifies rolling blackouts, unprecedented strain on the grid, states of emergency, public safety power shutoffs (PSPS), and programmatic comments regarding backup diesel generators made by the California Air Resources Board as the rationale for the petition. The petitioner is simply attempting to cloak an effort to relitigate the issue of air quality analysis for emergency operations, an issue that was comprehensively analyzed. The petition confuses the issue of causes of emergency generator operations with ability to model emergency generator operations and related emissions.

In developing the extensive record for the proceeding, which the exemption was based on, staff did not attempt to list every conceivable way in which the backup generators might have to operate in an emergency because such an exercise would be pointless. The evidence in the record does not state the backup generators will never be used, the issue is being able to meaningfully model emergency use. Whether that use is triggered by mylar balloons, PSPS, equipment failure, or grid emergencies, useful modeling remains elusive.

The recent unpredictable rolling blackouts, which as the petition admits, is only the second time in 20 years, confirms the conclusion of staff detailed in the analysis set forth by Dr. Jiang that emergency operations are infrequent, unpredictable, unplanned, and would require so many speculative assumptions that a modeled result would not be meaningful. (Ex 200, pp. 5.3-31 to 5.3-39, Hearing Transcript, p. 74: 15-25, p. 75: 1-25, p. 76: 1-11.) The fact that there was a period of grid stress causing a few data centers to operate some of their generators under emergency conditions does not impact the conclusions and findings of the CEC’s decision on the Walsh application for exemption. It is not necessary to identify all the causes of emergency generator use to have a

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<sup>1</sup> Pub. Resources Code §25541.

<sup>2</sup> This is the purpose for requiring the petition to discuss the effects such new information has upon a substantive element of the decision. Thus, new information in and of itself should not be enough to justify reconsideration unless that information, assumed or proven to be true, could lead the CEC to change a finding regarding its decision. For example, an assertion that there is new evidence that the project’s impacts are likely to be less than anticipated should not trigger reconsideration.

complete and valid analysis. And the recent grid emergencies do not provide any new certainty in determining the next grid or data center emergency that would result in a future emergency response.

The petition has provided no facts that rolling blackouts due to grid stress is now a regular occurrence and therefore can be more accurately modeled, or that the grid stress was linked to the data centers in Santa Clara or the greater Bay Area. Staff believes the more likely scenario is that the California Independent System Operator, California Public Utilities Commission, and the CEC along with utilities will take affirmative steps to address the structural causes and that rolling blackouts will not be a regular occurrence. (See letter dated August 19, 2020, Joint Letter to Governor Newsom from the CEC, CPUC, and California ISO regarding efforts to determine the cause of the rolling blackouts and to prevent future ones.)

Likewise, the issue of PSPS was addressed in the proceeding and is not a new topic and no errors in fact or law have been identified. The petitioner even took the opportunity and questioned the Silicon Valley Power witness about PSPS. (Hearing Transcript, pp. 35-36) Again, the petition also assumes a static situation where the utilities make no efforts to eliminate the need for PSPS.

### **III. Comments by California Air Resources Board at the September 9, 2020 Business Meeting do not Support the Motion for Reconsideration**

At the September 9, 2020, Business Meeting on the approval of the Sequoia exemption, representatives of the California Air Resources Board (CARB) and the Bay Area Air Quality Management District (BAAQMD) made general comments about wanting to work with CEC staff on refining how some of the air quality analysis is performed and reference was made regarding potential alternatives to diesel generators. (Docket 20-SPPE-01, TN# 234840, p.19: 11-20, p. 20: 3-25, p.21: 3-22, p.22: 7-22.) These statements, however, do not rise to the level of new evidence. None of the comments made at the business meeting provided any new evidence or cited to specific errors of fact or law in this decision that would support the petition. Both agencies generally expressed concerns about the growth in diesel combustion for backup power at data centers, and a preference for alternatives; they did not, however, provide any new facts or substantial evidence that the CEC's analysis of impacts was flawed. As discussed further below, the record in this proceeding already addresses the issues raised by these agencies; their comments in the Sequoia proceeding cannot be relied on to support the petition.

While staff has been working with CARB and BAAQMD on the issues surrounding data centers and looks forward to continuing broader programmatic discussions on how analysis for emergency generators can be refined, the actual evidence in the Walsh

proceeding, as opposed to general comments at the business meeting related to another project, supports the approved exemption decision issued by the CEC.

In the Walsh proceeding, staff specifically provided refined air quality analysis in response to comments by BAAQMD, which BAAQMD testified adequately addressed its concerns for the Walsh project. (Exhibits 201 and 203, Hearing Transcripts, pp. 65-68.)

CARB and BAAQMD suggested at the business meeting that other cleaner generating technology *be considered* but have not specifically identified how those technologies would meet project objectives. (Docket 20-SPPE-01, TN# 234840, p.19: 11-20, p. 20: 3-25, p.21: 3-22, p.22: 7-22.) CEC staff looks forward to working with CARB, BAAQMD and stakeholders to identify specific technologies or fuels that are commercial, permitted by local or state agencies, and that would meet some of the project objectives and reliability goals.

For purposes of the Walsh project, the comments at the September Business Meeting do not reflect new facts or evidence not already considered in the Walsh proceeding. A discussion of alternative generating technology was not required because there were no significant impacts from the testing and maintenance of the generators identified in staff's analysis or anywhere in the record necessitating the need for an alternative's discussion. Despite this, the Walsh application did contain a section on alternatives explaining why various technologies would not be viable for backup generation. (Exhibit 1, pp. 184-186.)

CARB also raised the issue of the project using older Tier 2 engine technology, but as the record shows, the project's proposing to use Tier 2 with *diesel particulate filters* to reduce air emissions beyond just Tier 2 levels. (Exhibit 200, p. 5.3-21, Exhibit 201, p. 6, Hearing Transcripts, p. 64: 6-22) Staff notes that if the Walsh Data Center is approved by the City of Santa Clara, at the time the BAAQMD reviews the project to issue air permits for the backup generators, BAAQMD may require Tier 4 engines if the BAAQMD designates Tier 4 as the current best available control technology.

Thus, CARB and BAAQMD comments at the business meeting did not result in new evidence, facts or errors in fact or law necessitating the granting of the petition for reconsideration.

#### **IV. The Walsh and Lafayette Data Centers are Separate Facilities**

While the petitioner was aware of the Lafayette project during the development of the Walsh Record (Exhibit 501, p. 5), the idea that Walsh and Lafayette are a single project was first brought up at the August 12, 2020 Business Meeting by the petitioner. The primary driver of this theory stems from the proximity of the two proposed facilities to

each other and an allegation of common ownership. Even if both are true, such information is not dispositive that the projects are one data center.

At the same business meeting the applicant provided information as to why the two projects are separate and distinct. The features of the projects that support them being separate facilities include: Walsh is owned by 651 Walsh Partners, a partnership that includes Digital Realty; Lafayette is owned by Digital Realty; each facility has its own security, independent Silicon Valley Power substation, and land parcel; the facilities have different design teams; and each facility will have different employees. (Aug 12 Business Meeting transcripts, pp: 123-125.)

Therefore, the petition does not identify any new facts or errors in law to support this one project theory.

## **V. Conclusion**

For the reasons stated above, the Commission should deny the petition for reconsideration filed under Title 20, section 1720 because the petition fails to meet the threshold requirements of identifying 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or identifying 2) an error in fact or change or error of law. Even if new evidence was identified, the petition did not 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.

Dated: September 24, 2020

Respectfully submitted,

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