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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

**RULING ON ADMISSIBILITY OF EVIDENCE FROM THE MAY 11, 2021
EVIDENTIARY HEARING**

BACKGROUND

The Application

On August 14, 2019, C1-Santa Clara, LLC (Applicant) submitted an application for a small powerplant exemption (SPPE) for the proposed Sequoia Backup Generating Facility in Santa Clara, California (the Application),¹ to the California Energy Commission (CEC).² The Applicant proposes to build 54 standby diesel generators (Backup Generators), each with a maximum peak rating of 2.25 megawatts (MW), as part of an uninterruptible power supply to the Sequoia Data Center (Data Center) during interruptions of the electrical supply. The Application described the Backup Generators as complying with the US Environmental Protection Agency (U.S. EPA) Tier 2 emissions standards.³

¹ Information about this Application, including a link to the electronic docket, may be found on the CEC's [web page](https://ww2.energy.ca.gov/sitingcases/sequoia/) at <https://ww2.energy.ca.gov/sitingcases/sequoia/>. Documents related to this Application may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-03) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-03>.

² The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Pub. Resources Code, § 25200.) All subsequent citations are to the Public Resources Code unless otherwise specified.

³ TN 229419-1, p. 2-6.

The Original Proceedings

The CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Patty Monahan, Commissioner and Associate Member, (the Committee) at the September 11, 2019, CEC Business Meeting.⁴

On August 21, 2020, after conducting an evidentiary hearing, the Committee issued a Proposed Decision recommending that the CEC grant exemption from the CEC's certification process for the Sequoia Backup Generating Facility after making findings that it would generate more than 50 but less than 100 megawatts and that the Project did not cause significant environmental or energy impacts.⁵

On September 9, 2020, the CEC held a public hearing on the Proposed Decision.⁶ After hearing comments from the parties, the Bay Area Air Quality Management District (BAAQMD), and the California Air Resources Board (CARB), the CEC adopted a motion to remand the proceedings back to the Committee to conduct limited additional proceedings to consider the comments made by BAAQMD and CARB (Motion to Remand).⁷

On November 16, 2020, the CEC affirmed the Motion to Remand and directed the Committee to conduct limited additional proceedings to address: 1) input assumptions regarding NO₂ emissions from routine testing and maintenance; 2) direct and cumulative impacts of emergency operations of the Backup Generators; and 3) additional issues that arise during the conduct of the proceedings.⁸

The Proceedings Following Remand

The Applicant filed a revised project description on January 25, 2021 (Revised Project Description)⁹ that included a selective catalytic reduction (SCR)¹⁰ to the existing diesel particulate trap to make the Backup Generators compliant with U.S. EPA Tier 4 emissions standards.

⁴ TN 229721.

⁵ TN 234416.

⁶ [Transcript of September 9, 2020, Business Meeting](#), pp. 131-152.

⁷ [Transcript of September 9, 2020, Business Meeting](#), pp. 149:13-152:8; TN 234830.

⁸ [Transcript of November 16, 2020, Business Meeting](#), pp. 135-136.

⁹ TN 236429.

¹⁰ Selective catalytic reduction (SCR) injects a liquid-reductant through a special catalyst into the exhaust stream of the diesel engine to reduce the amount of oxides of nitrogen in the final exhaust stream. The Project will use urea for its SCR. (TN 237528, p. 5.9-6.)

The May 11 Evidentiary Hearing

On April 12, 2021, the Committee issued its Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders (Notice and Orders) that scheduled an evidentiary hearing on May 11, 2021 (May 11 Evidentiary Hearing). Among other items, the Notice and Orders directed Staff to file a Compiled Revised Initial Study and Proposed Mitigated Negative Declaration (Revised IS/PMND) no later than April 23, 2021, and address information from BAAQMD inferring that backup generators at existing data centers operated more frequently and for longer periods of time than previously estimated (BAAQMD Data).¹¹ Staff filed the Revised IS/PMND on April 23, 2021.¹² The Notice and Orders also directed the other parties to file reply testimony concerning the Revised IS/PMND by April 28, 2021.¹³

The Notice and Orders limited the scope of the May 11 Evidentiary Hearing to the issues specified in the November 2020 remand and issues associated with the additional information submitted to address 1) input assumptions regarding NO_x impacts from routine testing and maintenance; 2) direct and cumulative impacts of emergency operations of the Project's Tier 4-compliant backup generators; 3) other matters discussed and evaluated by the Parties as result of the Applicant changing the project description; and 4) new "Additional Information."¹⁴

The Notice and Orders specified that cross-examination would be conducted by written questions.¹⁵ If a party objected to a question, the objection was to be noted but the question answered. The Notice and Orders provided that any objections would be considered prior to the admission of the evidence at issue into the hearing record.¹⁶

On April 30, 2021, Mr. Sarvey submitted cross-examination questions within the time specified in the Notice and Orders.¹⁷ These questions did not specify a particular witness nor a party to whom the questions were directed; they also did not identify an evidentiary hearing topic area to which they applied.

On May 3, 2021, the Hearing Officer filed a memo regarding Mr. Sarvey's April 30 filing (May 3rd Hearing Officer Memo).¹⁸ The May 3rd Hearing Officer Memo directed Mr.

¹¹ TN 237428, pp. 7-8.

¹² TN 237528.

¹³ TN 237428, p. 8.

¹⁴ *Id.* at p. 4. The "Additional Information" was a series of questions and directions from the Committee to the parties to ensure a complete record.

¹⁵ The Notice and Orders also specified that the Committee would entertain motions to conduct oral cross-examination upon a showing of "good cause."

¹⁶ TN 237428, pp. 8-9.

¹⁷ TN 237607.

¹⁸ TN 237612.

Sarvey to file revised questions that, at a minimum, identified the party to whom the question was directed.

Also on May 3, 2021, Staff filed a motion requesting an order from the Committee directing Mr. Sarvey to identify the factual issues in dispute to which his April 30 questions applied (Staff's Motion).¹⁹

Mr. Sarvey filed revised questions on May 4, 2021 (Mr. Sarvey's Cross Examination Questions) that included the information outlined in the May 3rd Hearing Officer Memo.²⁰ These 19 questions covered topics such as recirculation of the Revised IS/PMND, air quality and public health impacts from the addition of the SCR to the Backup Generators, potential noise impacts from changed technology, and whether the SCR would cause an energy penalty through its use. Only two questions (Questions 14 and 15) were directed to the Applicant; Staff was to answer the balance of the questions.

The Applicant responded to Mr. Sarvey's Cross-Examination Questions on May 5, 2021.²¹ In addition to answering Questions 14 and 15, the Applicant objected and responded to Questions 8, 9, and 10. The Applicant objected to these questions contending that information from other projects was irrelevant to the current limited issues before the Committee.²²

Staff filed responses to Mr. Sarvey's Cross-Examination Questions on May 7, 2021.²³ Staff objected to Questions 2, 3, 4, and 5, arguing that they were beyond the scope of the issues to be determined at the May 11 Evidentiary Hearing.²⁴ The Applicant joined in the objection at the May 11 Evidentiary Hearing.²⁵

The May 11 Evidentiary Hearing was held as scheduled.²⁶ Mr. Sarvey moved to admit Exhibits 312 through 321.²⁷ Staff objected to the introduction of pages 3 through 12 of Mr. Sarvey's Exhibit 312 and the entirety of Exhibits 313, 314, 315, 316, 317, 318, 319, and 321. Staff also renewed the objections to Mr. Sarvey's Cross-Examination Questions contained in the responses to some of the questions.²⁸ The Committee took the objections under submission and indicated that rulings on the objections would be made in the Revised Committee Proposed Decision.²⁹

¹⁹ TN 237634.

²⁰ TN 237644.

²¹ TN 237672.

²² TN 237672, p. 3.

²³ TN 237737.

²⁴ TN 237737, pp. 2-5.

²⁵ TN 237827, p. 22.

²⁶ TN 237827, pp. 2-4.

²⁷ TN 237827, 22:12 – 22:6.

²⁸ TN 237827, 22:13 – 23:4; see also TN 237737 (Staff's Cross-Examination Responses including Declarations and Resumes).

²⁹ TN 237827, 24:22 – 25:4, 28:16 – 28:20, 30:15 – 30:18.

Mr. Sarvey filed a response to Staff's Motion on May 17, 2021 (Mr. Sarvey's Response).³⁰ The response specifies the topic areas for each of Mr. Sarvey's Cross-Examination Questions, as requested in Staff's Motion.³¹ In addition, Mr. Sarvey addresses the objections made to his exhibits made during the May 11 Evidentiary Hearing.³²

DISCUSSION

Staff's Motion to Direct Intervenor Sarvey to Comply with Committee Order

Because the May 11 Evidentiary Hearing has already occurred, Staff's Motion is moot, and we decline to rule on it.

A. Ruling on Evidentiary Objections and Admission of Exhibits

1. Mr. Sarvey's Cross-Examination Questions

Questions 2, 3, 4, and 5

In these four questions, Mr. Sarvey sought information about the input assumptions for the cumulative health risk assessment (HRA) contained in the IS/PMND.

Staff objected to each of these questions in its written responses to Mr. Sarvey's Cross-Examination Questions, contending that the HRA presented in the Revised IS/PMND did not contain any new information and was thus beyond the scope of the May 11 Evidentiary Hearing.³³ The Applicant joined in the objection at the May 11 Evidentiary Hearing.³⁴

After making the objection, Staff responded to the question as directed by the Committee and explicitly did so without waiver of the objection. Staff noted that the cumulative HRA had been previously published on April 22, 2020, as "CEC Staff Responses to Committee Questions" (Exhibit 203)³⁵ and was presented in the Revised IS/PMND in response to the Committee's direction in the Notice and Orders.³⁶ Staff also indicated that the First Evidentiary Hearing included an inquiry into the assumptions that underlay the cumulative HRA. Staff noted that if other data centers were excluded from

³⁰ TN 237829.

³¹ TN 237829, pp. 2-6.

³² TN 237829, pp. 6-9.

³³ TN 237737, p. 2.

³⁴ TN 237827, p. 22.

³⁵ TN 233095.

³⁶ TN 237737, pp. 2-3.

the analysis, it was because they were outside the radius used to analyze such impacts.³⁷

Regarding the radius used to analyze the cumulative health risks, Staff noted that it relied on the thresholds contained in BAAQMD's threshold of significance to review the cumulative cancer risk, hazard index, and PM2.5 concentration were conservatively calculated using the maximum value in relation to the sensitive receptors in the area. Again, all of this information was previously contained verbatim in Exhibit 203.

While it is true that the information responsive to Mr. Sarvey's Cross-Examination Questions was previously presented in Exhibit 203, the introduction to the section concerning the cumulative HRA in the Revised IS/PMND merely stated that "Staff updated its analysis, described below, to include emission sources within 1,000 feet from the project property line, plus emissions from sources in the northwest portions of the San Jose International Airport (i.e., those within 2,000 feet of the project property line)."³⁸ Staff did not indicate in the Revised IS/PMND that the updated analysis was duplicative of that contained in Exhibit 203. Someone reading the Revised IS/PMND could conclude that it presented a new analysis of the cumulative health risks associated with the addition of the SCR to the Backup Generators and wish to explore the basis for the analysis and conclusions. Therefore, we **OVERRULE** Staff's objections to Questions 2, 3, and 4.

Turning now to Question 5, which sought clarification about why Staff had used a 1,000-foot radius instead of the more typical six-mile radius, Staff provided new information about the difference between the impacts associated with a typical powerplant project and the Backup Generators. Specifically, Staff noted that standby diesel backup generators have more localized impacts due to their shorter stacks and less buoyant plumes.³⁹ Given the interest by Mr. Sarvey, CARB, and BAAQMD about the emissions from the Backup Generators and their potential environmental and health impacts, we **OVERRULE** the objections to Question 5.

Questions 8, 9, and 10

In Questions 8 and 9, Mr. Sarvey cites to noise assessments conducted for the currently-pending Great Oaks South SPPE application, which also proposes to use an SCR for its backup generators. Mr. Sarvey then questioned whether Staff conducted an updated noise analysis in the Revised IS/PMND because of the addition of the SCR to the Backup Generators. In Question 10, Mr. Sarvey inquired about any revision to the stack height for the Backup Generators under the Revised Project Description, again

³⁷ *Id.* at p. 3.

³⁸ TN 237528, p. 5.3-31.

³⁹ TN 237737, p. 5.

comparing them to the Great Oaks South SPPE and asking why the addition of the SCR would not increase the stack height.⁴⁰

Although Questions 8, 9, and 10 were not directed to the Applicant, the Applicant objected to Questions 8, 9, and 10, contending that information from other projects was irrelevant to the current limited issues before the Committee.⁴¹ Staff did not object to Question 8, 9, or 10, providing responses to Mr. Sarvey's inquiries.⁴²

The issue of whether there is a change in noise impacts due to the addition of SCR to the Backup Generators falls within the limited purpose of the May 11 Evidentiary Hearing: to resolve questions surrounding the impacts associated with the addition of the SCR technology. Mr. Sarvey's questions were thus relevant to the scope of the May 11 Evidentiary Hearing as set forth in the Notice and Orders, and the objections are therefore **OVERRULED**.

2. Mr. Sarvey's Exhibits

Having ruled on the objections to Mr. Sarvey's Cross-Examination Questions, we now address the objections to his exhibits, grouping exhibits by subject matter where possible.

Exhibit 312

Exhibit 312 is Mr. Sarvey's reply testimony and includes comments on the Revised IS/PMND.

Staff's primary objection is that the content of pages 3 through 12 (the bulk of the 13-page document) is outside the scope of the May 11 Evidentiary Hearing, as set forth in the Notice and Orders, but Staff did not provide any support for the objection.⁴³

Mr. Sarvey responded that Exhibit 312 is his rebuttal to the conclusions in the Revised IS/PMND and includes citations to his pre-identified exhibits. These exhibits, he further argues, provide factual support for his comments and challenges to the adequacy of the Revised IS/PMND.⁴⁴

Mr. Sarvey has established the appropriate scope of his testimony in pages 3 through 12 of Exhibit 312. We therefore **OVERRULE** Staff's objection and admit Exhibit 312 into the hearing record.

⁴⁰ TN 237644, pp. 2-3.

⁴¹ TN 237672, p. 3.

⁴² TN 237737, pp. 6-8.

⁴³ TN 237827, pp. 22:15 - 23:4, 27:1 - 27:3.

⁴⁴ TN 237829, p. 9.

We now turn to the admissibility of the documents referenced in it.

Exhibits 313, 314, and 321

Mr. Sarvey describes Exhibits 313, 314, and 321 as a list of data centers that may be a source of emissions near the Project and has included maps showing their location relative to the Sequoia Data Center. Mr. Sarvey argues that these exhibits are relevant to the direct and cumulative impacts of emergency operations relative to the Revised Project Description, and therefore within scope of the May 11 Evidentiary Hearing.⁴⁵

Staff states that these exhibits are beyond the scope of the May 11 Evidentiary Hearing but did not provide any support for the objection.⁴⁶

Exhibits 313, 314, and 321 are duplicative of information contained in other exhibits admitted during the Original Proceedings and addressed in the Proposed Decision on the topics of air quality and public health. The issues of air quality and public health⁴⁷ are within the scope of the May 11 Evidentiary Hearing.

We therefore **OVERRULE** Staff's objections and admit Exhibits 313, 314, and 321 into the hearing record.

Exhibits 315 and 316

Exhibits 315 and 316 are letters submitted in two other SPPE application proceedings currently pending at the CEC. These letters both contain data collected by BAAQMD in 2020 that identify backup generator operations at other data centers in the cities of Santa Clara, Sunnyvale, and San Jose for the period September 2019 to September 2020. This time period includes the statewide emergency declarations and executive actions responding to extreme heat waves and wildfires in August and September 2020. The cover letters use the BAAQMD Data to support the position that the CEC should include various scenarios of backup power generation operations beyond routine testing and maintenance in the environmental documents for the two projects.⁴⁸ Mr. Sarvey argues that the CEC should model and analyze emergency operations based on the Revised Project Description, contending that CARB and BAAQMD have requested it in those two other SPPE proceedings.⁴⁹

⁴⁵ TN 237829, p. 7.

⁴⁶ TN 237827, 23:2 – 23:4.

⁴⁷ See, e.g., TN 232270, pp. 14-20; TN 232341; TN 232505, pp. 9-14.

⁴⁸ TN 237581 (BAAQMD comments on the Great Oaks South SPPE); TN 237582 (BAAQMD comments on the San Jose City SPPE).

⁴⁹ TN 237579, pp. 1-3.

Staff objected to their admission as exceeding the scope of the May 11 Evidentiary Hearing and as irrelevant because they were not directed to the Revised Project Description.⁵⁰

Mr. Sarvey responded that the Committee itself asked that Staff analyze the information contained in these two exhibits.⁵¹

The information in these two exhibits was the basis for questions the Committee asked and that were answered by Staff in the Revised IS/PMND. Accordingly, the information is relevant and material to the scope of the May 11 Evidentiary Hearing. We therefore **OVERRULE** Staff's objections and admit Exhibits 315 and 316.

Exhibit 317

Exhibit 317 is an engineering analysis conducted by BAAQMD in 2010 for the Santa Clara Data Center project. BAAQMD performed this analysis as part of its actions as a responsible agency issuing its own permit for the operation of backup generators.

Staff states that Exhibit 317 is beyond the scope of the May 11 Evidentiary Hearing but did not provide any support for the objection.⁵²

Mr. Sarvey argues that Exhibit 317 challenges the adequacy of Staff's analysis of direct and cumulative impacts of the Revised Project Description. Mr. Sarvey states that "Staff's statement that modeling air quality impacts of emergency operations is inaccurate as demonstrated by this exhibit which is squarely in the scope of the evidentiary hearing."⁵³

We disagree. The fact that an engineering assessment was performed for the Santa Clara proceeding in 2010 does not support a conclusion that BAAQMD guidance calls for a similar assessment in this case. More significantly, the assessment is not relevant to the project revisions that were the subject of the May 11 Evidentiary Hearing. It therefore goes beyond the scope of the May 11 Evidentiary Hearing.

We therefore **SUSTAIN** Staff's objection and deny Mr. Sarvey's motion to admit Exhibit 317 into the hearing record; however, this exhibit is properly included in the administrative record.

⁵⁰ TN 237827, 27:4 – 27:9.

⁵¹ TN 237829, pp. 7-8.

⁵² TN 237827, 23:2 – 23:4.

⁵³ TN 237829, p. 8.

Exhibit 318

Exhibit 318 is the revised noise analysis for the Great Oaks South SPPE.

Staff states that Exhibit 318 is beyond the scope of the May 11 Evidentiary Hearing but did not provide any support for the objection.⁵⁴

Mr. Sarvey's Response states that this exhibit is relevant to the current proceedings to address changes in the environment because of the addition of the SCR to the Backup Generators.⁵⁵

We begin by noting that the Revised IS/PMND does not address whether the addition of SCR has any impact on the noise analysis.⁵⁶ As discussed above in resolving the objections to Mr. Sarvey's Cross-Examination Questions 8 and 9, the question of any change in noise impacts due to the addition of the SCR falls within the limited purpose of the May 11 Evidentiary Hearing. However, Mr. Sarvey did not provide any information demonstrating the similarity between the Great Oaks South project and the Sequoia project. More importantly, Staff responded to Mr. Sarvey's questions about changes in noise and explained why no change occurred as the result of the addition of the SCR.⁵⁷ Exhibit 318 does nothing to change or challenge that analysis.

We therefore **SUSTAIN** Staff's objection and deny Mr. Sarvey's motion to admit Exhibit 318 into the hearing record; however, this exhibit is properly included in the administrative record.

Exhibit 319

Exhibit 319 is a letter from a former CEC Executive Director from 2008 that describes the analysis that may occur in the review of another SPPE.

Staff states that Exhibit 318 is beyond the scope of the May 11 Evidentiary Hearing but does not provide any support for the objection.⁵⁸

Mr. Sarvey's Response advocates that this letter is relevant to whether the analysis of emergency operations is speculative.⁵⁹

Staff concluded in the Revised IS/PMND that "assessing the air quality impacts of emergency operations would require a host of unvalidated, unverifiable, and speculative

⁵⁴ TN 237827, 23:2 – 23:4.

⁵⁵ TN 237829, p. 8.

⁵⁶ TN 237528, pp. 5.13-1 – 5.13-6.

⁵⁷ TN 237737, pp. 6-8.

⁵⁸ TN 237827, 23:2 – 23:4.

⁵⁹ TN 237829, p. 8.

assumptions about when and under what circumstances such a hypothetical emergency would occur.”⁶⁰ The assumptions necessary to support an analysis of emergency operations would therefore be dependent on specific characteristics of the project in question.

Mr. Sarvey has not shown how a letter from the CEC’s Executive Director from 2008 for a project for which no application had yet been filed is relevant to the sufficiency of the analysis completed by Staff for this facility. Therefore, Exhibit 319 is not relevant to our determination here: whether an analysis of the emergency operations of the Sequoia Backup Generators is speculative.

We therefore **SUSTAIN** Staff’s objection and deny Mr. Sarvey’s motion to admit Exhibit 319 into the hearing record; however, this exhibit is properly included in the administrative record.

Exhibit 320

At the May 11 Evidentiary Hearing, Mr. Sarvey moved to admit Exhibit 320.⁶¹ Neither Staff nor the Applicant objected to the admission of Exhibit 320. We admit Exhibit 320 into the hearing record of this proceeding.

3. Staff’s Exhibits

At the May 11 Evidentiary Hearing, Staff moved to admit Exhibits 205 through 213.⁶² Neither the Applicant nor Mr. Sarvey objected to the admission of Exhibits 205 through 213.⁶³ We admit Exhibits 205 through 213 into the hearing record of this proceeding.

4. Applicant’s Exhibits

The Applicant moved to admit Exhibits 36 through 48 at the May 11 Evidentiary Hearing.⁶⁴ Neither Staff nor Mr. Sarvey objected to the admission of Exhibits 36 through 48.⁶⁵ We admit Exhibits 36 through 48 into the hearing record of this proceeding.

⁶⁰ TN 237528, p. 5.3-39.

⁶¹ Due to an oversight, the Hearing Officer failed to admit the evidence to which no objection was made. We therefore correct that oversight in this ruling.

⁶² TN 237827, 21:17- 21:19. The Exhibit List prepared for the May 11 Evidentiary Hearing includes the exhibits admitted at the First Evidentiary Hearing as well as those identified by the parties for use during the proceedings on remand. (TN 237827, 14:2 – 14:8.)

⁶³ TN 237827, 21:20 – 22:1.

⁶⁴ TN 237827, 21:2 – 21:6.

⁶⁵ TN 237827, 21:7 – 21:15.

CONCLUSION

The Hearing and Policy Unit of the Chief Counsel's Office is hereby directed to update the Exhibit List for this proceeding consistent with our rulings above.

IT IS SO ORDERED.

Dated: June 4, 2021

Dated: June 4, 2021

APPROVED BY:

APPROVED BY:

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

Patty Monahan
Commissioner and Associate Member
Sequoia Backup Generating Facility SPPE
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