DOCKETED	
Docket Number:	19-SPPE-03
Project Title:	Sequoia Data Center
TN #:	238472
Document Title:	Robert Sarvey Comments on revised proposed decision
Description:	Comments on revised proposed decision Sarvey
Filer:	Robert Sarvey
Organization:	Robert Sarvey
Submitter Role:	Intervenor
Submission Date:	6/24/2021 4:56:33 PM
Docketed Date:	6/24/2021

State of California
State Energy Resources Conservation and Development Commission

In the matter of:	
Sequoia Data Center	Docket 19-SPPE-03

Intervenor Robert Sarvey's Comments on the Revised Proposed Decision

Introduction

On September 9, 2020 the CEC adopted a motion to remand the proceedings back to the committee to conduct additional proceedings to consider the comments made by BAAQMD and CARB. BAAQMD who has been participating in all five of the CEC Santa Clara data center proceedings has made the following comments during this proceeding and in others:

1) The Air District's CEQA Guidelines for assessing cumulative health risk impacts recommend that a lead agency evaluate all sources of toxic air contaminants (TACs) within 1,000 feet of a proposed project to ensure that the cumulative health risk from the project plus other nearby sources will not exceed a chronic Hazard Index of 10 or a carcinogenic risk of 100 additional cancers per million exposed population. Although Appendix F includes a health risk assessment (HRA) of the Project, it does not account for the cumulative health risk impacts associated with all nearby sources.[1]

2) Air District staff recommend that the Project join SVP's Santa Clara Green Power program and thus commit to purchase 100 percent renewable energy, or otherwise negotiate an electricity contract with SVP for 100 percent renewable energy.[2]

3) Air District recommends that the project applicant use the cleanest available technologies such as solar battery power, fuel cells, or Tier 4 generators.[3]

[1] Exhibit 301 Page 2
[2] Exhibit 301 Page 3
[3] Exhibit 301 Page 3

4) Air District staff recommends that CEC assess and justify how power plant projects such as the back-up generators associated with these data centers will meet the electricity sector's share of the statewide goals in the Scoping Plan.[4]

The California Air Resources Board appeared at the September 9, 2020 adoption hearing for the SDC and provided its comments on Staff's air quality analysis on October 15, 2020. CARB's issues were as follows.

5) Emergency operation is foreseeable and anticipated and because reasonable assumptions can be made similarly to model various scenarios of emergency operation, at least some meaningful analysis of emergency operation emissions impacts can be conducted.[5]

6) It would be appropriate to consider ambient air quality impacts of multiple data centers—not just multiple generators—because the CEC is considering several projects in the same area.[6]

7) Many of these projects are in, or near, communities experiencing elevated levels of environmental risk per CalEnviroScreen.[7]

BAAQMD Issue # 1: The Project, does not account for the cumulative health risk impacts associated with all nearby sources.[8]

CEC Staff's cumulative HRA neglects to include several sources most importantly the Lafayette Data Center, currently being evaluated by CEC Staff, in the TAC analysis. The IS/MND states that, *"The staff's cumulative HRA includes four major types of sources: (1) San Jose International Airport emissions sources located within 2,000 feet of the boundaries proposed for the Walsh (19-SPPE- 02) and Sequoia (19-SPPE-03) projects combined; (2) existing stationary sources; (3) surrounding highways, major streets, and railways; and (4) the proposed Sequoia project, the proposed Walsh project, and the approved McLaren project (17-SPPE-01)."*[9] The Lafayette Data Center is next to the 651 Walsh Avenue Data Center which was included in the TAC assessment but the Lafayette Project was left out.

[4] Exhibit 301 Page 4
[5] Exhibit 320 Page 8
[6] Exhibit 320 page 5
[7] Exhibit 320 Page 2
[8] Exhibit 301 Page 2
[9] PD page 157 of 584

Without including the Lafayette Data Center and the other projects the TAC analysis is inadequate and does not establish that a significant impact will not occur to residents within 1,000 feet of the SDC. CEC Staff's revised analysis also doesn't consider all of the other data centers being permitted by the CEC.[10] Staff's analysis also does not consider the 25 existing data centers in the census tract the SDC is located in.[11]

BAAQMD Issue #2 Air District staff recommend that the Project join SVP's Santa Clara Green Power program and thus commit to purchase 100 percent renewable energy, or otherwise negotiate an electricity contract with SVP for 100 percent renewable energy.[12]

The lead agency has the discretion to develop its own thresholds of significance and methodologies to evaluate the significance of GHG emissions. The CEC initially embarked on a process in the 2009 IPER but never finalized those thresholds or methodologies in a public reviewed final CEQA document. The Energy Commission has several options in adopting a threshold of significance for GHG emissions. First the Energy Commission could utilize BAAQMD's threshold of 1,100 metric tons of CO2e/yr presented in the 2017 BAAQMD CEQA Guidelines. The Energy Commission can use the only statewide GHG significant emission threshold for industrial uses which was proposed by CARB in 2009. The Air Resources Board Staff established a numerical threshold of 7,000 metric tons of CO2e/yr as significant for industrial projects which includes indirect emissions from electricity use.[13] The Energy Commission could adopt a 25,000 metric tons of CO2e/yr threshold as it coincides with the mandatory GHG reporting requirement.

But since the commission has refused to provide a threshold of significance for the SDC's GHG emissions no amount of GHG emissions can be considered significant. The results of the CEC's refusal to adopt a level of significance for GHG emissions has resulted in this projects 165,225 $MTCO_2e$/year to remain unmitigated despite the

[10] Exhibit 321
[11] Exhibit 313,314
[12] Exhibit 301 Page 3
[13] Exhibit 306 Page 7 of 15

BAAQMD threshold of significance for this project is 1,100 $MTCO_2e$/year. The commissions refusal to adopt a threshold of significance for GHG emissions has resulted in a potential 687,882 $MTCO_2e$/year of unmitigated GHG emissions over the five data centers it has now permitted. SVP has testified under oath[14] it can provide all of SDC's energy from its green energy program eliminating the 165,225 $MTCO_2e$/year of GHG emissions. All the commission has to do is set a threshold of significance and it can require Sequoia to enroll in the green energy program. The RPD does not address BAAQMD's recommendation that the project enroll in SVP's green energy program.

BAAQMD Issue #3 Air District recommends that the project applicant use the cleanest available technologies such as solar battery power, fuel cells, or Tier 4 generators.[15]

Recognizing that the California Energy Commission would not require any air quality mitigation for this project's impacts on this disadvantaged community the Bay Area Air Quality Management District took it upon itself to provide the only air quality mitigation for this project by requiring Tier 4 engines for this project.

BAAQMD Issue #4 Air District staff recommends that CEC assess and justify how power plant projects such as the back-up generators associated with these data centers will meet the electricity sector's share of the statewide goals in the Scoping Plan.[16]

Staff's analysis and the RPD do not compare the projects electric use to the electricity sectors share of the statewide goals. Staff's analysis simply states that SVP will comply with the state's electricity sector targets with no analysis of how an additional 165,225 MTCO2e/year of GHG emissions will impact the state's electricity sector goals. The commissions refusal to adopt a threshold of significance for GHG emissions has resulted in 687,882 MTCO2e/year of unmitigated GHG emissions over the five data centers it has permitted. SVP has testified under oath[17] it can provide all of SDC's energy from its green energy program eliminating the 165,225 MTCO2e/year of GHG emissions from the SDC and demonstrating compatibility with the state's electricity sectors goals.

[14] June 5, 2020 RT Page 70 Lines 1-8
[15] Exhibit 301 Page 3
[16] Exhibit 301 Page 4
[17] Evidentiary Hearing Transcript RT 6-25-20 Page 70

CARB Issue # 5 Emergency operation is foreseeable and anticipated and because reasonable assumptions can be made similarly to model various scenarios of emergency operation, at least some meaningful analysis of emergency operation emissions impacts can be conducted.[18]

The RPD concludes that, *"In sum, we find* ***there is evidence*** *supporting the Revised IS/PMND's conclusion that the Backup Generators would operate very infrequently, if at all, for emergency operations. This fact, in conjunction with the number of assumptions that would need to be made to estimate air quality impacts due to emergency operations, renders quantification of those impacts too speculative to be meaningful and is therefore not required by CEQA."*[19] There is also substantial evidence supporting the conclusion that half of the emergency generators in Santa Clara operate annually but the RPD fails to acknowledge it.[20] The RPD ignores substantial evidence that in fact backup generator emergency operations occur frequently at data centers and that quantification of these impacts is not speculative.

BAAQMD provided evidence contained in exhibit 315 that half of the emergency generators in the air district operated in emergency mode between September 1, 2019 and September 31, 2020. According to BAAQMD the, *"Air District staff has reviewed recent data regarding backup generator usage during non-testing/non-maintenance operations at a number of South Bay data centers.* ***Between September 1, 2019, and September 30, 2020 nearly half of the identified data centers in Santa Clara, San Jose, and Sunnyvale operated backup diesel generators for reasons other than routine testing and maintenance.*** *Many of the data centers operated diesel generators during multiple nontesting/ non-maintenance events; non-testing/non-maintenance hours of operation approached 50 hours for one generator for one event; it appears 40 or more generators operated concurrently at two facilities; and one facility ran diesel generators for approximately 400 hours for non-testing/non-maintenance purposes over the course of the period."*[21]

[18] Exhibit 320 Page 8
[19] PD page 38
[20] Exhibit 315
21 Exhibit 315 TN #237580 Page 2

The RPD never acknowledges or address rebuttal testimony that analyzes BAAQMD's emergency operation data for Santa Clara data centers that occurred during non-electrical emergencies. That analysis demonstrates that, *"According to BAAQMD's data the probability of a Santa Clara Data Center experiencing an outage in any one year is 8/39 or approximately 20.5% a year without considering any interruptions due to extreme heat or PSPS events."* [22] The testimony concluded that outside of the August 2020 electrical emergencies 20.5% of Santa Clara Data Centers operated in emergency mode during the 12 month period.

The PD ignores the testimony of the California Air Resources Board (Exhibit 320) in its comments on CEC Staff's inadequate air quality analysis. In its comments the Air Resources Board states, *"The proposed project, like all data centers, is seeking to install diesel engine backup generators for events in which it loses connection to the grid, so that it may continue to operate and provide its services reliably to its customers. Though the timing or occurrence of such events may not always be known, power loses do happen—and data centers are designed and built specifically because such events are foreseeable. Indeed, data centers have generators and sell themselves as reliable operators specifically because they intend to operate during such events, which have been occurring with increasing regularity. But this commercial proposition comes with analysis, disclosure, and mitigation obligations. Community members living near the data centers reasonably deserve to know—and want to know—what the air quality impacts will be when the centers operate. These impacts are likely to extend far beyond those of a single generator. These obligations and operational realities mean forecasting a reasonable range of uses during power outages is appropriate. Such use is reasonably foreseeable. Although we recognize continuing work to limit reliability events and power shutoffs, data centers are constructed on the reasonable premise that such outages do occur, and that we must manage the continuing risks of a warming climate."*[23]

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22 Exhibit 312 Page 3
[23] Exhibit 320 Page 6

The RPD also fails to address CARB concerns that, *"Consequently, CARB recommends that the short-term criteria pollutant and toxic air contaminant ambient air quality impacts due to the emergency operation of the backup generators for the proposed project be evaluated. For this analysis, CARB recommends that several operating scenarios be analyzed, including a scenario with multiple backup generators operating at high load and providing the full power required by the data center and a scenario based on the recent operation of data center backup generator systems due to the heat storm in California."*

Modeling Air Quality Impacts from Emergency Operations is not speculative.

The proposed decision concludes that modeling emergency operations is speculative. The evidence remains unrefuted that in fact emergency modeling of CO emissions for this project has already been conducted.[24] The RPD does not address the fact that the applicant has already modeled CO emissions for emergency operation of the project.[25] Modeling air quality impacts from emergency operation cannot be speculative as it already happened.

The Air Resources Board is in agreement as they stated in their comments on CEC Staff's air quality analysis, ***"Capturing these concerns is important—which requires developing reasonable assumptions as to when centers will operate at greater capacity. In our conversations with Staff, one question was whether modeling such operations is in fact unduly speculative. In CARB's view, data center emergency operations are not speculative, and an evaluation of their operations during loss of power—for which the centers are being specifically designed, and for which they are marketed to customers—is also not speculative. CEQA requires an appropriate evaluation even of foreseeable impacts otherwise imprecise in scope or contingent in occurrence."*** [26]

[24] Exhibit 312 Page 4
[25] Exhibit 312 Page 4 and Exhibit 3 TN 229419-3 Appendices A-N - part 2 Page 17 of 208
[26] Exhibit 8 Page

CARB also testified that, ***"Because some emergency operation is foreseeable and anticipated and because reasonable assumptions can be made similarly to model various scenarios of emergency operation, at least some meaningful analysis of emergency operation emissions impacts can be conducted."***[27]

Further CARB commented, "***Modeling at least some impact from simultaneous operation of the backup generators is no more speculative than assuming no hours of simultaneous operation or even in modeling the permitted 50 hours annually of operation for maintenance, which requires a similar degree of CEC making reasonable assumptions.***[28]

Consequently, CARB recommends that the short-term criteria pollutant and toxic air contaminant ambient air quality impacts due to the emergency operation of the backup generators for the proposed project be evaluated. For this analysis, CARB recommends that several operating scenarios be analyzed, including a scenario with multiple backup generators operating at high load and providing the full power required by the data center and a scenario based on the recent operation of data center backup generator systems due to the heat storm in California.[29] The RPD fails to address CARB's issues which was allegedly the reason for the remand.

<u>Emergency operations of data center backup generators can be expected during future electrical emergencies.</u>

The PD reasons that emergency operation of Data Center BUGS from electrical emergencies that occurred in August 2020 is not indicative of future years based on staff testimony. The PD reasons on page 38, *"Additionally, the BAAQMD Data showed that 75 percent of all engine-hours occurred either during the energy emergencies in August and September 2020 — events that Staff concluded were not representative or indicative of future years."* But already on June 16, 2021 the Governor issued an emergency proclamation relaxing rules around operation of diesel generators in the state in response to potential electrical emergencies surrounding the states latest 2021

[27] Exhibit 8 Page 8
[28] Exhibit 8 Page 8
[29] Exhibit 8 Page 9

June heat wave.[30] The RPD should be revised to state, *Additionally, the BAAQMD Data showed that 75 percent of all engine-hours occurred either during the energy emergencies in August and September 2020 ~~— events that Staff concluded were not representative or indicative of future years.~~"*

CARB Issue # 7 Many of these projects are in, or near, communities experiencing elevated levels of environmental risk per CalEnviroScreen.[31]

Both BAAQMD and CARB have told the CEC that they are concerned these data center projects it is permitting are in disadvantaged communities. CARB stated in tis comments on CEC staff's air quality analysis, "*As data center applications multiply, it is critical that air and energy agencies collaborate to ensure that the internet is powered by the cleanest energy possible. Doing so is especially important because many data centers are in or near communities already suffering from air pollution burdens."*[32] BAAQMD stated at the September 9, 2020 SDC adoption hearing, *"This Sequoia project that you're considering today and many of the other recent projects are in impacted communities down at Santa Clara County under our community health protection program. And our goals there are in these impacted communities to drive down emissions as quickly as we can. And so any increase in toxic diesel emissions in these communities is very concerning."*[33] Both CARB's and BAAQMD's concerns regarding increases in toxic diesel emissions in these disadvantaged communities is never addressed in the RPD.

The Generating Capacity of the SDC is over 100 MW.

The Revised Proposed Decision (RPD) page 3 states, *"The proposed Project site encompasses 15 acres and is located at 2600 De La Cruz Boulevard, Santa Clara, California (Project Site) (see Figure 1)."* Actually, the evidence shows (Exhibit 8 page 8,9) the Sequoia Data Center project is phase one of a 23-acre 144-megawatt site that

[30] Governor Newsom's June 16, 2021 Emergency proclamation. https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-Extreme-Heat-proclamation.pdf
[31] Exhibit 320 Page 2
[32] Exhibit 320 page 16
[33] 09/09/21 RT Page 147 Lines 24, 25 and Page 148 Lines 1-5

is being developed by Cyrus 1. The total data center is expected to be over 100 MW when fully developed. Exhibit 8 Page 9 states:

"On February 19, 2019, C1 published a press release (attached) announcing its plan to develop the "CyrusOne Santa Clara Data Center campus" on two adjacent land parcels that will be capable of "delivering over 100 MWs of capacity." Shortly before the press release, C1 purchased the adjacent 8.35-acre parcel north of the SOC property at 2750 De La Cruz Boulevard (APN 230-03-099). The total area for the two properties is 23.3 acres.

On February 22, 2019, the online publication, Data Center Frontier, posted an article (attached) describing the C1 plan to deploy 144 MWs of new data center capacity on two adjoining parcels totaling 23 acres. The article describes how the adjacent 8-acre parcel will house a 48-MW data center, resulting in the "largest contiguous data center campus in Santa Clara…."[34]

Cyrus 1's own website states, "CyrusOne (NASDAQ: CONE), a premier global data center REIT, today announced the purchase of 8 acres of land in Santa Clara. Upon completion, the new facility will be the second for CyrusOne in Santa Clara and will be adjacent to the company's existing land parcel that is currently under construction. Combined, the CyrusOne Santa Clara Data Center campus will be the largest mission-critical concentration in Silicon Valley delivering over 100MW of capacity."[35]

Another press release on the Cyrus 1 website states "Cyrus 1 has purchased 8 acres of land in Santa Clara to locate the second data center for CyrusOne in Santa Clara. This acreage will be adjacent to the company's existing land parcel that is currently under construction. Combined, the CyrusOne Santa Clara Data Center campus will be the largest mission-critical concentration in Silicon Valley delivering over 100MW of capacity."[36]

Other media reports state, "Fastest-Growing Major Data Center Provider Closes 8 Acre Land Deal for Creation of Second Santa Clara Facility Creating the Largest Mission-Critical Concentration in Silicon Valley Delivering Over 100MW of Capacity."[37]

Baxtell reports CyrusOne (NASDAQ: CONE), a premier global data center REIT, today announced the purchase of 8 acres of land in Santa Clara. Upon completion, the new facility will be the second for CyrusOne in Santa Clara and will be adjacent to the company's existing land parcel that is currently under construction. Combined, the CyrusOne Santa Clara Data Center campus will be the largest mission-critical concentration in Silicon Valley delivering over 100MW of capacity. The unique campus will be able to generate up to 27MWs of energy by use of the onsite generation, giving customers even more aggressive power pricing over any competitor in the market.

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[34] Exhibit 8 Page 62
[35] https://investor.cyrusone.com/news-releases/news-release-details/cyrusone-continues-expansion-silicon-valley-large-hyperscale
[36] https://www.capremedia.com/cyrusone-announces-hyperscale-expansion-in-silicon-valley
[37] https://investor.cyrusone.com/news-releases/news-release-details/cyrusone-continues-expansion-silicon-valley-large-hyperscale

"Today marks an exciting new chapter for CyrusOne as we set the course for our second data center in the heart of Silicon Valley. With innovative power cogeneration, our new data center will provide low energy costs for our hyperscale customers. Part of our mission at CyrusOne is to help the world's leading technology companies power this new exciting digital era we all live in. Continuing our expansion in Silicon Valley will help our customers turn their visions into reality," said Kevin Timmons, chief technology officer, CyrusOne. "In technology, speed is a differentiator, and our track record demonstrates that we build data centers faster than anyone in the world."[38]

The RPD completely ignores the evidence contained in Exhibit 8 and ignores public statements by Cyrus 1 about the size of the Sequoia Data Center. Even without the announced expansion of the Sequoia Data Center the generating capacity for the SDC is 121.5 MW as computed by Section 2003 the only authority promulgated in the CEC regulations to compute generating capacity.

The RPD allows the applicant to successfully piecemeal this project to avoid an EIR on the 96.5 MW first phase of the project. The applicant can simply claim the second 48 MW phase of the project is not over 50 megawatts and process it with an MND though the City of Santa Clara and completely avoid a comprehensive review of this second and first phase of the project by the CEC. The RPD should be revised to include condition number PD-3.

> PD-3 - Should the applicant propose additional backup generation for the adjacent 8 acre parcel an application must be filed with the CEC and a complete EIR on the 144 MW project will be conducted.

The RPD proposes mitigation Measure PD-1 and PD-2 which allegedly limits the project to 100 MW unless the CEC authorizes otherwise. PD-2 provides that, *"The granting of the Small Power Plant Exemption for the Sequoia Backup Generating Facility is specifically conditioned on the power generated being used exclusively by the Sequoia Data Center. At no time shall the Project owner of the Sequoia Data Center allow the power to be generated by the Sequoia Backup Generating Facility to be used for any other facility, property, or use, including, but not limited to, delivery to the electric distribution system without the express written approval of the CEC."* The evidence

[38] https://baxtel.com/data-center/california/news

provided by BAAQMD already shows that the CEC has previously authorized data center 10 in Santa Clara to operate over 100 MW of backup generation at one time.[39] The CEC must not have discretion to allow the SDC backup generators to operate over 100 MW under any circumstances. Therefore PD-2 should be modified to state:

> **Condition of Exemption PD-2. Notice of Events Affecting Off-Site Distribution of Energy Generated by the Facility.**
> The granting of the Small Power Plant Exemption for the Sequoia Backup Generating Facility is specifically conditioned on the power generated being used exclusively by the Sequoia Data Center. At no time shall the Project owner of the Sequoia Data Center allow the power to be generated by the Sequoia Backup Generating Facility to be used for any other facility, property, or use, including, but not limited to, delivery to the electric distribution system. ~~without the express written approval of the CEC.~~

The nearest residential area is located approximately one quarter mile southwest of the Project Site.

The proposed decision states on page 5, "The nearest residential area is located approximately three-quarters of a mile south of the Project Site. Evidence in the IS/MND shows that, *"Staff drove around the project site, and found that additional nearby residences are located to the southwest of the site at a distance of approximately 1,725 ft. (0.33 miles). These additional residences are located more often downwind of the project site than the residences identified by the applicant."*[40]

Energy Resources are significantly impacted by SDC's 96.5 MW.

The IS/MND concludes that, *"Project operation would not have a significant adverse effect on local or regional energy supplies and would not create a significant adverse impact on energy resources."* Since the MND was filed the state has experienced electrical emergencies which reveal electrical shortages in the State of California and SVP which change the conclusion in the IS/MND that energy resources will not be significantly impacted. The committee for this project has refused to allow testimony or discussion of these impacts and the public must be allowed to comment on

[39] Exhibit 315 Pages 12,13,14 of 18
[40] Exhibit 200 Page 5.3-8

the issue. The public has been subject to rolling blackouts due to a lack of energy and this project adds 96.5 megawatts of load to the grid and additional strain of the state's energy resources. This is the fifth data center approval by the CEC in the last two years totaling an additional 500 MW of load the state has not procured. The electrical emergencies demonstrate that the SDC with its 96.5 MW load will impact energy resources but the commission has not addressed the issue in the RPD.

The mitigated negative declaration must be recirculated for comment through the State Clearing house.

PRC Section 15070 provides that, "A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when: **(b)** The initial study identifies potentially significant effects, but:**(1)** Revisions in the project plans or proposals made by or agreed to by the applicant **before a proposed mitigated negative declaration and initial study are released for public review** would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The project was revised on January 25, 2021[41] over 1 year after the IS/MND was submitted to the State clearinghouse on January 20, 2020[42] and included selective catalytic reduction, 27 urea storage tanks, 40,500 gallons of urea and conditions of certification PD-1 and PD-2. The applicant had not agreed and the IS/MND circulated on January 20, 2020 did not include the project revisions or he additional conditions of certification PD-1 and PD-2. Therefore, the IS/MND must be recirculated.

Section 15073.5 (b) (2) requires that an agency to recirculate a mitigated negative declaration when "*The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required."* Since the original MND was filed CARB identified that even operation of one generator violated NO2 standards and operation of multiple generators will surely cause an exceedance of the NO2

[41] TN 236429
[42] TN 231651

standards[43] a new impact was identified. Since BAAQMD knew the CEC would do nothing they required Tier 4 engines for the project in response to CARB's identification of a significant impact. The public and state agencies have not been informed through the clearinghouse and have not been allowed to comment on the projects use of Tier 4 engines and the addition of urea tanks.[44] The project now includes 27 urea tanks and Each urea tank would hold 1,500 gallons. The total amount of urea stored on the Project Site would be 40,500 gallons. Therefore, the revised MND which includes Tier 4 engines, the use of urea, and the installation of underground urea tanks is a substantial change to the project which requires recirculation of the IS/MND.

The IS/MND concludes that, "Project operation would not have a significant adverse effect on local or regional energy supplies and would not create a significant adverse impact on energy resources." Since the MND was filed the state has experienced electrical emergencies which reveal electrical shortages in the State of California and SVP which change the conclusion in the IS/MND that energy resources will not be significantly impacted. The committee for this project has refused to allow testimony or discussion of these impacts and the public must be allowed to comment on the issue. The public has been subject to rolling blackouts due to a lack of energy and this project adds 96.5 megawatts of load to the grid and additional strain of the state's energy resources. This is the fifth data center approval by the CEC in the last two years totaling an additional 500 MW of load the state has not procured.

Noise increases from the use of SCR

The RPD concludes that*, "Mr. Sarvey's comments about the Great Oaks South Project and its potential noise impacts do not apply to the Project because of the differences between the two projects.*" Unfortunately, as is the pattern in this decision the evidence which demonstrates that the change to SCR will increase the noise levels

[43] Exhibit 320 Page 5 "As there are fifty-four generators in this project, exceedance concerns become even more acute. Because one generator appears to cause violations, operating multiple generators almost certainly would lead to further exceedances.

[44] Note that "The San Jose Airport Department was notified of the addition of the SCR and issued a Final Determination of Consistency for the Project indicating that, with the continuation of the conditions contained in the original consistency determination, the Project would be consistent with the policies of safety, height, and noise." But other public agencies and the public were not notified thorough recirculation of the IS/MND

of the generators is ignored. The original application provides the sound levels expected from the generators without noise attenuation as shown below:

Generators with no Screening

Addition												
dBA_1	dBA_2	dBA_3	dBA_4	dBA_5	dBA_6	dBA_7	dBA_8	dBA_9	dBA_{10}	dBA_{11}	Total	
98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	109.1	
98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	109.1	112.1
98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	109.1	113.9
98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	109.1	115.1
98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7	98.7		108.7	116.0
0.0												
0.0												
0.0												
											0.0	

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The revised application shows large increases in sound levels from the backup generators as shown below.

Sound Data

	Octave Band Center Frequency (OBCF)											Receiver	
	Hz	*31.5*	*63*	*125*	*250*	*500*	*1000*	*2000*	*4000*	*8000*	*dBA*	*Angle*	*Distance*
Raw Engine Exhaust Sound Levels													
Sound Pressure	dB	108.7	110.2	118.0	119.4	116.0	110.5	108.7	99.8	79.8	117.4	90°	1 meters
Calculated Sound Power	dB	116.7	118.2	126.0	127.4	124.0	118.5	116.7	107.8	87.8	125.4		
Calculated Sound Pressure	dB	108.6	110.1	117.9	119.3	115.9	110.4	108.6	99.7	79.7	117.3	90°	3.3 feet
Requested Sound Target													
Overall Sound Pressure											75.0	90°	23 feet
Calculated Target Overall Sound Pressure											91.9	90°	3.3 feet
Sound Performance Estimations(M3Z-56-64-20120094-XR4)													
Estimated Sound Attenuation	dB	12.0	17.5	24.5	31.8	37.5	45.3	56.5	66.8	70.3	34.9		
Estimated Sound Power	dB	104.7	100.7	101.5	95.6	86.5	73.2	60.2	41.0	17.5	90.4		
Estimated Sound Pressure	dB	79.8	75.8	76.6	70.7	61.6	48.3	35.3	16.1	-7.4	65.5	90°	23 feet
Estimated Sound Pressure	dB	96.6	92.6	93.4	87.5	78.4	65.1	52.1	32.9	9.4	82.4	90°	3.3 feet
Warranted Sound Level													
Warranted Sound Pressure											91.9	90°	3.3 feet

- Computed noise levels at each distance and frequency is based on a *free field condition*.
- Site conditions have *not* been taken into account in acoustic predictions.
- The ambient sound level must be at least 10 dBA below the requested sound target.
- MIRATECH does not warrant Sound Performance Estimations.
- Warranted sound level is of the primary silencer only.
- For all distance noise propagation, free field dispersion rule of 6 dB is used every time distance is doubled.

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The evidence in the record shows that the application of SCR will result in significant increases in noise which have not been evaluated.

[45] TN 229419-4 Exhibit 4 Page 1174 of 1176
[46] Exhibit 36 Page 18 of 32

Conclusion

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. The "fair argument" standard reflects this presumption. **The fair argument standard is an exceptionally low threshold favoring environmental review in an EIR rather than a negative declaration**.[47] This standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.[48] As a matter of law, substantial evidence includes both expert and lay opinion based on fact.[49] Even if other substantial evidence supports a different conclusion, the agency nevertheless must prepare an EIR.

In this proceeding I have made a fair argument that the projects emergency operations have the potential to result in violations of the state and federal air quality standards. These arguments have been supported by both the California Air Resources Board and by the Bay Area Air Quality Management District. I have made a fair argument that the project in conjunction with other nearby proposed and operating data center projects will have a significant air quality impact on the environmental justice community in the project area. My fair arguments have been supported by both CARB and BAAQMD.

According to the RPD the proceeding was remanded back to the committee to address direct and cumulative impacts of emergency operations of the Backup Generators.[50] These were the issues that I raised and as the applicant stated in its reconsideration comments on the remand, *"All of CARB's contentions (emergency operation modeling, appropriate thresholds of significance and offsets, alternative technologies, and Best Available Control Technology (BACT)) mirror the issues raised by Intervenor Sarvey and therefore were already adequately considered and evaluated*

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[47] 14 C.C.R. § 15064(£)(1); *Pocket Protectors,* 124 Cal.App.4th at 931

[48] PRC § 21080(e)(l) (For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."); 14 C.C.R. § 15064(£)(5).

[49] *Arviv Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

[50] RPD Page 11 "On November 16, 2020, the CEC reconsidered its prior action on the Motion to Remand.101 The CEC affirmed the Motion to Remand with directions to 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.

by the Commission Staff and the Committee in the Proposed Decision and IS/MND."[51] As described above The RPD resolves none of BAAQMD's or CARB's issues and ignores substantial evidence supporting my, CARB,s and BAAQMD's positions.

To grant an SPPE, the CEC must make three distinct findings. First the proposed powerplant has a generating capacity up to 100 MW. Second no substantial adverse impact on the environment will result from the construction or operation of the powerplant; and third no substantial adverse impact on energy resources will result from the construction or operation of the powerplant. Examination of the entire body of evidence in this proceeding reveals the CEC's revised decision cannot make any of the three findings and the application must be denied.

[51] TN 235476 Page 11