

DOCKETED

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Project Title:	Great Oaks South Backup Generating Facility Small Power Plant Exemption
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Document Title:	Intervenor Sarvey Request for Official notice of certain Commission Documents
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State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Great Oaks South Backup
Generating Station

Docket 20-SPPE-01

Intervenor Sarvey Request for Official Notice of Certain Commission Documents.

Introduction and Summary

Pursuant to Government Code sections 11513(c) and 11515, Intervenor Robert Sarvey hereby moves for the Committee to take official notice of the following documents in the matter of the Great Oaks South Data Center Proceeding.

- (1) The Final Commission Decision for the Laurelwood Data Center. TN 232394 Docketed 3/13/20 In proceeding 19-SPPE-1.
- (2) California Air Resources Board Comments – CARB Comments on Air Quality Analysis TN 235271 on October 15, 2020 in the Sequoia Data center Proceeding 19-SPPE-03

Argument

Section 1212(b)(1)(C) of Energy Commission regulations governing adjudicative proceedings provides that the hearing record for a proceeding shall contain “any materials or facts officially noticed.”¹ And section 1212(c)(2) of Energy Commission regulations provides that for Energy Commission adjudicative proceedings a “finding may be based on any evidence in the hearing record, if the evidence is the sort of information on which

¹ 20 CCR § 1212 subd. (b)(1)(C).

responsible persons are accustomed to relying on in the conduct of serious affairs.”² Government Code provisions governing formal hearings for administrative adjudication provide that a “hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided” and “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.”³ Additionally, these provisions specify that “[i]n reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency’s special field, and of any fact which may be judicially noticed by the courts of this State.”⁴ Evidence Code section 452 allows courts to take judicial notice of regulations and legislative enactments issued by a public entity and official acts of state legislative, executive, and judicial departments.

In the current proceeding CEC Staff is claiming that modeling emergency operations is not possible because of the speculative nature of the assumptions that must be made and the fact that the results are not meaningful. The Laurelwood decision discloses that CEC Staff can easily estimate the projects emergency emissions and the analysis of emergency operations they conducted in the Laurelwood data center proceeding demonstrated that sensitive receptors would not be impacted by emergency operations at the Laurelwood data center.

In the current proceeding CEC Staff is claiming that the California Air Resources Board is not recommending that the GOSBGS conduct an analysis of emergency operations. CARB Comments on Air Quality Analysis submitted on October 15, 2020 in the Sequoia Data center Proceeding is a document provided by the Air Resources Board which makes specific recommendations on air quality analyses for data centers being permitted by the CEC of which the Great Oaks South Data Center is one of. The document explains why the trustee agency the California Air Resources Board believes emergency operations must be performed and that emergency operations are not speculative.

Respectfully submitted,
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² 20 CCR § 1212 subd. (c)(2).

³ Gov. Code § 11513(c)

⁴ Gov. Code § 11515

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