

DOCKETED

Docket Number:	20-SPPE-02
Project Title:	Lafayette Backup Generating Facility
TN #:	248014
Document Title:	Digital Realty's Motion to Disband Committee - Lafayette Backup Generating Facility
Description:	N/A
Filer:	Scott Galati
Organization:	DayZenLLC
Submitter Role:	Applicant Representative
Submission Date:	12/12/2022 7:52:00 AM
Docketed Date:	12/12/2022

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

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

DOCKET NO: 20-SPPE-2

**DIGITAL REALTY'S MOTION TO
DISSOLVE THE COMMITTEE**

Digital Realty hereby files this Motion To Dissolve the Committee appointed to administer the Small Power Plant Exemption (SPPE) Application process for the Lafayette Backup Generating Facility (20-SPPE-2). Digital Realty acknowledges that recent changes to the regulations for the administration of SPPE Applications adopted by the Commission on October 12, 2022, Resolution No. 22-1012-10, TN246550 (hereinafter SPPE Amendments) are pending approval of the Office of Administrative Law (OAL). Digital Realty understands that such approval is likely to be obtained in December 2022 and the Commission has requested an early effective date pursuant to Government Code 11343.4(b)(3) for the SPPE Amendments to be the date of the OAL approval.

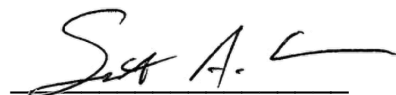
Digital Realty makes this motion in anticipation of OAL providing approval of the SPPE Amendment regulations and therefore requests that immediately upon receipt from OAL, the Committee issue an Order of dissolution. The SPPE Amendments alter the administrative procedure by which the Commission considers an Application for an SPPE, most notably eliminating the need and requirement for a Committee and the evidentiary hearing process.

This Motion is based on well settled law that a statutory action that governs procedural matters such as trial practices and procedure applies to pending matters immediately

upon the effective date of regulation, unless the regulation or statute specifically includes timelines that govern applicability dates.¹ The SPPE Amendments eliminate the specific provisions for a Committee and the entire process administered by the Committee including status reports, evidentiary filings and hearings, legal briefing, and a preparation of a Proposed Decision. The Commission specifically elected to leave these measures in place for Applications For Certification (AFCs). The Commission also elected not to include any language in the SPPE Amendments that would make the regulations applicable only to future projects. Therefore, the elimination of the Committee would be required upon the effective date of the SPPE regulations for this proceeding.

Dated: December 12, 2022

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott A. Galati", written over a horizontal line.

Scott A. Galati
Counsel to Digital Realty

¹ *Bretton v Metabolite Intl., Inc.* (2004) 116 Cal.App.4th 679, 689; *ARA Living Centers-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1561; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; and *Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371,