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Project Title:	Lafayette Backup Generating Facility
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Document Title:	ORDER REFERRING APPLICANT'S MOTION TO DISSOLVE THE COMMITTEE TO THE FULL COMMISSION AND EXTENDING TIME TO RULE
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CALIFORNIA ENERGY COMMISSION

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Sacramento, California 95814

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CEC-70 (Revised 7/2022)



IN THE MATTER OF:

Lafayette Backup Generating Facility

Docket No. 20-SPPE-02

**ORDER REFERRING APPLICANT'S MOTION TO
DISSOLVE THE COMMITTEE TO THE FULL COMMISSION
AND EXTENDING TIME TO RULE**

BACKGROUND

On May 20, 2020, Digital Realty Inc. (Applicant) submitted an application for a small power plant exemption (SPPE) for the Lafayette Backup Generating Facility (Application)¹ to the California Energy Commission (CEC). On July 8, 2020, the CEC appointed a committee to preside over the proceeding arising from the Application (Committee).² On September 4, 2020, the Committee held a committee conference,³ and subsequently issued a Scheduling Order on October 26, 2020,⁴ and a Revised Scheduling Order on May 10, 2021.⁵ On August 4, 2021, CEC staff (Staff) filed a notice of preparation of an Environmental Impact Report (EIR).⁶ On January 11, 2022, the Committee granted intervenor status to Robert Sarvey.⁷ On December 9, 2022, Staff reported that it would evaluate whether it has the information necessary to complete a

¹ Information about this proceeding, including a link to the electronic docket, may be found on the Lafayette Backup Generating Facility [web page](https://ww2.energy.ca.gov/sitingcases/lafayette/) at <https://ww2.energy.ca.gov/sitingcases/lafayette/>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-SPPE-02) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-SPPE-02>. The Application is TN 233041-1 to TN 233041-6.

² TN 233902, as amended by TN 242446. The current Committee consists of Kourtney Vaccaro, Commissioner and Presiding Member, and David Hochschild, Chair and Associate Member (TN 242446).

³ See TN 234688.

⁴ See TN 235419.

⁵ See TN 237772.

⁶ See TN 239177.

⁷ See TN 241143; see Cal. Code Regs., tit. 20, § 1211.7.

draft EIR after receiving information anticipated from Applicant the week of December 12, 2022.⁸ Staff will publish a draft EIR within 60 days following acknowledgement in a status report that it has no further data requests.⁹

On December 12, 2022, Applicant filed a motion seeking to dissolve the Committee on the grounds that the Committee will no longer be necessary under updated SPPE regulations that, upon their effective date, will eliminate the adjudicatory process for this proceeding (Applicant's Motion).¹⁰ New SPPE regulations took effect on December 14, 2022, eliminating the adjudicatory process for all SPPE proceedings.¹¹ On December 16, 2022, Staff responded to Applicant's Motion, agreeing that the new SPPE regulations eliminated the adjudicatory process, and recommending therefore that the Committee refer the Lafayette proceeding back to the full Commission to dissolve the Committee under the authority of Title 20 of the California Code of Regulations sections 1203(c) and 1204(c).¹² No further response to Applicant's motion was filed within the 14-day period to respond.¹³

DISCUSSION

Applicant's Motion relates to whether the CEC, in light of the updated SPPE regulations, may wish to dissolve the Committee assigned to the Lafayette proceeding. It is appropriate to refer Applicant's Motion to the full Commission for consideration at a noticed public business meeting.¹⁴

Because the CEC is not scheduled to convene a public business meeting until January 25, 2023, the time for the CEC to rule on Applicant's Motion must be extended to prevent it from being denied by action of law 30 days after its filing.¹⁵ Here, an extension to February 8, 2023, for a CEC ruling on Applicant's Motion, would allow for the CEC action on the motion at the January 25, 2023, business meeting and additional time, as needed, to issue a written ruling.

⁸ See TN 248002.

⁹ See TN 237772, p. 4.

¹⁰ See TN 248014.

¹¹ See TN 248156.

¹² See TN 248134, p. 6. The Presiding Member may regulate the conduct of a proceeding, including, but not limited to, disposing of procedural requests and ordering the severance of a proceeding. (Cal. Code Regs., tit. 20, § 1203(c).)

The CEC may at any time withdraw any matter from a committee to allow consideration of the matter by the full commission, and a committee may at any time refer a matter directly to the full commission. (Cal. Code Regs., tit. 20, § 1204(c).)

¹³ See Cal. Code Regs., tit. 20, § 1211.5(a).

¹⁴ See Cal. Code Regs., tit. 20, §§ 1203(c) and 1204(c).

¹⁵ See Cal. Code Regs., tit. 20, § 1211.5(a) [a presiding member must rule on a motion within 30 days of its filing or it is deemed denied unless a later deadline is established].

ORDERS

Applicant's Motion is hereby referred directly to the full Commission for consideration. The hearing officer shall add an agenda item to the CEC's business meeting scheduled for January 25, 2023, that would allow the Commission to take action on Applicant's Motion. The hearing officer shall ensure that a proposed order is submitted in advance of the business meeting.

The time to rule on Applicant's Motion is hereby extended through February 8, 2023.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor provides assistance to members of the public with participating in CEC proceedings. For information on how to participate in this proceeding, please contact the Public Advisor at publicadvisor@energy.ca.gov or (916) 957-7910. Requests for interpreting services, reasonable accommodations, and other modifications should be made at least five days in advance. The CEC will work diligently to accommodate all requests based on the availability of the service or resource needed.

Direct questions of a procedural nature related to the Application to Hearing Officer Deborah Dyer at deborah.dyer@energy.ca.gov.

Direct technical subject inquiries concerning the Application to Project Manager, Leonidas Payne at leonidas.payne@energy.ca.gov or (916) 838-2124.

Direct media inquiries to mediaoffice@energy.ca.gov or (916) 654-4989.

AVAILABILITY OF DOCUMENTS

Information about the Application, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the [Lafayette Backup Generating Facility web page](https://ww2.energy.ca.gov/sitingcases/lafayette/) at: <https://ww2.energy.ca.gov/sitingcases/lafayette/> or scan the following QR code:



IT IS SO ORDERED.

Dated: January 4, 2023

APPROVED BY:

Kourtney Vaccaro
Commissioner and Presiding Member
Lafayette Backup Generating Facility
SPPE Committee