

DOCKETED

Docket Number:	17-SPPE-01
Project Title:	McLaren Backup Generating Facility
TN #:	226293
Document Title:	Order on Petition for Reconsideration
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	1/10/2019 4:24:55 PM
Docketed Date:	1/10/2019



**Before the Energy Resources Conservation and Development
Commission of the State of California**
1516 Ninth Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov

**APPLICATION FOR A SMALL POWER PLANT
EXEMPTION FOR THE:**

**MCLAREN BACKUP GENERATING
FACILITY PROJECT**

Docket No. 17-SPPE-01

ORDER ON PETITION FOR RECONSIDERATION

I. INTRODUCTION AND PROCEDURAL HISTORY

Intervenor Helping Hand Tools (Helping Hand) was granted Intervenor (party) status in the application for a Small Power Plant Exemption for the McLaren Backup Generating Facility Project (Project) on April 30, 2018.¹ The Energy Commission adopted an Order granting the Small Power Plant Exemption on November 7, 2018.² A Final Decision, consisting of the Order, Committee Proposed Decision³, and Errata⁴, was filed on November 13, 2018.⁵ Prior to adoption of the Final Decision, Helping Hand submitted comments on the Committee Proposed Decision⁶ and participated in the public hearing before the Commission on November 7, 2018.⁷

On December 7, 2018, Helping Hand timely filed a “Request for Reconsideration of the Final Decision granting a Small Power Plant Exemption for the McLaren Backup Generating Facility Project” (Petition).⁸ The Petition cited California Code of Regulations, title 20, section 1720 (Section 1720) as authorizing the request.

Energy Commission staff (Staff) filed a reply⁹ and Vantage Data Centers, LLC (Applicant) filed a response¹⁰ to the Petition. Staff and Applicant both argued that a petition for reconsideration was not available for a small power plant exemption. Staff and Applicant further contended that even if such a petition were authorized by either the Warren-Alquist

¹ TN 223291.

² TN 225884.

³ TN 225112.

⁴ TN 225828.

⁵ TN 225970.

⁶ TN 225830.

⁷ TN 225914, pp. 15-19.

⁸ TN 226041-2.

⁹ TN 226162.

¹⁰ TN 226222.

Act¹¹ or by Section 1720¹², the Petition did not contain any new information or claims that had not been raised by Helping Hand prior to the adoption of the Final Decision granting the small power plant exemption.

In addition, two members of the public filed written comments in response to notice of the Petition. These commenters are the property owner of an adjacent parcel and the manager of a business operated on that land. The comments focused on prior notices and public outreach about the Project and on the potential environmental impacts of the Project related to the appearance of the Project, the use of diesel generators, and power usage.¹³

During the January 9, 2019, Business Meeting, Helping Hand distributed an article, dated May 17, 2017, to the Commissioners and parties that discussed another Applicant-owned data center near the Project where nearly 30 diesel generators were activated to test the system.¹⁴ Helping Hand argues that nothing in the Final Decision prevents Applicant from doing this same thing with the Project.

II. ANALYSIS

Notwithstanding the parties' various arguments about the applicability of Section 1720, the Commission is not persuaded that Section 1720 does not apply and, moreover, recognizes that it has discretion under Public Resources Code section 25530 to consider a petition for reconsideration for any Commission order or decision. After considering the Petition and the information presented at the January 9, 2019, Business Meeting, the Commission denies the petition because we find that it is a reassertion and re-argument of previous matters already raised to and considered by to the committee and the Commission prior to the issuance of the Final Decision. In fact, the Petition itself states:

These matters were raised before and ignored by the commission, hence the need to request reconsideration to correct the factual and legal errors in the decision.¹⁵

Further, Helping Hand made no showing that the article distributed at the January 9, 2019, Business Meeting, was not available prior to the Final Decision. We therefore conclude that Helping Hand has made no showing that there are new facts, evidence, or changed circumstances, or alleged factors that warrant reconsideration of the Final Decision.

With respect to the public comments received, the record discloses that the property owner was provided with copies of the Notice of Prehearing Conference and Evidentiary

¹¹ Pub. Resources Code, § 25000 et seq.

¹² Cal. Code Regs., tit. 20, § 1720.

¹³ TN 226200, 226201.

¹⁴ TN 226284.

¹⁵ TN 226041-2, p. 2.

Hearing¹⁶, Notice of Availability of the Committee Proposed Decision and Notice of Energy Commission Hearing¹⁷, and Notice of Energy Commission Hearing on Petition for Reconsideration.¹⁸ In addition, the property owner was contacted by the City of Santa Clara during its consideration of the underlying data center for which the Project would provide backup generating power—as well as more recent proceedings conducted by the City of Santa Clara since issuance of the Final Decision.¹⁹ These comments thus do not support reconsideration.

III. CONCLUSION

For the reasons stated above, the Petition is hereby DENIED.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on January 9, 2019.

AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None

Original Signed by:

Cody Goldthrite
Secretariat

¹⁶ TN 224237.

¹⁷ TN 225114.

¹⁸ TN 226159.

¹⁹ TN 226222, pdf pp. 7-8, 10-11, citing to the mailing list used by the City of Santa Clara obtained in January 2019.