

DOCKETED

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Scott A. Galati
DAYZEN LLC
1720 Park Place Drive
Carmichael, CA 95608
(916) 441-6574

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

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

DOCKET NO: 19-SPPE-03

**C1-SANTA CLARA, LLC'S REPLY TO
INTERVENOR ROBERT SARVEY'S
MOTION TO COMPEL**

C1-Santa Clara, LLC (C1) hereby files its Reply to Intervenor Robert Sarvey's Motion To Compel Applicant To Perform a Cumulative Impact Analysis (TN232187), dated February 21, 2020. The Motion should be dismissed on the grounds that Mr. Sarvey lacks standing to bring a motion to compel as he has not propounded any discovery request for the data he seeks. At best the Motion can be deemed to be an untimely data request which should be denied because the time for discovery has closed. Lastly, the motion is misplaced because Applicant provided a Cumulative Impact Analysis in the Application for the Small Power Plant Exemption, pages 4.3-31 through 32. Mr. Sarvey may disagree with the Cumulative Impact Analysis methodology employed by C1, but that methodology was also used by Staff in its Proposed IS/MND and is exactly the methodology approved by the Commission in its Final Decision in the Laurelwood Data Center Project (TN 231721 and TN 231933).

Intervenor Sarvey Lacks Standing

Mr. Sarvey cannot bring a motion to compel C1 to provide information as only a party who properly served data requests which were unanswered can bring such a motion.

Section 1941 of the CEC Regulations¹ provides:

Information necessary to complete an analysis of the application for an exemption may be obtained by following the requirements of section 1716, except that all requests for information shall be submitted no later than 60 days from the application for exemption's filing date or a later date as approved by the presiding member.

Section 1716 (g) of the CEC Regulations provides:

If the **requesting party** or agency is unable to obtain information as provided in this section, **such party** or agency may petition the committee for an order directing the responding party to supply such information. A party petitioning the committee for an order to provide information must do so within either 30 days of being informed in writing by the responding party that such information will not be provided or within 30 days of the date the information was provided or was due. (**Emphasis added**)

Mr. Sarvey did not request C1 to perform the analysis identified in his purported motion to compel. As such he lacks standing and is not authorized to bring the motion.

Intervenor Sarvey Cannot Propound Discovery

Section 1941 expressly prohibits discovery after 60 days from the date of filing an application for an SPPE. C1 filed on August 12, 2019, and the date for the close of discovery would be October 11, 2019. The date of the close of discovery was extended for Staff only by C1 to account for Staff's workload and to allow follow-up data requests to C1's prior responses. This extension was not a complete waiver for all parties. Therefore, if the Committee interprets Mr. Sarvey's motion as a data request, it is untimely and the Committee should grant C1's objection to providing the analysis requested by Mr. Sarvey.

Intervenor Sarvey's Motion Is Testimony

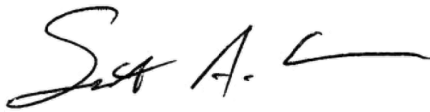
Mr. Sarvey's Motion is primarily a summary of testimony and briefing that is properly the subject of evidentiary hearing. The entire motion does not acknowledge that C1 did perform a cumulative air quality impact analysis using the adopted BQQAMD CEQA guidance and significance thresholds. Mr. Sarvey's argument is that a different

¹ Title 20, Division 2 of the California Code of Regulations.

methodology should be employed and his motion includes facts that are not properly in the record. The facts that Mr. Sarvey relies upon should be brought into the record via testimony, which should be subject to cross-examination and after C1 and Staff have an opportunity to provide competing reply testimony. Therefore the motion should be dismissed. The issues raised in Mr. Sarvey's motion should be treated in evidentiary hearing provided Mr. Sarvey provides the proper evidentiary basis and support for them.

Dated: February 25, 2020

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott A. Galati", with a horizontal line underneath it.

Scott A. Galati
Counsel to C1-Santa Clara, LLC