

DOCKETED

Docket Number:	19-SPPE-05
Project Title:	Mission College Data Center SPPE
TN #:	233413
Document Title:	Energy Commission Staff's Objection to Committee Order Granting More Time for Opening or Reply Testimony
Description:	N/A
Filer:	Patty Paul
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	6/10/2020 10:16:12 AM
Docketed Date:	6/10/2020

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

Main website: www.energy.ca.gov
CEC-57 (Revised 1/19)



**STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

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

**MISSION COLLEGE BACKUP
GENERATING FACILITY**

Docket No. 19-SPPE-05

**ENERGY COMMISSION STAFF'S OBJECTION TO COMMITTEE ORDER
GRANTING MORE TIME FOR OPENING OR REPLY TESTIMONY**

On June 9, 2020, the Mission College Backup Generating Facility SPPE Committee issued an Order to Show Cause Regarding the Petition to Intervene Filed by Robert Sarvey proposing to grant his request to intervene and also establishing a new deadline for his opening testimony and/or reply testimony. The Order to Show Cause provided parties leave to file opposition to the order by 12:00 p.m. on June 10, 2020.

The SPPE application was filed on November 25, 2019. On April 9, 2020, the Committee published a scheduling order clearly establishing that opening testimony was due 30 days after staff published its environmental review document, and reply testimony was due 10 days after that. Staff filed the Initial Study/Proposed Mitigated Negative Declaration (IS/PMND) on April 21, 2020, making May 22, 2020, and June 1, 2020, the applicable deadlines, respectively. Mr. Sarvey did not submit comments on the IS/PMND.

Both staff and applicant filed opening testimony on May 22, 2020, though staff's testimony solely referenced its April 21, 2020 environmental document and applicant's testimony consisted solely of declarations agreeing with staff's analysis and sponsoring applicant's previously filed documents. Neither party filed reply testimony. On May 28,

2020, the Committee filed an updated scheduling order establishing June 8, 2020 as the last day to file an application to intervene in the proceeding. Mr. Sarvey filed his petition to intervene on June 6, 2020.

CEC staff does not object to granting Mr. Sarvey intervenor status, but respectfully objects to granting him more time to file opening or reply testimony. Mr. Sarvey has not provided good cause to show why he should be allowed to provide testimony at the hearing that has not been prefiled or why he could not prefile his testimony in accordance with the previously established schedule. The deadlines established were not out of the norm for these proceedings; Mr. Sarvey is a seasoned intervenor, well aware of the obligations and responsibilities that go along with becoming a party, and not unfamiliar with how the CEC establishes deadlines for these proceedings, or where to find the established deadlines. Additionally, the facts of this proceeding are similar to those of other proceedings Mr. Sarvey has recently participated in; it would have been a simple matter for him to minimally alter his testimony from those proceedings to file here in the generous time already allotted. Staff is concerned that allowing persons to escape deadlines applicable to all other parties by requesting to intervene after these deadlines have passed will reward and encourage late intervention in future proceedings and a "gaming" of the schedule; therefore, staff objects to the order allowing Mr. Sarvey to file opening and reply testimony by June 11, 2020 and to present such testimony at the evidentiary hearing.

One might ask whether allowing intervention but disallowing testimony deprives intervention of any substance. It does not. Mr. Sarvey would still be able to cross-examine staff and applicant witnesses, including Silicon Valley Power and the Bay Area Air Quality Management District, giving Mr. Sarvey a platform to question the provided testimony that public commenters are not directly afforded.

Notwithstanding the objection to allowing late opening or reply testimony stated above, staff notes that it, as directed by the Committee, filed responses to comments received on the IS/PMND on June 1, 2020 (Exhibit 201, TN 233274). While Mr. Sarvey did not file comments on the IS/PMND, some of staff's responses to the two agencies who did might intersect with issues Mr. Sarvey expressed interest in in his petition to intervene, and staff believes it is fair to allow Mr. Sarvey leave to file rebuttal testimony narrowly tailored to these responses, since the previous Committee orders did not establish a schedule for rebutting these responses. Staff would request that this narrowly tailored rebuttal testimony be filed by 5:00 p.m. on June 11, 2020, and that staff and applicant be allowed to rebut this testimony at the evidentiary hearing or object to its admittance into the evidentiary record if it goes beyond the scope of the Exhibit 201 responses.

DATED: June 10, 2020

Respectfully submitted,

_____/s/
LISA M. DECARLO
Senior Attorney
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814
Ph: (916) 654-5195
lisa.decarlo@energy.ca.gov

_____/s/
MICHAEL MURZA
Senior Attorney
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814
Ph: (916) 651-9943
michael.murza@energy.ca.gov