

**DOCKETED**

<b>Docket Number:</b>	19-SPPE-05
<b>Project Title:</b>	Mission College Data Center SPPE
<b>TN #:</b>	233415
<b>Document Title:</b>	Oppidan Concurrence with Staff Objection to Late Filing of Testimony
<b>Description:</b>	N/A
<b>Filer:</b>	Scott Galati
<b>Organization:</b>	DayZenLLC
<b>Submitter Role:</b>	Applicant Representative
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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 **MISSION COLLEGE  
BACKUP GENERATING FACILITY**

**DOCKET NO: 19-SPPE-5**

**OPPIDAN'S OBJECTION TO  
COMMITTEE ORDER GRANTING  
MORE TIME FOR OPENING AND  
REPLY TESTIMONY**

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On June 9, 2020, the Mission College Backup Generating Facility (MCBGF) 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.

Oppidan concurs in Staff's Objection to the Committee Order ranting more time for opening and reply testimony. Oppidan does not believe there are regulatory grounds to object to granting Mr. Sarvey's Petition to Intervene in this proceeding. However, as Staff has articulated, Mr. Sarvey deliberately waited until the last moment to intervene and has offered no reason, let along any facts sufficient to determine good cause, for extension of the time for filing testimony. Mr. Sarvey was clearly aware of the MCBGF as he has included specific reference to it, including detailed information about its emissions and its PUE, in the Walsh Backup Generating Facility and the Sequoia Backup Generating Facility proceedings.

Mr. Sarvey also did not file comments to the Initial Study/Mitigated Negative Declaration, which is the primary avenue for raising issues and concerns in the process outlined by the California Environmental Quality Act (CEQA). This precluded Staff from

providing responses. As the Commission has articulated in the last five SPPE proceedings, it is the Lead Agency pursuant to CEQA. For many lead agencies, a person who fails to file comments, or files late comments, on an IS/MND is precluded from further participation other than providing 3 minute public comment at the final adoption hearing. The Committee could and should limit Mr. Sarvey's participation in this proceeding to public comment because he has not shown good cause for an extension to the scheduling order for the filing of Opening and Reply Testimony. This would also preclude his ability to provide such testimony at the orally at the evidentiary hearing.

If, however, the Committee overrules Staff and Oppidan's objection, Oppidan requests the ability for Staff and Oppidan (excluding Mr. Sarvey) to revise their respective Prehearing Conference Statements and Exhibit Lists and to docket additional Exhibits to directly rebut Mr. Sarvey's late filed testimony. The Scheduling Order currently requires the Prehearing Conference Statement to have been filed on June 9, 2020 (both Staff and Oppidan have timely complied) and requires the finalization of documents to be used at evidentiary hearing by June 10, 2020. Without the ability to review Mr. Sarvey's late testimony, Oppidan and Staff cannot prepare properly. Oppidan therefore, requests Staff and Oppidan be allowed to file Revised Prehearing Conference Statements, Revised Exhibit Lists, additional exhibits, and the list of exhibits to be used at evidentiary hearing by 5 pm on June 11, 2020. The Order should explicitly prohibit Mr. Sarvey from filing any exhibits or testimony beyond 5 pm on June 10, 2020.

Dated: June 10, 2020

Respectfully Submitted,

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Scott A. Galati  
Counsel to Oppidan Investment Company