

DOCKETED

Docket Number:	19-SPPE-05
Project Title:	Mission College Data Center SPPE
TN #:	233422
Document Title:	Order On Objections From The Order To Show Cause Regarding The Petition To Intervene Filed By Robert Sarvey
Description:	N/A
Filer:	Muoi-Lynn Tran
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	6/10/2020 4:36:28 PM
Docketed Date:	6/10/2020



State of California
State Energy Resources Conservation and
Development Commission
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**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

***MISSION COLLEGE BACKUP
GENERATING FACILITY***

Docket No. 19-SPPE-05

**ORDER ON OBJECTIONS FROM THE ORDER TO SHOW
CAUSE REGARDING THE PETITION TO INTERVENE
FILED BY ROBERT SARVEY**

On June 8, 2020, Robert Sarvey filed a petition to intervene (Petition) ¹ in this proceeding for the Application for a Small Power Plant Exemption (SPPE) for the Mission College Backup Generating Facility.

On June 9, 2020, the California Energy Commission² (CEC) committee³ (Committee) designated to conduct proceedings in this matter issued an order to show cause (June 9th Order).⁴ The June 9th Order tentatively granted the Petition, subject to the rights of the parties to file opposition to the June 9th Order if they wished to contend that the Petition fails to meet the regulatory requirements; any such opposition was required to be filed by no later than 12:00 p.m. (noon) on June 10, 2020.

At the time of the Petition, the only parties to the action were Oppidan Investment Company⁵ (Applicant) and CEC Staff (Staff).

¹ TN 233349 (technically filed during weekend June 6, 2020). Information about the Application, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the [CEC's web page for the Mission College proceeding at](http://www2.energy.ca.gov/sitingcases/missioncollege/) <http://www2.energy.ca.gov/sitingcases/missioncollege/>.

² The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Pub. Resources Code, § 25200.) All subsequent citations are to the Public Resources Code unless otherwise specified.

³ The CEC designated a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea Scott, Vice Chair and Associate Member, to preside over the Application on January 22, 2020. (TN 231784).

⁴ TN 233384.

⁵ On November 25, 2019, Oppidan Investment Company submitted an application (Application) to the California Energy Commission for a SPPE for the Mission College Backup Generating Facility in Santa Clara, California. (TN 230848.)

Prior to the deadline established in the June 9th Order, Staff and Applicant both filed objections to portions of that order. In its “Energy Commission Staff’s Objection to Committee Order Granting More Time for Opening or Reply Testimony” (Staff’s June 10th Objections), ⁶ Staff did not object to the portion of the June 9th Order allowing Mr. Sarvey to intervene. Instead, Staff focused on the portion of the June 9th Order that allows Mr. Sarvey to file opening and rebuttal testimony by June 11, 2020, and to present such testimony at the evidentiary hearing. Staff offers an alternative: allow Mr. Sarvey to (1) cross-examine witnesses at the evidentiary hearing and (2) file testimony narrowly tailored to the Staff’s responses to comments on the initial study/proposed mitigated negative declaration.⁷

Similarly, in “Oppidan’s Objection to Committee Order Granting More Time for Opening and Reply Testimony” (Applicant’s June 10th Objections),⁸ Applicant did not object to granting the Petition. Applicant did, however, ask that the Committee limit Mr. Sarvey’s participation in this proceeding to public comment because he has not shown good cause for an extension of the filing dates for testimony.

In the alternative, the Applicant’s June 10th Objections requested that if objections to filing testimony are overruled, then

“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.”

Having considered the objections filed by Staff and Applicant, the Committee **ORDERS** as follows:

1. The portions of the June 9th Order granting Mr. Sarvey status as an intervenor are **SUSTAINED**. Neither Staff nor Applicant has objected to the granting of the Petition.
2. While the Committee appreciates Staff’s innovative and collaborative approach to allowing Mr. Sarvey to participate as an intervenor, we believe the limitations are too restrictive. In crafting the June 9th Order, the Committee endeavored to allow Mr. Sarvey to reasonably participate in the proceeding without disturbing the orderly conduct thereof. The objections by Staff and Applicant to preclude the filing of any testimony by Mr. Sarvey are hereby **OVERRULED**. Mr. Sarvey may participate in the proceeding as ordered in the Committee’s June 9th Order.

⁶ TN 233413.

⁷ TN 223274.

⁸ TN 233415.

3. We agree with Applicant's suggestions regarding updated filings by Applicant and Staff after Mr. Sarvey files his testimony. The Committee hereby **GRANTS** the Applicant's request as follows: within the scope of issues raised by Mr. Sarvey's filings on June 11, Staff and Applicant may file, **no later than 5 pm on June 12, 2020**, Revised Prehearing Conference Statements, Revised Exhibit Lists, additional exhibits, and the list of exhibits to be used at evidentiary hearing.

AVAILABILITY OF DOCUMENTS

Information about the Application, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the [CEC's web page for the Mission College proceeding at:](http://ww2.energy.ca.gov/sitingcases/missioncollege/) <http://ww2.energy.ca.gov/sitingcases/missioncollege/>.

IT IS SO ORDERED.

Dated: June 10, 2020

Approved by:

Karen Douglas
Commissioner and Presiding Member
Mission College Backup Generating
Facility SPPE Committee

Dated: June 10, 2020

Approved by:

Janea A. Scott
Vice Chair and Associate Member
Mission College Backup Generating
Facility SPPE Committee