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**State of California
State Energy Resources Conservation and
Development Commission**

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APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:

***WALSH BACKUP GENERATING
FACILITY***

Docket No. 19-SPPE-02

ENERGY COMMISSION STAFF'S OPENING BRIEF

At the conclusion of the evidentiary hearing on the Walsh Backup Generating Facility Small Power Plant Exemption, the Committee directed the parties to submit briefs within seven business days of the hearing transcript posting, which would be June 12, 2020. In its *Orders After Evidentiary Hearing And Second Revised Scheduling Order* filed on June 10, 2020, the Committee invited the parties to respond two questions, which staff addresses below in its opening brief.

I. THE INCREMENTAL CONTRIBUTION OF THE PROJECT'S INDIRECT GREENHOUSE GAS EMISSIONS TO THE EFFECTS OF CLIMATE CHANGE IS NOT SIGNIFICANT BECAUSE SUBSTANTIAL EVIDENCE SHOWS THE PROJECT'S ELECTRICITY USE WILL NOT PREVENT SILICON VALLEY POWER (SVP) FROM MEETING ITS GHG EMISSIONS TARGETS.

As a whole, the electricity sector has been marching forward to reduce GHG emissions and increase renewable energy starting with the first renewable portfolio standard (RPS) bill, SB 1078, passed in 2002. Since that time the required renewable energy percentage has increased from 20% by 2017 (SB 1078) to 60% by 2030 (SB 100). GHG emissions from the electricity sector have also been targeted as well with the passage of AB 32 in 2006, mandating the state reach 1990 levels of GHG emissions by 2020. SB 32 expanded the target to 40% below 1990 levels by 2030. In 2018, SB 100 specifically covered the electricity sector by imposing a goal of 100% carbon free by 2045.

To support the meeting of these targets, AB 32 tasked the California Air Resources Board (CARB) with developing a market-based system to reduce GHG emissions from major sectors of the economy, including the electricity sector. (Cal. Code Regs., tit. 17, §§ 95811(b) and 95812(c).) The cap and trade program is the primary market-based program used to drive down the state's GHG emissions from multiple sectors of the economy. (Cal. Code Regs., tit. 17, § 95801.)

For the electricity sector, the obligation to be under the cap is on the operator of an in-state power plant, which emits 25,000 metric tons or more of CO₂ per year, or the importer for out of state generation. (Cal. Code Regs., tit. 17, §§ 95811(b) and 95812(c).) The cap and trade program therefore is one tool to achieve the statewide GHG emissions cap through the allocation and purchase of emission allowances. (Cal. Code Regs., tit. 17, § 95841.)

Beyond the cap and trade program, additional state laws focusing on GHGs and renewable energy apply specifically to utilities such as SVP. Two key laws that complement CARB's cap and trade program include SB 350 and SB 100. SB 350 creates a requirement for publicly owned utilities like SVP to map out how the utility will meet their expected load, reliability, RPS and GHG emission reduction requirements through the development of an Integrated Resources Plan (IRP) which sets forth, among other things, how SVP will reduce GHG emissions below specific levels set by CARB. (Ex 28, pp. 1-1, 2-14 to 2-18.)

The salient mandates of SB 350 relevant to SVP and its GHG emissions are found in the Public Utilities Code section 9621(b).

(b) On or before January 1, 2019, the governing board of a local publicly owned electric utility shall adopt an integrated resource plan and a process for updating the plan at least once every five years to ensure the utility achieves all of the following:

(1) Meets the greenhouse gas emissions reduction targets established by the State Air Resources Board, in coordination with the [public utilities] commission and the Energy Commission, for the electricity sector and each local publicly

owned electric utility that reflect the electricity sector's percentage in achieving the economy wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030.

Under Public Utilities Code section 9622 the CEC is tasked with reviewing the IRP to determine if the plan is inconsistent with the requirements of section 9621 and making recommendations to correct deficiencies.

Embedded in the SB 350 IRP process is an initial step where CARB determines the 2030 GHG emissions for SVP and other utilities. (Ex 28, p. 2-15.)

SVP's 2019 IRP indicates that its 2030 GHGs targets, as set forth by CARB, range from 275,000 MTCO₂e to 485,000 MTCO₂e, which is 0.915% of the 2030 electricity sector emissions. (Ex. 28, table 2-3) SVP's IRP sets the roadmap on achieving both the GHG requirements and 60% renewable energy by 2030. (Ex. 28, tables 2-4, 8-5 and 8-6)

After SB 350 went into effect, SB 100 was signed into law and accelerated targets by raising the 2030 RPS from 50% to 60% and adding the goal of 100% carbon free electricity by 2045. SVP's IRP incorporated the SB 100 targets. (Ex. 28, p. 1-7.)

The Walsh project's indirect emissions are not significant because SVP, through cap and trade and future procurement of renewable and zero- or low-carbon energy, is set to meet all statewide GHG and renewable energy mandates which will drive the reduction of GHG emissions towards the targets of 2030 and 2045. (Transcript p.24: 16-25, p.25: 1-25, p.26: 1-7, p.42: 1-21, p.44: 10-22, p.45: 3-10, p.46: 2-25 and p.47: 1-16.)

The CEQA Guidelines explicitly call on lead agencies to evaluate compliance with plans for the reduction or mitigation of GHGs, and staff's emphasis on programs that reduce emissions from SVP's portfolio of energy procurement is methodologically appropriate given the nature of this project's emissions as predominantly indirect and tied to electricity usage. (Cal. Code Regs., tit. 20, 15064.4(b). See also *Ass'n of Irrigated Residents v. Kern Cty. Bd. of Supervisors*, 17 Cal. App. 5th 708, 743,(Ct. App. 2017) *...an inquiry into significance that is based on compliance with a program that sets limits*

and requirements for California's petroleum refining industry as a whole is a rational approach to regulating that industry's contribution to global climate change.)

In this case, there are no facts in the record demonstrating that SVP will not be able to meet its obligations relating to GHG emissions and the RPS. Future IRPs, approved by the CEC, will continue to detail SVP's pathway towards state GHG and RPS requirements of 2030 and beyond, and the CEC is equipped to pursue enforcement and corrective actions against SVP under the RPS enforcement program if future evidence suggests that the utility is slipping out of compliance with statewide procurement targets. (Cal. Code Regs., tit. 20, §§ 3200-3208.)

SVP is on track to meet the requirements of AB 32, cap and trade, and SB 100 as over 70 percent of SVP's electricity is already carbon free. (Ex. 200, pp. 5.6- 6, 5.8-10, and 5.8-15.) SVP expects to be 100 percent carbon free by 2045 in compliance with the goals of SB 100. (Transcript p.24: 16-25, p.25: 1-15, Exhibit 203, pp. 13-14.)

SVP's IRP, which was approved by the CEC and adopted by the City of Santa Clara, along with the testimony of SVP's Chief Operating Officer, Kevin Kolnowski provides the substantial evidence that SVP will meet its GHG reduction requirements and that the Walsh project and other data centers will not inhibit the achievement of these targets. (Transcript p.24: 16-25, p.25: 1-25, p.26: 1-7, p.42: 1-21, p.44: 10-22, p.45: 3-10, p.46: 2-25 and p.47: 1-16, Ex. 28, tables 2-4, 8-5 and 8-6.) Therefore, the incremental GHG emissions from the electricity usage by the Walsh project cannot be significant.

In *Center for Biological Diversity v. Dept. of Fish & Wildlife*, 62 Cal.4th 204 (2015), the court rejected the California Department of Fish and Wildlife's methodology for determining whether a housing development's GHG emissions were significant. The court reached this conclusion because the administrative record disclosed no substantial evidence that real party in interest Newhall Ranch's project-level reduction of 31 percent in comparison to business as usual was consistent with achieving AB 32's statewide goal of a 29 percent reduction from business as usual. (*Center for Biological Diversity v. Dept. of Fish & Wildlife*, 62 Cal.4th 204 (2015) p.20.) The court noted:

the EIR's deficiency stems from taking a quantitative comparison method developed by the Scoping Plan as a measure of the greenhouse gas emissions reduction effort required by the state as a whole, and attempting to use that method, without consideration of any changes or adjustments, for a purpose very different from its original design: To measure the efficiency and conservation measures incorporated in a specific land use development proposed for a specific location. The EIR simply assumes that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development. From the information in the administrative record, we cannot say that conclusion is wrong, but neither can we discern the contours of a logical argument that it is right. (Center for Biological Diversity v. Dept. of Fish & Wildlife, 62 Cal.4th 204 (2015) p.22-23.)

In this case, SVP's specific GHG targets are known and set by CARB. (Ex. 28, table 2-3.) In addition, SB 100 sets an outward mark of 100% zero carbon energy by 2045. Because the GHG targets are known, evidence that shows SVP can meet these emission targets while providing electricity to meet the forecasted demand of the Walsh and other data center projects also supports a finding that the incremental contribution of GHG emissions from the project's electricity use cannot be significant. (Transcript p.24: 16-25, p.25: 1-25, p.26: 1-7, p.42: 1-21, p.44: 10-22, p.45: 3-10, p.46: 2-25 and p.47: 1-16, Ex. 28, tables 2-4, 8-5 and 8-6, Ex. 203, pp. 13-14.)

II. CONCLUSION

The vast majority of the GHG emissions from the project are indirect and related to the use of grid power. To determine if these emissions are significant, staff considered whether SVP is on track to meet its GHG and RPS 2030 and 2045 obligations under various state requirements. SB 350's IRP sets forth SVP's road map for meeting these obligations. The uncontested evidence in the record from the Initial Study and IRP to the testimony of Mr. Kevin Kolnowski demonstrates that SVP is on target to meet state GHG targets and will be in the range of GHG emissions by 2030 as set forth by ARB and the Walsh project's consumption of electricity from SVP will not prevent SVP from

meeting its GHG emission targets under SB 350 and SB 100. Therefore, the Walsh project's GHG emissions would not cause an incremental contribution to the effects of climate change that can be considered significant, and staff's IS/PMND correctly determined these effects to be less than significant.

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Respectfully submitted,

Approved by:

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