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State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Walsh Data Center

Docket 19-SPPE-02

ROBERT SARVEY'S PETITION FOR RECONSIDERATION

Robert Sarvey petitions this Commission for reconsideration of its Adoption Order, Findings and Order (collectively, "Decision") approving the SPPE for the Walsh Data Center and its backup diesel generating system. 20 CCR § 1720 (a) (1) allows the commission to Reconsider a Decision if , "*new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision.*"

In the last three weeks California has experienced its first rolling blackouts since 2001. Soaring temperatures have put an unprecedented strain on the grid. The situation was so dire that the California Energy Commission utilized 100 MW of diesel backup generators at data centers in Santa Clara to provide additional resources. The governor even declared a state of emergency on September 2 allowing backup diesel generators to operate outside their permits. On top of that the entire State is blanketed in smoke. PG&E has just employed an unprecedented early September PSPS event. At the September 9th Energy Commission Business meeting the California Air Resource Board and the Bay Area Air Quality Management district representatives appeared to explain that there are over 1,600 MW of diesel generators planned for Data Centers in the Bay Area. Both agencies explained their concerns for the significant impacts to air quality that these massive concentrations of diesel generators cause. They explained that all of the new data centers must use cleaner technology and requested a

proceeding to explore options for these diesel generators. In light of the testimony by the California Air Resources Board and the Bay Area Air Quality Management District the commission remanded the Sequoia proposed decision back to the Sequoia committee for analysis of energy emergencies and the air quality and public health impacts.

The Walsh Data Center is similarly situated. The Walsh Data Center plans to deploy 93 MW of diesel generators at their facility so the Commission should reconsider its decision to allow backup diesel generators and require cleaner technologies in light of yesterday's testimony by CARB and BAAQMD. Emergency operation is possible in light of the rolling blackouts and PSPS events that were not occurring until after the evidentiary hearing for the project was conducted. Executive orders have been issued to allow data center backup generators to operate outside of their permits which their impacts were analyzed under. These are new facts for the commission to consider which indicate significant impacts to the environment could occur and call into question the decision on the Walsh Data Center approved on August 12, 2020.

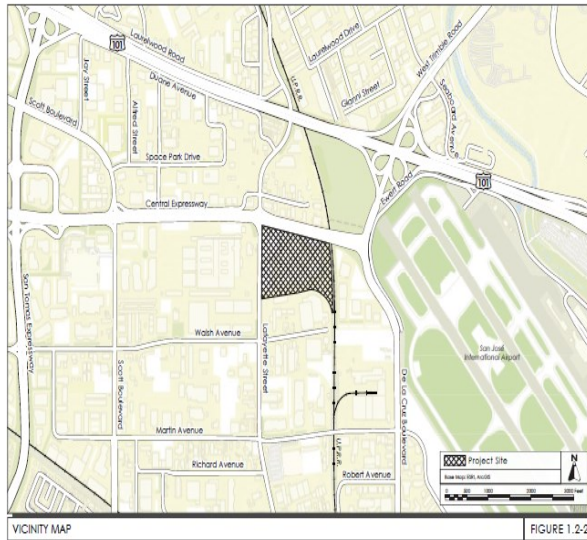
The Walsh Data Center Decision should also be reconsidered because the Walsh Data Center is part of a larger project which includes the 99 MW Lafayette Data Center. Facts presented by the applicant at the adoption hearing were incorrect. The applicant made several misrepresentations to the commission at the adoption hearing for the Walsh Data Center which led the Commission conclude the Lafayette Data Center and the Walsh Data Center should be analyzed as separate projects. First the applicant claims that the Walsh Data Center and the Lafayette Data Center are not owned by the same company. It's not disputed that the Lafayette Data Center is owned by Digital Realty. Mr. Galati claims that 651 Walsh Partners is owned and controlled by a different entity. 651 Walsh partners is a subsidiary of Digital Realty and therefore controlled by Digital Realty as demonstrated in Exhibit 1 page 220 of 232.

Secondly the applicant claimed at the adoption hearing that the two projects are not adjacent to each other. Figure 1.2 from the Lafayette Data Center Application¹

¹ TN 233401-1 LBGF SPPE Application Part 1 Page 12 of 194

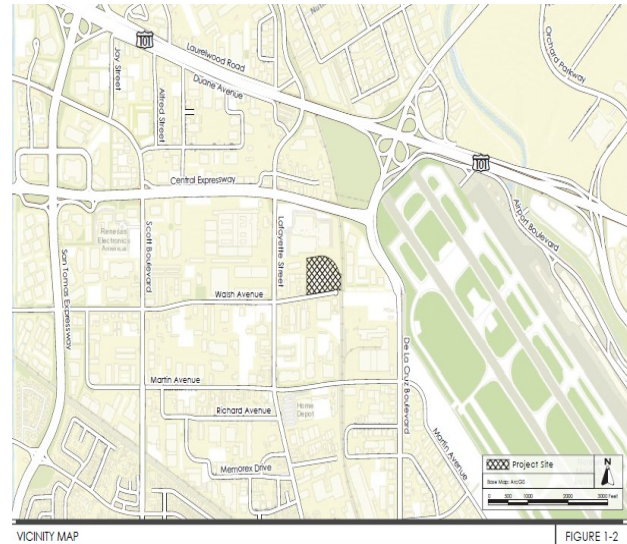
(below left) and Figure 1 from the Walsh Avenue Data Center Application² (below right) show the projects are in fact adjacent and share a common boundary a fact the applicant misled the commission on.

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Finally as we know both projects are devoted to data center and backup generator activity so they are in the same industrial classification. Hence they are the same project and should be evaluated as such.

Even if the two projects were not owned by the same company, did not share a common boundary and were not of the same industrial classification the impacts from the adjacent data centers should have been properly analyzed together. The fact that the adjacent Lafayette Data Center filed its application on May 20, 2020 prevented the Walsh IS/MND from including the Lafayette Data Center in its air quality and public health analysis. While CEC Staff may have been unaware of the location and impacts of the Lafayette Data Center at the Walsh evidentiary hearing held on May 27, 2020 surely

² Exhibit 1 TN 228877-2 WBGF SPPE Application Page 11 of 203

the applicant knew of the projects location adjacent to the Walsh Data Center but failed to inform the parties and the committee that 44 diesel generators would be operating adjacent to the Walsh Data Center. The air quality modeling and public health assessment did not include the adjacent Lafayette Data Centers 44 diesel backup generators in any of the modeling analyses. Significant environmental impacts may occur with the two project operating generators in such close proximity. The applicant has the burden of proof here but withheld information from the parties and the commission on the extent of the impacts. In addition, the construction of the two projects will overlap and the combined construction impacts should have been evaluated to determine whether there is a significant impact to the environment. ³

The applicant is intending to piecemeal these two projects to lessen the environmental impact of the two facilities and avoid an EIR (AFC). CEQA defines a project as the whole of an action which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Guidelines sec. 15378(a); Pub. Res. Code sec. 21065. As used in CEQA, the term "project" is very broad. In considering whether an activity is a "project" an agency must look at **all of the parts, components, and phases of the activity**. Project Segmenting is not Permitted. An agency is generally not permitted to, 'segment" or "piecemeal" a project into small parts if the effect is to avoid full disclosure of environmental impacts. This rule arises from the definition of "project" under CEQA which includes the phrase "whole of the action." This phrase has been interpreted by the California Supreme Court to mean that it is generally inappropriate to chop a project into small segments to avoid preparing an EIR. See *Bozung u. Local Agency Formation Commission* (1975) 13 Cal. 3d 263. Therefore, an agency may not treat each separate permit or approval as a separate project for purposes of evaluating environmental impacts. **"Project" refers to the underlying activity being approved by an agency, not just the government permits necessary to develop such an undertaking.**

³ Lafayette Data Center Construction is expected to last 21 Months TN 233401-1 LBGF SPPE Application Part 1 Page 62 of 194

Walsh Avenue Data Center Construction is expected to last 21 months. Exhibit 1 TN 228877-2 WBGF SPPE Application Page 62 of 203

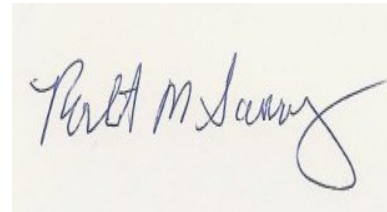
Guidelines sec. 15378(c). Therefore, an Agency may not treat each separate permit or approval as a separate project for purposes of evaluating environmental impacts.

The projects 80 MW load could also be a significant impact to energy resources requiring evaluation considering the unexpected rolling blackouts experienced since the evidentiary hearing.

Conclusion

Significant events have occurred since the evidentiary hearing and the adoption of the Walsh Proposed Decision. Energy shortages, fire storms, unexpected September PSPS events, and the September 9, 2020 testimony by the California Air Resources Board and BAAQMD that the use of diesel backup engines will in fact result in significant impacts to air quality. The air quality and public health impacts are understated in the Walsh analysis which leads to a uniformed and erroneous decision. Intervenor Sarvey petitions the full commission to reconsider the Walsh Data Center Decision.

Respectively Submitted,

A handwritten signature in blue ink on a light-colored background. The signature is cursive and appears to read "Robert M. Sarvey".

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