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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:	**DOCKET NO: 19-SPPE-5**
Application For Small Power Plant Exemption for the **MISSION COLLEGE BACKUP GENERATING FACILITY**	**OPPIDAN INVESTMENT COMPANY'S OPPOSITION TO INTERVENOR ROBERT SARVEY'S PETITION FOR RECONSIDERATION**

INTRODUCTION

Oppidan Investment Company (Oppidan) in accordance with the Committee Notice of Hearing, dated September 17, 2020[1], for the Intervenor Robert Sarvey's (Petitioner) Petition For Reconsideration (Petition), hereby files its Opposition to the Petition in support of its Application for a Small Power Plant Exemption (SPPE) for the Mission College Backup Generating Facility (MCDC)[2]. For the reasons articulated below, the Commission should summarily reject the Petition because it is not allowed by statute or regulation for a SPPE Decision. The Commission should also reject the Petition because it fails to raise any new factual or legal issues or errors that are relevant or contrary to the analysis and rationale of the Commission Final Decision[3].

[1] TN 234811
[2] The MCBGF is the backup generating facility for the Mission College Data Center. For purposes of this Opposition, the term "MCDC" includes both the MCDC and the MCBGF.
[3] Final Decision for the Mission College Backup Generation Facility, TN 234401

REBUTTAL OF PETITIONER'S CONTENTIONS

I. Petitioner has no right to file a Petition for Reconsideration under Section 1720 of the Commission Regulations[4]

Section 1720 governs the filing of a Petition For Reconsideration only for Commission Orders or Decisions for either a Notice of Intent (NOI) or Application For Certification (AFC) proceedings.. Section 1720 was promulgated pursuant to Public Resources Code Section 25530, which provides that the Commission *may* order the reconsideration of a Commission decision or order on its own motion or on petition of any party. The Commission's exercise of the "permissive" language of the statute authorized it to adopt Section 1720 and apply it only to NOI and AFC proceedings. Evidence that the Commission intended Section 1720 to apply only to NOI and AFC proceedings include the specific placement of the section in Article 1 of the Commission Regulations, which is entitled "General Provisions Applicable to Notices of Intent and Applications for Certification". Section 1701 (a) specifically states that Article 1 governs NOI and AFC proceedings. SPPEs are therefore, not governed by Article 1. Section 1701(e) states that "Article 5….shall apply to all applications for a SPPE. Thus only Article 5 controls SPPE proceedings, not Article 1. Notably Article 5, which was recently revised by the Commission, does not include any provision for filing a Petition For Reconsideration for a decision on a SPPE application.

II. Petitioner has failed to raise any new evidence or errors of facts or laws that undermine any substantive element of the Final Decision.

Even if the Commission were to consider the Petition, notwithstanding the fact that Section 1720 applies only to AFC and NOI proceedings, the Petition should be denied for failing to satisfy the very elements sent forth in Section 1720.

Section 1720 provides:

> (a) Within 30 days after a decision or order is final, the commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) ***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***

[4] The term CEC Regulations refers to the Power Plant Site Certification regulations found in Title 20, Division 2, Chapter 5 of the California Code of Regulations.

> ***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 addition to being served on all parties as required by section 1211, the petition for reconsideration shall be filed with the chief counsel of the commission. ***(Emphasis Added)***

Petitioner has the burden to prove two substantive elements in the Petition. The first element can be satisfied in one of two methods: 1) producing new evidence that could not have been produced during evidentiary hearings; or 2) producing proof of an error in fact or change or error of law. However, proof of the first element alone does not satisfy Section 1720's requirements for granting the Petition. The second element is causation. Petitioner has the burden of proving that the new evidence or the error in fact or change or error of law ***has an effect upon a substantive element of the decision.*** As explained below, the Petitioner's contentions fail to satisfy either the first or second element.

III. The Recent Governor's Proclamations Do Not Undermine Any Substantive Element of the Final Decision.

Petitioner's sole contention is that Governor Newsom's Proclamations of a State of Emergency (attached hereto as Exhibit 1) issued on August 16, 2020 and September 3, 2020 pursuant to two extreme heat events are new facts sufficient toundermine the Commission's Final Decision. As described below, while they are new facts, they do not change any of the assumptions, rationale or analysis contained in the Final Decision. Therefore, Petitioner fails to demonstrate in the Petition that these new facts have a causative effect on how the Final Decision addressed potential emergency operations. The Petitioner fails to meet his burden.

Specifically, Petitioner contends at Page 2 of his Petition:

> 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.
>
> 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 Mission College Data Center approved on August 12, 2020. ***(Emphasis Added)***

An analysis of the Petitioners contentions, and the comments provided by Califronai Air Resources Board (CARB) and the Bay Area Air Quality Management District (BAAQMD) relating to the Sequoia Project relied upon by the Petitioner, is presented below.

1. The extreme heat events identified in the Governor's Proclamations actually caused very few generators to run voluntarily and only approximately 12 MW of data centers were forced to run due to actual curtailment.

It is important to note that the Governor's Executive Orders suspended the any permit, regulation or law prohibiting or restricting the use of emergency backup generators. Existing law only allows an owner to operate the emergency backup generators for testing and maintenance or during an actual emergency. An emergency is defined as an unforeseeable (to the owner) loss of utility power to the owner's facility[5]. Therefore, in order for an owner to be allowed to voluntarily shed utility load and operate the facility using emergency backup generators, the laws or permit conditions restricting such use had to be suspended. The last time this occurred was during the energy crisis in 2001. This is a extremely infrequent event.

On August 17, 2020 after the first extreme heat event, Governor Newsom sent a letter to the Commission, the California Public Utilities Commission (CPUC), and the California Independent System Operator (CaISO), collectively the "energy agencies", requesting an explanation of the disruption to electrical energy supply, among other things[6]. On August 19, 2020, the energy agencies responded to

[5] 13 Cal. Code Regs. § 2453(m)(4)(E)(i)
[6] A copy of the Governor's August 17, 2020 correspondence is provided herein as Exhibit 2.

the Governor, identifying "that capacity shortfalls played a major role in the CAISO's ability to maintain reliable service on the grid"[7]. The agencies stated that in response to the capacity shortfalls, "The CEC coordinated with data center customers of Silicon Valley Power to move **approximately 100 MW of load to backup generation facilities onsite**" (emphasis added).

The Petition, and the comments at the September 9, 2020 Commission Business Meeting by CARB referenced therein, assume a large amount of backup generator deployment during the extreme heat events. It has been estimated that approximately 500 MW of emergency backup generation for data centers exists in the Silicon Valley Power (SVP) service area.. To put the event of August 17, 2020 in perspective, the 100 MW of voluntary load shedding from data centers represents approximately 20 percent of the total load capacity and not the whole scale deployment of generation assumed by Petitioner. The only involuntary curtailment occurred when CAISO ordered SVP to curtail up to 13 MW for 30 minutes on August 14, 2020. See Exhibit 4, attached hereto. Of the 13 MW, 12 MW was curtailment of data centers.[8]

It is also extremely important to note that the data centers that were not curtailed by SVP, ***voluntarily elected to participate in the load shedding program at great risk to customers solely because the Commission requested they do so.*** Other than the handful of generators (12 MW) that operated on August 14, 2020 due to CaISO order to SVP forcing curtailment, none of the emergency generators would have been deployed in SVP's service territory were it not for the request of the Commission. This voluntary deployment arranged by the Commission allowed SVP's resources to be used elsewhere to minimize rolling blackouts in areas where there was a capacity shortfall. As the Mission College Final Decision concluded, SVP operates a very reliable system and had sufficient capacity to avoid curtailment from either of the two extreme heat events covered by the Governor's Proclamations.

Petitioner and CARB have assumed that the extreme heat events caused and would continue to cause widespread deployment of emergency backup generators. This assumption is not supported by any evidence and contrary to the facts of the actual deployment on August 14, 2020. This emergency is not unlike the other types of emergencies considered by the Commission Staff and

[7] A copy of the energy agencies collective response to the Governor dated August 19, 2020 is provided herein as Exhibit 3.
[8] Personal Communication with Kevin Kolnowski, Chief Operating Officer of Silicon Valley Power.

determined to be speculative for California Enviornmental Quality Act (CEQA)[9] purposes in the Final Decision.

2. Emergency operations of all types are very infrequent within Silicon Valley Power's service territory and modeling of emergency operations requires speculative assumptions.

The MCDC Final Decision at page 20 concludes that modeling of emergency operations requires numerous speculative assumptions.

> Staff typically evaluates the impact of criteria pollutant emissions using modeling,[123] but in the case of emergency operations, found that the numerous assumptions that must be made in order to conduct a modeling analysis render the results of any such efforts speculative. The IS/PMND,[124] and Staff witness Mr. Brewster Birdsall, identified several variables that impact modeling, categories including: the duration of the emergency (i.e., the numbers of hours the Backup Generators would run); the continuous or the variable use of the Backup Generators during the emergency; local meteorological conditions at the time of the emergency; background air quality concentrations of the pollutants of concern at the time of the emergency; the number and location of emergency generators running simultaneously (how many generators would be needed to meet demand at time of outage[125] and which stack combinations and their locations within the Backup Generating Facility[126]); and the load points of each generator, whether it be at 100 percent full load or 50 percent for example.[127] The IS/PMND further indicated that modeling results can be highly sensitive to even minor adjustments such as the number and combination of standby generators that would operate and the locations of their stacks.[128]
>
> The IS/PMND further stated that emergency operations are unlikely, explaining that the risk of an outage at any data center within the SVP service territory has historically been 1.6 percent per year.[129] The IS/PMND also stated that the historic weighted

[9] Public Resources Code Section 21000 et. seq.

> average outage was about 2.6 hours per outage so any potential ambient air impacts from emergency operations would thus be expected to be of short duration.[130] The IS/PMND concluded that the impacts associated with operation of the Backup Generators during an emergency are too speculative to be meaningfully evaluated and therefore such an analysis is not required under CEQA.[131]

Ultimately after hearing Petitioner's challenges to Staff's analysis and rationale at evidentiary hearing and in briefing, the Final Decision correctly concluded at page 22:

> In sum, we find there is evidence supporting the IS/PMND conclusion that the Backup Generators would operate very infrequently, if at all, for emergency operations.[143] This fact, in conjunction with the number of assumptions that would need to be made to estimate air quality impacts due to emergency operations, renders quantification of those impacts too speculative to be meaningful and is therefore not required by CEQA.1

Petitioner's attempt to yet again raise this issue in the Petition is not a new fact that has an effect upon a substantive element of the MCDC Final Decision. This emergency is not unlike the other types of emergencies determined to be speculative by the Commission Staff and by the Commission in the MCDC Final Decision. Petitioner has not met his burden under the requirements of Section 1720.

3. The extreme events that led to voluntary operation of backup generators to shed load pursuant to the Governor's Executive Order are even more unlikely than other types of circumstances that could cause interruption of electricity at data centers.

In order for the events covered by the Governor's Executive Order to reoccur, the following must happen simultaneously.

- There must be extreme heat that affects California, Oregon and Washington;

- Imports from the north are generally unavailable due to the extreme heat and/or fires;
- California must be unable to import sufficient electricity to meet demand;
- The California energy agencies have done nothing to resolve the capacity shortfall issues and failed to increase the capacity of resources available, including to offset normal imports; and
- The Governor suspends the rule that prohibits voluntary operation of emergency backup generators for load shedding.

While each of the above conditions may be foreseeable, in combination the probability of reoccurrence is astronomically low. Petitioner makes the unreasonable assumption that the energy agencies will do nothing to correct the capacity shortage and plan for these extreme weather events. This is nonsensical. Within two days of the August 14, 2020 event, the energy agencies committed to study the causes of the event and take swift action to develop recommendations and implement remedies. It is unreasonable to assume that the energy agencies will not follow through with action.

4. The solution to avoiding voluntary operation of backup generators in response to extreme heat event is a coordinated approach by the energy agencies to solve the capacity shortage issues, not prevention of individual data center projects.

As discussed above, Petitioner makes the unreasonable assumption that the energy agencies will remain stagnant in the face of the most recent capacity shortfalls. We, however, have confidence in the Commission and its sister energy agencies that the capacity shortage issues during extreme heat events will be solved. We have good reason to be confident. Nineteen years ago, the energy agencies and the State rose to the occasion and addressed the causes of the worst energy crisis in California's recent history, which has not been repeated.

However, if the Commission is not as confident as Oppidan, Oppidan will accept the following Condition of Exemption that would prevent it from ever ***voluntarily*** operating its emergency backup generators for load shedding. Even if the Commission assumes, as Petitioner incorrectly speculates that the events identified in the Governor's Proclamations will be more frequent, the fact that the

MCDC will not participate assures that it will not voluntarily contribute to any potential speculative environmental impact that may be assumed.

> ***Condition of Exemption PD 3***
> ***The granting of the Small Power Plant Exemption for the Mission College Backup Generating Facility is specifically conditioned on the provision that at no time shall the Project owner of the Mission College Data Center voluntarily participate in a load shedding and/or demand response program that would allow it to voluntarily use electricity generated by the Mission College Backup Generating Facility in order to participate in any load shedding and/or demand response request from the CEC, any utility, or any State agency.***

IV. The Final Decision Does Not Require an Alternatives Analysis

Petitioner and CARB allege that the recent capacity shortfall events should cause the Commission to conduct an alternative analysis. If the Petitioner and CARB are referring to an alternative analysis under the CEQA, no such analysis is required. CEQA is clear that an environmental document describes alternatives to a proposed project that would avoid or substantially lessen any ***significant environmental impacts of the project.***[10] As demonstrated in the Final Decision, the MCDC would not result in any significant environmental impacts such that alternatives should be evaluated. Petitioner's suggestion that the extreme heat events would cause such impacts is unsupported conjecture that ignores the evidence that such impacts are speculativeand, if the Commission adopts Condition of Exemption PD-3, impossible.

If however, Petitioner is referring to a broader policy discussion about the use of backup generating technologies; such discussions should take place in the forums provided by the energy agencies. Petitioner and other agencies should be encouraged to participate in the Integrated Energy Policy Report proceedings and load forecasting forums at the Commission, and the Resource Adequacy procurement proceedings at the CPUC. The best way to ensure emergency backup generation is not deployed, no matter what technology is used, is to support an extremely reliable and robust energy system with enough capacity to weather future heat storms. SVP is a good model.

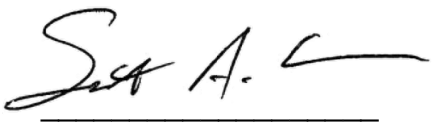
[10] Pub. Resources Code § 21002; 14 Cal. Code Regs. § 15126.6.

CONCLUSION

The Commission must deny the Petition because it fails to demonstrate that there are new facts that undermine any of the rationale, assumptions or analysis of the Final Decision. The MCDC will provide an essential service to the State, has recently received its approval from the City of Santa Clara, and is currently under construction. Petitioner's unfounded assumptions should not be used to send construction workers home.

Dated: September 25, 2020

Respectfully Submitted,



Scott A. Galati
Counsel to Oppidan Investment Company

EXHIBIT 1

Governor Newsom's Proclamations of State Emergency

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS beginning on August 14, 2020, a significant heat wave struck California and the surrounding Western states, bringing widespread temperatures well in excess of 100 degrees throughout the state (the "Extreme Heat Event"); and

WHEREAS as a result of this Extreme Heat Event, the National Weather Service issued multiple Excessive Heat Warnings and Red Flag Warnings within the State; and

WHEREAS the Extreme Heat Event has put a significant demand and strain on California's energy grid as well as limiting energy imports from surrounding states; and

WHEREAS the California Independent Service Operator (CAISO) has, to date, issued multiple Stage 2 and Stage 3 System Emergencies during the Extreme Heat Event, the first Stage 3 Emergencies issued due to heat in two decades, resulting in rolling blackouts for customers throughout the State; and

WHEREAS the Extreme Heat Event is expected to last through at least August 20, 2020, and CAISO has advised that additional Stage 2 and Stage 3 System Emergencies are likely unless action is taken to conserve power and increase output; and

WHEREAS it is necessary to take action to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8558, subd. (b), I find that conditions of extreme peril to the safety of persons and property exist due to the Extreme Heat Event throughout California; and

WHEREAS under the provisions of Government Code section 8625, subd. (c), I find that local authority is inadequate to cope with the magnitude and impacts of the extreme heat event; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the Extreme Heat Event.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, 8625 and 8627, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to the Extreme Heat Event, all agencies of state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.

2. For purposes of regulations concerning stationary generators, the Extreme Heat Event shall be deemed an "emergency event" under California Code of Regulations (CCR), title 17, section 93116.1, subd. (b)(14), and a loss of electrical service shall be deemed "beyond the reasonable control of the owner or operator" under CCR, title 17, section 93116.2, subd. 2(a)(12)(A)(2). In addition, use of stationary generators during the Extreme Heat Event shall be deemed an "emergency use" under CCR, title 17, section 93115.4, subd. (a)(30).

3. In regulations concerning portable generators, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 13, section 2452, subd. (j), and interruptions caused by the Extreme Heat Event shall be deemed an "unforeseen interruption of electrical power from the serving utility" under CCR, title 13, section 2453, subd. (m)(4)(E)(i).

4. In regulations concerning the use of auxiliary engines by ocean-going vessels berthed in California ports, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 17, section 93118.3, subd. (c)(14).

5. This Order shall be deemed to provide notice to reduce use of grid-based electrical power under CCR, title 17, section 93118.3, subd. (c)(14)(C), and notice under that same section that reduction is no longer necessary at 11:59 p.m. on August 20, 2020. Ships that initially berthed at California ports between August 17, 2020 and August 20, 2020 shall not be required to use shore power until August 24, 2020.

6. A ship operating on auxiliary engines pursuant to an "emergency event" under Paragraph 4 of this Order shall be deemed to qualify for an exemption under CCR, title 17, section 93118.3, subd. (d)(1)(E)(1)(a), and any visit occurring during the period described in Paragraph 5 of this Order shall be counted towards compliance under CCR, title 17, section 93118.3, subd. (d)(1)(F)(1).

7. The Air Resources Board shall exercise maximum discretion to permit the use of stationary and portable generators or auxiliary ship engines to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event.

8. Any permit, regulation or law prohibiting, restricting or penalizing the use of stationary or portable generators or auxiliary ship

engines allowed by this Order during the Extreme Heat Event is suspended.

9. The provisions in paragraphs 3-7 shall expire at 11:59 p.m. on August 20, 2020.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 16th day of August 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS beginning on September 2, 2020, a significant heat wave struck California, bringing widespread near-record temperatures well in excess of 100 degrees throughout the State (the "Extreme Heat Event"); and

WHEREAS as a result of this Extreme Heat Event, the National Weather Service issued multiple Excessive Heat Warnings within the State; and

WHEREAS the Extreme Heat Event has and will continue to put significant demand and strain on California's energy grid; and

WHEREAS on September 3, 2020, the California Independent Service Operator (CAISO) issued a Flex Alert, calling for voluntary electricity conservation from September 5, 2020 through September 7, 2020 to mitigate impact to energy supplies during this Extreme Heat Event; and

WHEREAS the Extreme Heat Event is expected to last through at least September 7, 2020; and

WHEREAS it is necessary to take action to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event; and

WHEREAS it is critical that power plants in the State generate as much power as possible to satisfy the increased demand created by the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8558, subd. (b), I find that conditions of extreme peril to the safety of persons and property exist due to the Extreme Heat Event throughout California; and

WHEREAS under the provisions of Government Code section 8625, subd. (c), I find that local authority is inadequate to cope with the magnitude and impacts of the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the Extreme Heat Event.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, 8625, and 8627, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to the Extreme Heat Event, all agencies of state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, all residents are to obey the direction of emergency officials with regard to this emergency in order to protect their safety.

2. For purposes of regulations concerning stationary generators, the Extreme Heat Event shall be deemed an "emergency event" under California Code of Regulations (CCR), title 17, section 93116.1, subd. (b)(14), and a loss of electrical service shall be deemed "beyond the reasonable control of the owner or operator" under CCR, title 17, section 93116.2, subd. 2(a)(12)(A)(2). In addition, use of stationary generators during the Extreme Heat Event shall be deemed an "emergency use" under CCR, title 17, section 93115.4, subd. (a)(30).

3. In regulations concerning portable generators, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 13, section 2452, subd. (j), and interruptions caused by the Extreme Heat Event shall be deemed an "unforeseen interruption of electrical power from the serving utility" under CCR, title 13, section 2453, subd. (m)(4)(E)(i).

4. In regulations concerning the use of auxiliary engines by ocean-going vessels berthed in California ports, the Extreme Heat Event shall be deemed an "emergency event" under CCR, title 17, section 93118.3, subd. (c)(14).

5. This Order shall be deemed to provide notice to reduce use of grid-based electrical power under CCR, title 17, section 93118.3, subd. (c)(14)(C), and notice under that same section that reduction is no longer necessary at 11:59 p.m. on September 8, 2020. Ships that initially berthed at California ports between September 4, 2020 and September 8, 2020 shall not be required to use shore power until September 11, 2020.

6. A ship operating on auxiliary engines pursuant to an "emergency event" under Paragraph 4 of this Order shall be deemed to qualify for an exemption under CCR, title 17, section 93118.3, subd. (d)(1)(E)(1)(a), and any visit occurring during the period described in Paragraph 5 of this Order shall be counted towards compliance under CCR, title 17, section 93118.3, subd. (d)(1)(F)(1).

7. The Air Resources Board shall exercise maximum discretion to permit the use of stationary and portable generators or auxiliary ship engines to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event.

8. The provisions of Water Code section 13385, subdivision (i)(1)(A) as they pertain to daily average and instantaneous temperature

limitations in waste discharge requirements for thermal power plants are suspended for any thermal power plant that maintains operations to abate the effects of the Extreme Heat Event. Any exceedance of the daily average or instantaneous temperature limitations resulting from maintaining operations during this time shall not constitute a violation for purposes of calculating mandatory minimum penalties under Water Code section 13385, subdivision (i).

9. Permitting requirements or conditions of certification adopted by the Energy Commission pursuant to section 25216.5, subd. (a), and sections 25500 et seq. of the Public Resources Code, as well as related permitting requirements adopted by local air quality management districts, that restrict the amount of power that a facility may generate, restrict the amount of fuel that a facility may use, or impose air quality requirements that prevent the facility from generating additional power during peak demand hours, from 3:00 p.m. to 10:00 p.m. or as otherwise needed to respond to the Extreme Heat Event, are suspended.

10. Any facility that operates in violation of permitting requirements or conditions of a certificate suspended by Paragraph 8 shall:

    (i) notify the relevant local air quality management district, the Energy Commission, and the Air Resources Board of its actions within 48 hours; and

    (ii) report additional fuel use, additional hours of operation, and energy produced by that additional use and operation to the relevant local air quality management district, the Energy Commission, and the Air Resources Board within 30 days of this Order.

11. Any permit, regulation or law prohibiting, restricting or penalizing the use of stationary or portable generators or auxiliary ship engines or other conduct allowed by this Order during the Extreme Heat Event is suspended.

12. The provisions in Paragraphs 2-9 of this Order shall expire at 11:59 p.m. on September 8, 2020, with the exception that, as provided in Paragraph 5, ships that initially berthed at California ports between September 4, 2020 and September 8, 2020 shall not be required to use shore power until September 11, 2020.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 3rd day of September 2020.

_____

GAVIN NEWSOM
Governor of California

ATTEST:

_____

ALEX PADILLA
Secretary of State

EXHIBIT 2

Governor Newsom's August 17, 2020 Letter to Energy Agencies

OFFICE OF THE GOVERNOR

August 17, 2020

Marybel Batjer
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Stephen Berberich
President and Chief Executive Officer
California ISO
P.O. Box 639014
Folsom, CA 95630

David Hochschild
Chair
California Energy Commission
1516 Ninth Street, MS-32
Sacramento, CA 95814

Dear Ms. Batjer, Mr. Berberich, and Mr. Hochschild,

I write today to express my deep concern about the broadscale de-energizations experienced by too many Californians on August 14 and 15th. These blackouts, which occurred without prior warning or enough time for preparation, are unacceptable and unbefitting of the nation's largest and most innovative state.

California residents, who are battling challenging conditions of a heat wave combined with a global pandemic in which we have encouraged people to

stay at home as much as possible, were forced to fend without electrical power -- a basic necessity. Residents, communities and other governmental organizations did not receive sufficient warning that these de-energizations could occur. In fact, I was not informed until moments before the blackouts started. Grid operators were caught flat footed, unable to avert disruptive blackouts and to adequately warn the public.

Collectively, energy regulators failed to anticipate this event and to take necessary actions to ensure reliable power to Californians. This cannot stand. California residents and businesses deserve better from their government. The failure to predict these shortages is unacceptable particularly given our state's work to combat climate change.

The California Independent System Operator (CAISO), the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) must do more to ensure reliable service and to safeguard California's energy future. More must be done to prevent outages and when they are unavoidable, CAISO must do more to warn residents about the possibility of blackouts.

I would like to better understand the causes of the supply deficiencies, why timely warnings were not provided and potential actions that can be taken in the coming days to minimize de-energization. Specifically, I request the following:

- Updated forecasts of energy demand for the coming days and any projected gaps between supply and demand.

- Actions the state can immediately take to increase resources available to fully serve California through the duration of the current weather event. As we discussed in our meeting this afternoon, I know we are already working with investor owned utilities, publicly owned utilities, community choice aggregators, major energy consumers and others on efforts to increase conservation, available supply and to shift use to non-peak hours. We are also working on actions the state can take to reduce its own energy consumption during peak hours. Additional actions to complement those we have already identified would be helpful.

- Immediate efforts to amplify and target Flex Your Power Campaign to emphasize the importance of actions of individuals and

businesses over the next few days. By altering the timing of use of electric appliances, and setting thermostats in homes and businesses higher than normal in the morning and lower than normal in the late afternoon and early evening, Californians can contribute to the solution over the next few days. As we have discussed, we are working with the Legislature, local government officials, business and labor leaders, newspaper publishers and others to increase energy conservation this week.

- A deeper dive into the root causes of how this happened and what more California must do to ensure that we do not leave our residents and our businesses exposed to this type of vulnerability in our power grid going forward.

Our immediate focus must be on reducing disruption and increasing reliability in the coming days. However, the unexpected events over the last two days require a comprehensive review of existing forecasting methodologies and resource adequacy requirements. Specifically, the following actions are necessary:

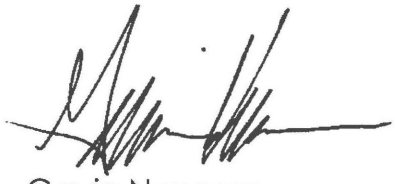
- The CEC must review its forecast to ensure they reflect the impact of climate change and resulting likelihood of more frequent and longer extreme heat events.
- The CAISO must review its assumptions regarding solar power and other sources of energy to ensure its assumptions of available capacity are accurate.
- The CPUC must review its resource adequacy requirements, existing procurement plans and demand response programs to ensure they provide the needed foundation for reliable power.
- Collectively, energy regulators must examine the mix of imports and in state generation, as well as any needed improvements to requirements relating to imports to ensure these resources are available to the state when needed.

Energy service shutoffs are simply too disruptive and we must do more to prevent them in the future. I request the CAISO to complete an after-action report to identify root causes of these events. It is critical that state energy agencies – CAISO, the Public Utilities Commission, and the California Energy Commission—examine longer-term actions for more accurate forecasting and to provide certainty of resource availability. This week's events demonstrate the

state must do more and faster to prevent future outages as we continue to work to transform energy generation in our state to achieve our necessary goals to combat climate change.

I look forward to your prompt response and expanded efforts to support reliable energy service in our state now and into the future.

Sincerely,



Gavin Newsom
Governor of California

EXHIBIT 3

Energy Agencies August 19, 2020 Joint Response Letter to Governor Newsom

August 19, 2020

Governor Gavin Newsom

1303 10th Street, Suite 1173

Sacramento, CA 95814

Dear Governor Newsom,

We write in response to your letter from earlier this week regarding the power outages of August 14 and 15 that were triggered due to insufficient resources.

We agree that the power outages experienced by Californians this week are unacceptable and unbefitting of our state and the people we serve. We understand the critical importance of providing reliable energy to Californians at all times, but especially now, as the state faces a prolonged heat wave and continues to deal with impacts from the COVID-19 pandemic.

Californians have always responded to great disruptions with courage, determination, and creativity. This week was no exception. But it is unfair to make Californians endure disruptions that are within our reach to avoid. We, as individuals, and the organizations we lead, share in the responsibility for what many Californians unnecessarily endured. We also share in the commitment to pinpoint the causes and ensure they do not reoccur.

Your letter requests that our organizations provide information to understand the causes of the recent supply deficiencies and the actions that can be taken in the near and longer-terms to minimize power outages. These questions deserve a more thorough review and response from us in the coming days, but in the sections below we provide responses based on the information we have now.

Near-Term Energy Demand Forecast

In the near term, the California Independent System Operator (CAISO) expects that energy demand will remain high as the current heat wave persists. In the table below, the CAISO provides its most recent demand forecasts for August 20 through 24. The table shows forecasted demand for two times of the day when the demand on the grid peaks. The first is the peak load hour, which occurs from 5 to 6pm (peak load hour) and the second is when the demand on the system, net of expected wind and solar production, occurs which is from 7 to 8pm (net load peak hour) for each day:

Table 1: Short Term Demand Forecasts

Forecast Period	8/20	8/21	8/22	8/23	8/24
Peak Load Hour Demand	45,113	44,743	42,718	42,154	46,779
Net Load Peak Hour Demand	42,850	42,415	41,393	40,946	44,329

The CAISO estimates that August resource adequacy capacity provides approximately 46,000 megawatts (MW) of load carrying capability at the peak load hour, after considering estimated outages. This load carrying capability drops to approximately 43,000 MW during the net load peak hour. Based on these forecasts, there is currently a risk of resource insufficiency on Monday, August 24. If those projections materialize as forecasted, the CAISO will require economic import energy to meet system needs. If economic import energy is unavailable, it could lead to additional supply shortages. The CAISO will do everything it can to avoid service interruptions. As detailed later in this letter, significant efforts have been undertaken across the state in recent days to reduce demand and identify additional supply.

Lack of Advance Warnings for Supply Deficiencies

As the CAISO anticipated high loads and temperatures beginning on August 14, it issued an order restricting maintenance operations on August 12, an alert identifying a possible system reserve deficiency on August 13, and a Flex Alert for August 14. However, the situation deteriorated on the afternoon of August 14, with the unanticipated loss of supply and severe constraints on imports because of a developing, historic west-wide heat wave. The imbalance in supply and demand led to the need to order the utilities to turn off power to their customers later that evening. On August 15, the CAISO experienced similar supply conditions, as well as significant swings in wind resource output when evening demand was increasing. Wind resources first quickly increased output during the 4:00 pm hour (approximately 1,000 MW), then decreased rapidly the next hour. These factors, combined with another unexpected loss of generating resources, led to a sudden need to shed load to maintain system reliability. The combination of high system demand, unanticipated loss of supply, and low net import availability due to hot temperatures throughout the West created untenable system conditions. Although the CAISO could not have predicted the specific series of events that ultimately required power outages, better communications and advance warnings about tight supply conditions were possible, and should have been done. The CAISO is committed to improving its communications, and providing appropriate warnings of such circumstances.

Causes of Recent Supply Deficiencies

We are working closely as joint energy organizations to understand exactly why these events occurred. The grid conditions of August 14 and 15, with peak demands of approximately 47,000 MW and 45,000 MW respectively, were high but not above similar hot days in prior years. Given this, our organizations will need to conduct a deep dive into how we ensure sufficient electric supply, and will make modifications to our reliability rules to make sure reliability resources can be available to address unexpected grid conditions.

Assigning definite causes to events on the electricity grid requires careful analysis, which will take time, however, we do know a number of things already. We know that capacity shortfalls played a major role in the CAISO's ability to maintain reliable service on the grid. A major focus of our review will need to be on the joint organizations' process of determining the needed capacity.

The resource adequacy procurement requirements are set by the California Public Utilities Commission (CPUC), to be based on a 1-in-2 peak forecast, *i.e.*, an average year forecast. This forecast is developed by the California Energy Commission (CEC) based on an agreed-upon methodology between the CEC, the CPUC, and the CAISO. To account for contingencies such as outages, import variability, load forecast error, and reserve requirements, the program requires utilities to procure a 15% planning reserve margin above the monthly

peak load forecast. The rules take into account the fact that the grid needs both a sufficient quantity and quality of resources to meet demand. As the events of the past few days indicate, a review of how the organizations forecast hourly demand and set reserve margins is critical. The forecasts and planning reserves need to better account for the fact that climate change will mean more heat storms and more volatile imports, and that our changing electricity system may need larger reserves.

Another factor that appears to have contributed to resource shortages is California's heavy reliance on import resources to meet increasing energy needs in the late afternoon and evening hours during summer. Some of these import resources bid into the CAISO energy markets but are not secured by long-term contracts. This poses a risk if import resources become unavailable when there are West-wide shortages due to an extreme heat event, such as the one we are currently experiencing. The CAISO has observed that during the current heat wave, energy supporting imports from other Western utilities have been significantly constrained during the late afternoon and evening hours, as those other utilities must plan to meet their own demand and have limited ability to export supplies to California. This hampers the CAISO's ability to secure net import energy sufficient to meet evening ramping requirements.

After this heat wave passes, as directed in your letter, our organizations will perform a root cause analysis of the events of August 14 and the following days, to understand the cause of the resource shortfalls. The CAISO will collaborate with the CPUC and the CEC on this analysis, and to promote long-term action to avoid these types of events in the future.

Collectively, our organizations want to be clear about one factor that did not cause the rotating outage: California's commitment to clean energy. Renewable energy did not cause the rotating outages. Our organizations understand the impacts wind and solar have on the grid. We have already taken many steps to integrate these resources, but we clearly need to do more. Clean energy and reliable energy are not contradictory goals.

Our collective investigation will include, at a minimum, a review of the following:

- Resource sufficiency, including:
    - Level of resource adequacy requirements relative to grid loads and grid conditions,
    - Imports and exports and their impact on reliability during periods of system stress conditions,
    - Outages, derates, and resource performance during system stress hours,
    - Performance of resources supplied to grid operator by CPUC and non-CPUC jurisdictional entities,
    - Availability of CAISO import capability to CPUC jurisdictional entities;
- Transmission grid performance, including outages and availability constraints;
- Sufficiency of existing incentives and penalty structure for deterring non-performance of reliability resources;
- Demand forecasts and how they are utilized in resource planning;
- Review of interagency coordination on summer reliability planning and assessment;
- Challenges to contracting for the retention of gas fleet resources needed for reliability; and
- Market performance observations and opportunities.

Immediate Actions to Address this Week's Supply Deficiencies

Since August 14, a number of immediate actions have been taken to minimize disruption and increase reliability. A collective effort, led by you and your staff, created a massive statewide mobilization to conserve electricity and maximize existing generation resources. The efforts led to reductions in peak demand on Monday and Tuesday of nearly 4,000 MW and an addition of nearly 950 MW of available temporary generation.

Some specific examples of actions that were taken include:

Demand Side Conservation Actions

- The CAISO called on demand response programs and other available demand relief;
- The CPUC issued a letter on Monday, August 17th, clarifying use of back-up generators in connection with specific demand response programs is allowable, which resulted in at least 50 MW of additional demand reduction each day;
- Solar and storage companies, including Sunrun and Tesla, worked with their customers to change battery charging patterns so that they are maximizing effectiveness between 4 and 9pm;
- The CEC coordinated with data center customers of Silicon Valley Power to move approximately 100 MW of load to backup generation facilities onsite;
- The CEC coordinated with the US Navy and Marine Corps to disconnect 22 ships from shore power, move a submarine base to backup generators, and activate several microgrid facilities resulting in approximately 23.5 MW of load reduction; and
- Six Electric Program Investment Charge (EPIC)-funded microgrids reduced load by a total of approximately 1.2 MW each day.

Supply Side Resources Actions[1]

- The CAISO procured available emergency energy;
- The CAISO executed significant event Capacity Procurement Mechanism to procure additional supply resources;
- The CAISO Suspended a market feature to ensure physical certainty of solution;
- Department of Water Resources (DWR) and Metropolitan Water District (MWD) adjusted water operations to shift 80 MW of electricity generation to the peak period;
- DWR and the U.S. Bureau of Reclamation (USBR) shifted on-peak pumping load that resulted in 72 MW of load flexibility;
- The CEC worked with the City and County of San Francisco to maximize power output at Hetch Hetchy which allowed for an additional 150 MW during the peak period;
- The CEC worked with private power producers to contribute an additional 147 MW from the following sources: SEGS Solar Plant: 60 MW, Ivanpah Solar Power Plant: 42 MW, and Sentinel: 45 MW;
- PG&E deployed temporary generation, that was procured for public safety power shutoff purposes, across its service territory totaling approximately 60 MW;
- SCE worked with generators to ensure that additional capacity was made available to the system from facilities with gas onsite or through invertor changes; and

[1] The additional capacity highlighted in this section is part of the 950 MW of available temporary generation, but does not comprise the totality of the 950 MW.

- LADWP helped bring additional generation from Haynes 1 and Scattergood power plants totaling 300 to 600 MW

Conservation Messaging Actions

- The CAISO Issued Flex Alerts and warnings;
- The CAISO, CEC and CPUC supported the Governor's Office and the California Governor's Office of Emergency Services to publicly request electricity customers lower energy use during the most critical time of the day, 3:00 pm to 10:00 pm;
- The CPUC issued a letter to the investor owned utilities on August 16 requesting that they aggressively pursue conservation messaging and advertising, and requested Community Choice Aggregators do the same; and
- The CPUC redirected the Energy Upgrade California marketing campaign messaging and media outreach to focus on conservation messaging.

With these efforts, we hope to reduce or prevent immediate future outages to the greatest extent possible.

Going-Forward Actions to Ensure Reliability

Our organizations are committed to collaborating on longer-term solutions and to re-examining our forecasts and existing reliability policies and programs to avoid future supply shortfalls.

The CEC will continue to refine its demand forecast, which currently accounts for climate change, based on improving science and stakeholder engagement, and will expand its demand forecasting process to include a broader set of scenarios that capture extreme weather events and associated load impacts. New peak demand forecasts could be used in the CPUC's resource adequacy program, which currently requires a 1-in-2 peak forecast. In addition, the CEC will:

- Develop an aggregate statewide view of resource adequacy obligations and available resources serving those obligations.
- Continue work to enable distributed energy resources and load flexibility, including development of load management standards to support grid reliability.

The CAISO will review its assumptions regarding solar power and other sources of energy to ensure its assumptions of available capacity are accurate.

The CPUC will review its resource adequacy requirements, existing procurement plans and demand response programs. The results of the root cause analysis will better help to strengthen and inform this reassessment. Some of the work that will contribute to the holistic reassessment you request has already been initiated.

- In 2019, the CPUC tightened electricity import rules to ensure imports and all other resources the state relies on are actually delivered to California on peak days.
- The CPUC ordered 3,300 MW of new capacity to come online by 2023 to meet potential shortfalls that were identified when it adjusted assumptions to reflect that peak demand occurs later in the day.
- The CPUC opened a phase in its Resource Adequacy proceeding to consider changing the framework for determining reliability rules. These changes may be needed to adjust for the fact that community choice aggregators dominate the retail electricity market.

Beyond that, the CPUC will work to ensure that increasingly prevalent distributed resources can be efficiently activated to support the grid even if they do not qualify to provide reliability services.

With regard to your request to review the mix of imports and in-state generation, our organizations agree that further attention is required to ensure that these resources are available when needed. As discussed above, the CPUC has already taken action to make imported electricity more dependable, and has also reduced the planning assumption for how much imported electricity will be available into California. The changes in those assumptions resulted in the directive to build 3,300 MW of new resources that will start coming online in 2021.

Each of our organizations has more work to do in order to be fully responsive to your letter and to ensure that we are taking every measure necessary to guarantee the events of this past week will not be repeated. We thank you for your leadership and will each be sending you individual follow on letters that will address the questions and directives in your letter in more depth.

Sincerely,

Marybel Batjer

President

California Public Utilities Commission

Stephen Berberich

President and Chief Executive Officer

California Independent System Operator

David Hochschild

Chair

California Energy Commission

EXHIBIT 4

Email Confirming CalSO Order for SVP to Curtail 13 MW on August 14, 2020 for 30 Minutes

From:	Michael Keate
To:	Alan Kurotori; "Alan Kurotori Cell"; Albert Saenz; Alex Chua; Allan Agatep; Ann Hatcher; Arielle Romero Cell ; Arielle Romero Cox; Arielle Romero"s gmail; Betty Sargent; Billy Quach; Brent Runyon; Chris Karwick; Damon Beck; Darlene Gomez; Dave Padilla; Dave Padilla; "Dawid Coetzee"; DeAnna Hilbrants; DeAnna Hilbrants Cell; DL CCO All Users; DL FIN Contact Center All; Edbert Nguyen; Elizabeth Elliott; Greg Garcia; "Greg Garcia Cell"; Gwen Goodman; "Gwen Goodman Cell"; "Gwen Goodman Gmail"; Heather Heinbaugh; Heather Heinbaugh Cell; Irma Munoz; Jay Sheth; Jean-Paul Hill; Jeevan Valath; Jeff Ipsaro; "Jeff Ipsaro Cell; Jim Tucker; "Jim Tucker"; John Roukema; John Sanders; Julia Black; "Julia Black Cell"; Kathleen Hughes; Kathleen Hughes; "Kathleen Hughes Gmail"; Ken Winland; Kevin Keating; "Kevin Keating Cell"; Kevin Kolnowski; Kevin Kolnowski; Lenka Wright; Lenny Buttitta; Manuel Pineda; Manuel Pineda; Mark Guerrero; Mary Medeiros McEnroe; Mary Medeiros McEnroe; Michelle Eglesia; Michael Keate; "Mike Keate Gmail"; Mike Vitarelli; Naomi Dale; Nilda Ramos; Robert P. Cell; Robert Pritchard; Sachin Bajracharya; Sandra Pacheco; Shane Kubo; Sharon Laughlin; Shelton Honda; Shreya Kodnadu; Shreya Kodnadu cell; Son Le; Stephanie Entizne; SVPReliability; SVPSched; Tajina Casey; Tera Curren; Tony Ochoa; "Troubleshooter Cell"; Veronica Bogan; Voula Margelos; Wendy Stone; "Wendy Stone Cell"; "Wendy stone Gmail"
Subject:	CAISO DIRECTED LOAD SHED AND RESTORED
Date:	Friday, August 14, 2020 8:23:00 PM

CAISO issued an Operating instruction to shed 13MW of Firm load at 1930. At 1936 13 MW of micro grid load was shed. At 2005 CAISO terminated the load shed operating instruction and 13MW of micro grid load was restored at 2009