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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 Comments on Reconsideration of Walsh Final Decision

SECTION 1720 OF THE COMMISSIONS REGULATIONS ALLOW A PETITION FOR RECONSIDERATION IN AN SPPE PROCEEDING.

The applicant argues that the, "*Petitioner has no right to file a Petition for Reconsideration under Section 1720 of the Commission Regulations.*" The applicant argues that Petitions for Reconsideration can only be filed in AFC proceedings according to Article 5 of the commission's regulations. The applicant's argument is laughable as the applicant's attorney just filed a petition for reconsideration in the Sequoia Data Center Proceeding. On September 10 the applicant's attorney filed a petition for reconsideration of the full commission's decision to remand the Sequoia Data center PD back to the committee. (See Sequoia Data Center 19-SPPE-03 TN 234649) [C1-Santa Clara LLC Petition For Reconsideration-Appeal of Order](#).

Applicant's attorney has raised these baseless claims that Section 1720 does not allow a Petition for Reconsideration in SPPE Proceedings before and they have been rejected. As the full commission stated in the McLaren Data Center "Order on Petition for Reconsideration", "***Notwithstanding the parties' various arguments about the applicability of Section 1720, the Commission is not persuaded that Section 1720 does not apply and, moreover, recognizes that it has discretion under Public Resources Code section 25530 to consider a petition for reconsideration for any Commission order or decision.***" ¹

¹ 17-SPPR-01 TN 226293 [Order on Petition for Reconsideration](#) Page 2

PETIONER WAS NOT AWARE THAT THE WALSH AND LAFYETTE PROJECTS WERE ADJACENT DURING THE MAY 27 EVIDENTIARY HEARING FOR THE WALSH PROJECT

Both staff and applicant make claims that petitioner knew about the location of the Lafayette Data Center next to the Walsh Data Center. While petitioner was aware there was a proposed Lafayette Data Center at the May 27 evidentiary hearing it would have been impossible to know the projects location since the commission itself did not announce receipt of the application until July 12, 2020. (See TN 228949 Notice of Receipt) Clearly the applicant was aware the Lafayette and Walsh Projects were adjacent as they are both owned and managed by Digital Realty. Neither staff or applicant included the impacts from the construction and operation of the 99 MW Lafayette Data Center into the analysis of the construction and operational impacts of the Walsh Data Center. This is despite the fact that BAAQMD CEQA Guidelines require inclusion of all reasonably foreseeable projects in the cumulative impact's assessment an error in Staff CEQA analysis and fatal to the commission's decision.

THE DECISION COMMITS LEGAL ERROR IN CONCLUDING THAT NO CUMULATIVE IMPACT AASESMENT IS REUIRED BY CEQA.

The Walsh Final Decision makes a legal error when it mistakenly concludes that an air quality cumulative impact assessment is not necessary. The final decision reasons that a cumulative impact analysis is not required stating:

“Mr. Sarvey challenged Staff's reliance on the 2017 BAAQMD Guidelines, pointing to language in the 2017 BAAQMD Guidelines stating that BAAQMD Thresholds are not conclusive and do not excuse a public agency of the duty to consider evidence that a significant effect may occur under the fair argument standard. Mr. Sarvey stated that the area in which the Project is to be located is overburdened with pollution, pointing to the number of existing and proposed data centers as well as to the fact that BAAQMD has

designated it as an area in need of best practices and further study under its CARE (Community Air Risk Evaluation) Program.”In reliance on the BAAQMD Thresholds, we find that there are no significant cumulative impacts from criteria pollutants related to routine emissions.

But the California Air Resource Board disagrees with the Final Decision’s conclusions. The Air Resources Board submitted a letter addressed to the Sequoia committee but clearly stated in the letter, **“CARB’s concerns here are applicable to most, if not all, proposed data center projects undergoing review. Thus, while the comments here are made in the context of the Sequoia Data Center proposal, they also represent air quality issues with current data center review.”**² The Air Resources Board stated in their October 15 comment letter, on the air quality analysis of the Sequoia Data Center and the other data centers the CEC is permitting.

*“it would be appropriate to consider ambient air quality impacts of multiple data centers—not just multiple generators—because the CEC is currently considering several projects in the same area. The impacts from the operation of the backup generators at these other constructed and/or proposed data centers located in the general project area should be included in the ambient air quality analysis for the proposed project to determine the cumulative impacts. Including these other data centers in the analysis is important given that it is unlikely the impacts from these other projects are properly accounted for in the background ambient data. This suggests there are significant adverse environmental impacts from this proposed project that require additional mitigation measures or a full environmental impact report—or even that the SPPE is not appropriate for this project.”*³ *“Thus, the conditions under which data centers may operate may already include poor air quality, meaning the incremental contribution of data centers to this pollution may also be cumulatively significant, even for relatively small amounts of pollution.”*⁴

² Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 2

³ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 5 ,6

⁴ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 7

On August 29, 2019 the committee for the Walsh Data Center held a status conference for the application. At that conference the committee also expressed an interest in the cumulative air impact analysis of the project in conjunction with other data centers on the SVP South Loop. As the Committee stated at the August 29 status conference for the Walsh Data Center:

“A further area is cumulative impacts. What projects have been previously approved or are under construction that are being used for the cumulative impacts analysis? For example, in Walsh, is Walsh on the same loop as say SC-1, McLaren, and Laurelwood, for determining cumulative impact for reliability? Similarly, this would also impact air quality. And I know that there were several data requests that staff put forward about these types of issues in terms of cumulative impacts analysis, but we're also very interested in that. And air quality always raises to me then issues of public health and environmental justice. So again we're not looking for answers today, but we do expect to see some analysis and evidence to help us make an informed decision when it comes time for that.”⁵

The committee's concerns related to the need and legal requirement for a cumulative air quality analysis in the Walsh Data center proceeding has been confirmed by the Air Resources Board October 15 letter. As I have repeatedly testified, commented, and briefed CEQA requires a cumulative impact assessment especially when the agency conducting the analysis is also reviewing similar projects within a few thousand feet of each other. CEC staff's comments on the petition are meritless.

THE DECISION COMMITTS LEGAL ERROR IN CONCLUDING THAT NO EMERGENCY OPERTIONS AIR QUALITY IMPACT AASESMENT IS REQUIRED BY CEQA.

The Walsh Final Decision adopts CEC Staff's theory that analyzing emergency operations is too speculative and therefore need not be performed. The Walsh Final Decision states, *“Mr. Sarvey argued that the IS/PMND fails to meet the requirements of CEQA because it did not analyze the potential impact to air quality from emergency operations. Mr. Sarvey disagreed that such an analysis is too speculative, pointing out*

⁵ TN 229861 Transcript of 08-29-2019 Committee Conference Page 29,30

that a similar analysis was done for the Laurelwood Data Center by CEC Staff and for the Santa Clara Data Center by BAAQMD. He also claimed that an analysis of emergency operations was conducted in Washington State. However, the fact that a modeling analysis was performed for other backup generators does not mean that such an analysis would yield useful information in this case.⁶ We find Staff's approach to be well-reasoned and decline to adopt Mr. Sarvey's conclusion that, because an analysis was performed under other circumstances, CEQA requires it to be performed here. While we agree that the operation of the Backup Generators in the event of interruption of electric service from SVP will create criteria pollutant emissions, we are persuaded that the number of assumptions required for assessing the impacts of those emissions render the results too speculative to be meaningful.⁷"

The Air Resources Board disagrees with the CEC Staff and the final decision that emergency operation is too speculative to model and agrees that CEQA requires such an assessment. The Air Resources Board stated in its October 15 letter to the commission on data center air quality analysis.

"In CARB's view, data center emergency operations are not speculative, and an evaluation of their operations during loss of power—for which the centers are being specifically designed, and for which they are marketed to customers—is also not speculative. CEQA requires an appropriate evaluation even of foreseeable impacts otherwise imprecise in scope or contingent in occurrence.⁸ Modeling at least some impact from simultaneous operation of the backup generators is no more speculative than assuming no hours of simultaneous operation or even in modeling the permitted 50 hours annually of operation for maintenance, which requires a similar degree of CEC making reasonable assumptions.⁹ Consequently, CARB recommends that the short-term criteria pollutant and toxic air contaminant ambient air quality impacts due to the emergency operation of the backup generators for the proposed project be evaluated.¹⁰

⁶TN 234408 Walsh Final Decision Page 22

⁷ TN 234408 Walsh Final Decision Page 22

⁸ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 6

⁹ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 8

¹⁰ TN 235271 California Air Resources Board Comments - CARB Comments

The Final Decision commits legal error when it concludes that emergency operations analysis is not required by CEQA.

CEC STAFF'S OPPOSITION TO THE PETITION FOR RECONSIDERTION IS MERITLESS.

CEC Staff states in its opposition to the petition for reconsideration that, *“In dramatic fashion, the petition identifies rolling blackouts, unprecedented strain on the grid, states of emergency, public safety power shutoffs (PSPS), and programmatic comments regarding backup diesel generators made by the California Air Resources Board as the rationale for the petition. The petitioner is simply attempting to cloak an effort to relitigate the issue of air quality analysis for emergency operations, an issue that was comprehensively analyzed. The petition confuses the issue of causes of emergency generator operations with ability to model emergency generator operations and related emissions.”*¹¹

CEC Staff is ignoring the concerns expressed by all five commissioners at the September 9 business meeting. At that meeting, *“The CEC adopted a motion to remand the proceedings back to the Committee for further proceedings, citing the new information about energy emergencies and the need to consider additional relevant information on air quality and public health impacts, as suggested by CARB and BAAQMD.”*¹²

CEC Staff is ignoring their own determinations that rotating outages and CARB's comments now require EIR's in both the San Jose Data Center case and the Great Oaks South Data Center proceeding to address the Air Resources Board's comments and the impacts of energy emergencies on air quality in the project area.

In the Great Oaks South Data Center proceeding CEC Staff just issued a notice of preparation of an EIR.¹³ The Committee order authorizing CEC Staff to prepare an

¹¹ TN 234892 CEC Staff's Opposition to Petition for Reconsideration Page 2

¹² TN 234898 Revised Notice of Hearing – Petition for Remand Page 2,3

¹³ TN 235414

EIR stated that CARB and BAAQMD’s concerns necessitated CEC Staff to prepare and EIR. As the order stated:

Here, Staff’s intent to conduct the more thorough analyses required under an EIR are appropriate given that CARB and BAAQMD—two agencies with expertise in air quality and public health modeling, analysis, and impacts—have expressed concerns that Staff’s analyses and modeling might not fully identify potential significant air quality and public health impacts. In addition, an EIR would help better inform the public, including residents who have expressed significant interest in the project, and allow the CEC to consider alternatives to the proposed diesel-fired backup generators. Thus, given the totality of the circumstances in this case, we agree that an EIR would best meet the purposes of CEQA, and decline Applicant’s request to direct Staff to prepare an IS/MND.¹⁴

. In the San Jose Data Center CEC Staff is now conducting an EIR to analyze the projects impacts to ensure a complete Environmental Impact Report is prepared. As stated in the CEC Staff’s latest status report:

“Since staff filed Status Report #6 on September 15, 2020, staff has continued to meet with the applicant, City of San Jose, the Bay Area Air Quality Management District (BAAQMD), and the California Air Resources board (CARB) to ensure a complete Environmental Impact Report is developed that includes City- and BAAQMD-specific details. To comply with CEQA procedural requirements, staff is also drafting the Notice of Preparation of an Environmental Impact Report for the project.”¹⁵

CONCLUSION

Reconsideration of the Walsh Data Center Final Decision is necessary to correct the errors in the decision. Reconsideration is necessary to correct Staff’s analyses and modeling that do not fully identify significant air quality and public health

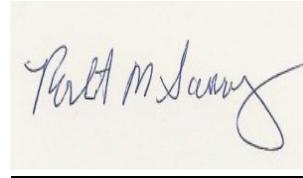
¹⁴ 20-SPPE-01 TN 235275 [COMMITTEE SCHEDULING ORDER AND RELATED ORDERS](#) Page 3

¹⁵ TN 235258 [STATUS REPORT #7 FOR THE SAN JOSE CITY DATA CENTER SMALL POWER PLANT EXEMPTION \(19-SPPE-04\)](#)

impacts from the Walsh Data Center. Reconsideration is necessary to evaluate the construction and operational impacts of the Walsh Data Center in conjunction with the adjacent Lafayette Data Center.

To grant an SPPE, the CEC must find that no substantial adverse impact on the environment will result from the construction or operation of the power plant. CARB and BAAQMD the two agencies with air quality expertise have commented that the data center projects being analyzed by the CEC have significant air quality impacts that CEC Staff's analyses fail to identify requiring additional analyses or preparation of an EIR.¹⁶

Respectively Submitted,

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

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¹⁶ 20-SPPE-01 TN 235275 [COMMITTEE SCHEDULING ORDER AND RELATED ORDERS](#)
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