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State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Mission College Data Center

Docket 19-SPPE-05

Robert Sarvey's Comments on Reconsideration

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 which is an SPPE 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-SPPE-01 TN 226293 [Order on Petition for Reconsideration](#) Page 2

CEC STAFF'S COMMENTS ON THE PETITION FOR RECONSIDERATION
ARE MERITLESS.

According to CEC Staff's comments on the petition for reconsideration, "*The recent rotating outages are not evidence calling into question a substantive element of the decision to grant the Mission College SPPE. Nor are the comments made by BAAQMD and CARB during consideration of the Proposed Decision in the Sequoia Data Center Backup Generating Facility SPPE proceeding.*"²

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.*"³ While CEC Staff obviously disagrees with CARB's assessment of the projects significant impacts the commissioners do not and consider CARB's comments important enough to remand the Sequoia PD back to the committee.

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

CEC Staff's position on the reconsideration is nonsensical considering their actions in the current data center proceedings. In the Great Oaks South Data Center proceeding CEC Staff just issued a notice of preparation of an EIR.⁴ The Committee order authorizing CEC Staff to prepare an EIR stated that CARB and BAAQMD's concerns necessitated CEC Staff to prepare and EIR. As the order stated:

² TN 234913 Staff's Opposition to Robert Sarvey Petition for Reconsideration Page 1

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

⁴ TN 235414

“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.”⁵

. CEC Staff has also announced that they are preparing an EIR In the San Jose Data Center proceeding to address CARB and BAAQMD concerns:

“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.”⁶

THE DECISION COMMITS LEGAL ERROR BY IGNORING THE CUMULATIVE IMPACTS OF THE OTHER CEC DATA CENTER APPLICATIONS.

As I stated in my testimony and comments on the proposed decision, “*The analysis and the PD ignore the cumulative impact of the diesel and NO₂ health and air quality impacts from the six Santa Clara Data centers being reviewed by the CEC.*”⁷

Just like the proposed decision the final decision also completely ignores argument that a cumulative impact assessment of all the CEC data centers is required.

⁵ 20-SPPE-01 TN 235275 [COMMITTEE SCHEDULING ORDER AND RELATED ORDERS](#)
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⁶ TN 235258 [STATUS REPORT #7 FOR THE SAN JOSE CITY DATA CENTER SMALL POWER PLANT EXEMPTION \(19-SPPE-04\)](#)

⁷ TN 234279 PD Comments Sarvey

The California Air Resource Board agrees that a cumulative impact assessment which includes the CEC Data centers is necessary. 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.”**⁸ 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.”*⁹ *“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.”*¹⁰

The Final Decision must be revisited to address the cumulative impacts from all the large data center projects the CEC is permitting.

⁸ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 2

⁹ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 5, 6

¹⁰ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 7

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

The Mission College Final Decision adopts CEC Staff's argument that analyzing emergency operations is too speculative and therefore need not be performed. The Mission College Data Center Final Decision states, *"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."*¹¹ 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.¹² 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.¹³ Consequently, CARB recommends that the short-term criteria pollutant and toxic air contaminant ambient air quality impacts due to the

¹¹ TN 234401 [Mission College Final Decision](#) Page 21

¹² Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 6

¹³ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 8

emergency operation of the backup generators for the proposed project be evaluated.¹⁴

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

CARB'S COMMENTS COULD NOT HAVE BEEN PROVIDED AT THE
EVIDENTIARY HEARING.

CEC Staff claims that, *“Lastly, even if CARB’s statements constituted the necessary evidence, Mr. Sarvey fails to explain why it could not have been provided during the evidentiary hearing, as required by section 1720(a)(1).”*¹⁵ The evidentiary hearing was held on June 15, 2020 and the Air Resources Board provided its comments which support my testimony on September 9 and October 15. If I had the Air Resources Board’s October 15, 2000 letter explaining the deficiencies in Staff’s analysis I would have surely submitted it at the evidentiary hearing. The CARB letter completely agrees with my testimony that emergency operations and analysis of cumulative impacts from all the CEC data centers was required to identify potential significant impacts.

CONCLUSION

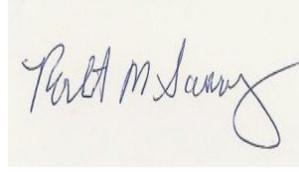
To grant an SPPE, the CEC must find that no substantial adverse impact on the environment will result from the construction or operation of the power plant. CARB and BAAQMD the two agencies with air quality expertise have commented that the data center projects being analyzed by the CEC have significant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

¹⁴ Exhibit 1 TN 235271 California Air Resources Board Comments - CARB Comments on Air Quality Analysis Page 9

¹⁵ TN 234913 Staff’s Opposition to Robert Sarvey Petition for Reconsideration Page 7

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

A handwritten signature in cursive script, reading "Robert M. Sarvey", written in dark ink on a light-colored rectangular background. The signature is fluid and stylized, with a large loop at the end of the last name.

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