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**State of California
State Energy Resources Conservation and
Development Commission
1516 Ninth Street, Sacramento, CA 95814
(800) 822-6228 – www.energy.ca.gov**

**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

***MISSION COLLEGE BACKUP
GENERATING FACILITY***

Docket No. 19-SPPE-05

Order No: 20-1116-5

ORDER ON PETITION FOR RECONSIDERATION

On November 25, 2019, Oppidan Investment Company (Applicant) submitted an application for a small power plant exemption (SPPE) to the California Energy Commission (CEC)¹ for the Mission College Backup Generating Facility (Mission College) in Santa Clara, California.² Mission College will consist of 43 2.5-megawatt and two 600-kilowatt diesel backup generators to provide an uninterruptible power supply to the Mission College Data Center during interruptions of the electrical supply.³

On June 8, 2020, Robert Sarvey petitioned to intervene in the case.⁴ The Committee⁵ appointed to preside over this SPPE application issued an order granting intervenor status to Mr. Sarvey on June 10, 2020.⁶

The Committee issued its Committee Proposed Decision (Proposed Decision) on July 31, 2020,⁷ and invited interested persons, public agencies, and members of the public to provide written comments on the Proposed Decision by August 10, 2020.⁸

¹ The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Pub. Resources Code, § 25200.)

² Information about this application, including a link to the electronic docket, may be found on the CEC's [web page](http://ww2.energy.ca.gov/sitingcases/missioncollege/) at <http://ww2.energy.ca.gov/sitingcases/missioncollege/>. Documents related to this application may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05) at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05>. The application is TN 230844 through 230848.

³ TN 230848, p.1.

⁴ TN 233349. Mr. Sarvey actually submitted the petition to intervene the CEC on Saturday, June 6, 2020.

⁵ On January 22, 2020, the CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea A. Scott, Vice Chair and Associate Member. (TN 231784.)

⁶ TN 233422.

⁷ TN 234113.

⁸ TN 234144, p. 1.

Mr. Sarvey filed written comments on the Proposed Decision on August 10, 2020.⁹ The comments challenged the Proposed Decision’s findings and conclusions regarding alternatives to diesel, cumulative air quality impacts, the foreseeability of emergency operations, and greenhouse gas emissions.¹⁰

The CEC held a public hearing on the Proposed Decision on August 12, 2020.¹¹ At the hearing, Applicant and Staff provided comments in support of the decision.¹² Neither Mr. Sarvey nor any other members of the public offered oral comments during the public hearing. At the conclusion of the public hearing, the CEC adopted the Proposed Decision as its own final decision, making findings under the California Environmental Quality Act, and granting the SPPE for Mission College (Final Decision).¹³

On September 10, 2020, Mr. Sarvey filed “Robert Sarvey's Petition for Reconsideration” (Petition). On September 17, 2020, we issued the original “Notice of California Energy Commission Hearing on Petition for Reconsideration.”¹⁴ On October 1, 2020 and October 30, 2020, we issued the “Revised Notice of California Energy Commission Hearing on Petition for Reconsideration”¹⁵ and the “Second Revised Notice of California Energy Commission Hearing on Petition for Reconsideration,”¹⁶ respectively, which ultimately set the hearing on the Petition for the November 16, 2020 business meeting and invited the parties to file comments by October 30, 2020.¹⁷

On September 25, 2020, comments in opposition to the Petition were filed by Staff¹⁸ and Applicant.¹⁹ Mr. Sarvey filed comments on the Petition on October 30, 2020,²⁰ which reference the October 15, 2020 written comments that the California Air Resources Board (CARB) filed in the Sequoia SPPE proceeding (Docket No. 19-SPPE-03).²¹

The CEC held a hearing on the Petition on November 16, 2020. At that time, the CEC received comments from Mr. Sarvey, Applicant, Staff, CARB, the Bay Area Air Quality Management District, and the Santa Clara and San Benito Counties Building and Construction Trades Council. At the conclusion of the hearing, the CEC voted to deny

⁹ TN 234279.

¹⁰ *Ibid.*

¹¹ TN 234365.

¹² TN 234425, pp. 141-145, which is in the transcript of the August 12, 2020 business meeting.

¹³ TN 234365.

¹⁴ TN 234811.

¹⁵ TN 234981.

¹⁶ TN 235458.

¹⁷ *Id.* at 2.

¹⁸ TN 234913.

¹⁹ TN 234917.

²⁰ TN 235474, p. 1.

²¹ TN 235474, pp. 3, 5.

the Petition based on the findings adopted at the meeting. The CEC also ordered that this order be prepared.

FINDINGS

After considering the Petition, written comments, and oral comments presented at the November 16, 2020 business meeting, the California Energy Commission hereby adopts the following findings:

1. Consistent with the broad discretion afforded to the California Energy Commission under Public Resources Code section 25530, it is appropriate to apply the principles found in California Code of Regulations, title 20, section 1720 to determine whether to grant Mr. Sarvey's Petition.
2. While Mr. Sarvey has filed CARB's written comments in the Mission College Backup Generating Facility docket, Mr. Sarvey has not presented any evidence to show how CARB's written comments filed in the Sequoia small power plant exemption proceeding can, or should, be applied to the Mission College Backup Generating Facility.
3. While the heat storm and public safety power shutoff events of August and September 2020 were not contemplated at the time of the adoption of the Final Decision, a review of the Final Decision indicates that it considered a broad range of potential events that could cause an outage and necessitate operation of the emergency backup generators. These events do not undermine the conclusion in the Final Decision that operation of the Mission College Backup Generating Facility's backup diesel generators is likely to be infrequent and of limited duration, nor do they call into question whether Silicon Valley Power will have sufficient resources to provide power to the Mission College Data Center.
4. The Bay Area Air Quality Management District participated throughout this proceeding and indicated that their concerns were addressed by the analyses presented by Staff. We appreciate their participation at the November 16, 2020 business meeting and also earlier in the proceeding, but note that despite their awareness of the significance of the issue of emergency operations in this proceeding, they did not provide comments that were specific to the Mission College Backup Generating Facility proceeding nor did they provide enough specificity for us to ascertain how that information could affect the conclusions in the Final Decision. Similarly, we value the CARB's participation at the November 16, 2020 business meeting, but their comments also lacked sufficient specificity to support the Petition or effect our original conclusions.
5. The Final Decision relied on the Bay Area Air Quality Management District's California Environmental Quality Act Guidelines to analyze air quality impacts. Under those guidelines, because the emissions from the Mission College Backup Generating

Facility did not exceed the project-level thresholds of significance, no separate cumulative impact analysis is required.

6. The Final Decision addresses comments received regarding the use of technology alternatives to diesel-powered backup generators; no alternatives analysis is required because there is no substantial evidence that the Mission College Backup Generating Facility will have a significant adverse impact on the environment.

7. Based on the foregoing, Mr. Sarvey has not presented new evidence or shown an error in fact or change or error of law to support his Petition.

ORDER

Therefore, the California Energy Commission hereby adopts the following order:

The California Energy Commission **DENIES** the Petition for Reconsideration of the Final Decision granting a small power plant exemption to the Mission College Backup Generating Facility.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on November 16, 2020.

AYE: Hochschild, Scott, Douglas, McAllister, Monahan

NAY: None

ABSENT: None

ABSTAIN: None



Cody Goldthrite
Secretariat