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**State of California
State Energy Resources Conservation and
Development Commission
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**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

***WALSH BACKUP GENERATING
FACILITY***

Docket No. 19-SPPE-02

Order No: 20-1116-4

ORDER ON PETITION FOR RECONSIDERATION

On June 28, 2019, 651 Walsh Partners, LLC (Applicant)¹ submitted an application for a small powerplant exemption (SPPE) to the California Energy Commission (CEC)² for the Walsh Backup Generating Facility (Walsh) in Santa Clara, California.³ Walsh will include 32 3.0-megawatt (MW) and one 2.0-MW diesel backup generators to provide an uninterruptible power supply to the Walsh Data Center during interruptions of the electrical supply.⁴

On March 30, 2020, Robert Sarvey petitioned to intervene in the case.⁵ The Committee⁶ appointed to preside over this SPPE application issued an order granting intervenor status to Mr. Sarvey on April 27, 2020.⁷ The Committee issued the Committee Proposed Decision (Proposed Decision) on July 28, 2020,⁸ and invited interested

¹ 651 Walsh Partners, LLC, is managed by Digital Walsh Holding, LLC, which is a subsidiary of Digital Realty Trust, L.P. (TN 228877-2, p. 1, fn. 1.)

² The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Pub. Resources Code, § 25200.)

³ Information about this application, including a link to the electronic docket, may be found on the CEC's [web page](https://ww2.energy.ca.gov/sitingcases/walsh/) at <https://ww2.energy.ca.gov/sitingcases/walsh/>. Documents related to this application may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-02) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-02>. The application is TN 228877-1 through -2.

⁴ TN 228877-2, p. 1.

⁵ TN 232587.

⁶ On July 15, 2019, the CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Patty Monahan, Commissioner and Associate Member. (TN 228984.)

⁷ TN 232849. Helping Hand Tools and California Unions for Reliable Energy (CURE) also petitioned to intervene and the Committee issued orders granting them intervenor status. (TNs 230809, 230808.)

⁸ TN 234026.

persons, public agencies, and members of the public to provide written comments on the Proposed Decision by August 7, 2020.⁹

The CEC held a public hearing on the Proposed Decision on August 12, 2020.¹⁰ At the hearing, Applicant and Staff provided comments on the Proposed Decision.¹¹ None of the intervenors nor any other members of the public offered oral comments during the public hearing.¹² At the conclusion of the public hearing, the CEC adopted the Proposed Decision as the Final Decision, making findings under the California Environmental Quality Act (CEQA), and granting the SPPE for Walsh (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 Request for Reconsideration.”¹⁴ On October 1, 2020 and October 30, 2020, we issued a “Revised Notice of California Energy Commission Hearing on Petition for Reconsideration” and a “Second Revised Notice of California Energy Commission Hearing on Petition for Reconsideration,” 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, 2020.¹⁵

Staff filed an opposition to the Petition on September 24, 2020.¹⁶ Applicant filed its opposition to the Petition on September 25, 2020.¹⁷ Mr. Sarvey filed comments on the Petition on October 30, 2020,¹⁸ 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).¹⁹

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, Bay Area Air Quality Management District, Claire Warshaw, and the Santa Clara and San Benito Counties Building and Construction Trades Council. At the conclusion of the hearing, the CEC

⁹ TN 234048. Helping Hand Tool submitted written comments on the Proposed Decision on August 7, 2020. (TN 234265.)

¹⁰ The transcript of the August 12, 2020, business meeting is TN 234425.

¹¹ TN 234425, pp. 123-126. Enchanted Rock, LLC. filed written comments prior to the CEC’s August 7, 2020, business meeting.

¹² *Id.* at pp. 126-127.

¹³ TN 234366. The CEC filed its Final Decision on August 21, 2020. (TN 234408.)

¹⁴ TN 234815.

¹⁵ TN 234980, TN 235459.

¹⁶ TN 234892.

¹⁷ TN 234918.

¹⁸ TN 235473.

¹⁹ TN 235473, pp. 3, 5.

voted to deny the Petition based on the findings adopted at the hearing. 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 Walsh 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 Walsh 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 Walsh Backup Generating Facility's backup diesel generators. These events do not undermine the conclusion in the Final Decision that operation of backup 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 Walsh 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 the Bay Area Air Quality Management District's participation at the November 16, 2020 business meeting and earlier in the proceeding but note that, despite their awareness of the significance of this issue of emergency operations in this proceeding, they failed to provide comments that were specific to Walsh and did not provide enough specificity for us to ascertain how the information could affect the conclusions in the Final Decision. Similarly, we value CARB's participation at the November 16, 2020 business meeting as well, but their comments also lacked sufficient specificity to support the Petition or affect our original conclusions.

5. The Final Decision relied on the Bay Area Air Quality Management District's California Environment Quality Act Guidelines to analyze air quality impacts. Under those guidelines, because the emissions from the backup generators 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 Walsh will have a significant adverse impact on the environment.
7. The California Energy Commission considered the contention that the Walsh and Lafayette projects should be reviewed as a single project. The Applicant responded to and refuted the claim at the August 12, 2020, public hearing before the adoption of the Final Decision. Mr. Sarvey has not presented any new evidence to support the argument that the relevant legal standard to find that Walsh and Lafayette are a single project has been met nor has he shown a change in law supporting the argument.
8. 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 Walsh 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

Cody Goldthrite
Secretariat