

**DOCKETED**

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

***SEQUOIA BACKUP GENERATING  
FACILITY***

**Docket No. 19-SPPE-03**

**ORDER AFFIRMING AND MODIFYING ORDER TO REMAND**

On August 14, 2019, C1-Santa Clara, LLC (Applicant) submitted an application for a small powerplant exemption (SPPE) for the proposed Sequoia Backup Generating Facility (Project) in Santa Clara, California,<sup>1</sup> to the California Energy Commission (CEC).<sup>2</sup> The Applicant proposes to build 54 diesel backup generators as part of an uninterruptible power supply to the Sequoia Data Center during interruptions of the electrical supply.

The CEC serves as the “lead agency” under the California Environmental Quality Act (CEQA) for SPPE applications.<sup>3</sup> On January 23, 2020, CEC staff (Staff) submitted an Initial Study/Proposed Mitigated Negative Declaration (IS/PMND) containing its analysis of the Project’s potential environmental impacts.<sup>4</sup> The public comment period<sup>5</sup> on the IS/PMND ended on February 28, 2020.<sup>6</sup> The City of San Jose Airport Department,<sup>7</sup> Bay Area Air Quality Management District (BAAQMD),<sup>8</sup> the Department of Toxic Substance

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<sup>1</sup> 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/sequoia/) at <https://ww2.energy.ca.gov/sitingcases/sequoia/>. Documents related to this application may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-03) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-03>.

<sup>2</sup> The CEC is formally known as the “State Energy Resources Conservation and Development Commission.” (Pub. Resources Code, § 25200.) All subsequent citations are to the Public Resources Code unless otherwise specified.

<sup>3</sup> Pub. Resources Code, § 25519(c).

<sup>4</sup> TNs 232322, 231651.

<sup>5</sup> § 21082.1(c)(4)(A)(i); CEQA Guidelines, § 15073(a) (the public review period on any document submitted to the State Clearinghouse for review by state agencies shall be at least 30 days).

<sup>6</sup> TN 232322.

<sup>7</sup> TN 232018.

<sup>8</sup> TN 232242.

Control,<sup>9</sup> and Robert Sarvey<sup>10</sup> submitted comments before the end of the comment period.<sup>11</sup>

Staff responded to comments received during the public comment period on March 6, 2020.<sup>12</sup> BAAQMD's comments on the IS/PMND suggested further analysis in the areas of air quality and greenhouse gas (GHG) emissions.<sup>13</sup> Staff's responses identified and corrected errors in the text of the IS/PMND.<sup>14</sup> Staff's responses also clarified how and why the analysis in the IS/PMND reached the conclusion that the air quality and GHG emissions impacts from the Project would have a less than significant impact.<sup>15</sup>

On June 5, 2020, the Committee conducted a public evidentiary hearing as required by the CEC's regulations.<sup>16</sup> The parties presented testimony and documentary evidence and the public and interested public agencies also had the opportunity to provide comments on the Project and IS/PMND during the evidentiary hearing.

After taking extensive comment on the Project, on August 21, 2020, the Committee issued a Committee Proposed Decision (Proposed Decision) that recommended approval of a mitigated negative declaration and granting an SPPE for the Project.<sup>17</sup> The Notice of Availability of the Proposed Decision, Notice of Public Comment Period, and Notice of Hearing set the CEC's consideration of the Proposed Decision for the September 9, 2020, business meeting.<sup>18</sup>

The CEC conducted the public hearing on the Proposed Decision as scheduled. The hearing was held via Zoom, because Executive Orders N-25-20 and N-29-20 and the recommendations from the California Department of Public Health encourage physical distancing in order to slow the spread of COVID-19. Members of the public, including the parties, were callers on a Verizon conference line.

At the September 9, 2020, hearing, parties to the proceeding, including CEC staff, the Applicant, and Mr. Sarvey, presented arguments and comments to the CEC. In addition,

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<sup>9</sup> TN 232259.

<sup>10</sup> On December 14, 2019, Robert Sarvey submitted a petition to intervene in the case. (TN 231245.) The Committee issued an order granting intervenor status to Mr. Sarvey on January 16, 2020. (TN 231546.) California Unions for Reliable Energy also intervened in the proceeding but did not participate in any hearings or offer any comments. (TNs 232045, 232401.)

<sup>11</sup> TN 232045.

<sup>12</sup> TN 232338.

<sup>13</sup> TN 232242.

<sup>14</sup> TN 232338, pp. 2-3.

<sup>15</sup> *Ibid.*

<sup>16</sup> Cal. Code Regs., tit. 20, § 1944. Prior to the Evidentiary Hearing, the Committee conducted a Prehearing Conference on May 18, 2020, to determine the parties' readiness to proceed to and the scope of the Evidentiary Hearing. TN 234024 (Transcript of the May 29, 2020, Prehearing Conference).

<sup>17</sup> TN 234416.

<sup>18</sup> TN 234417.

during the public comment period, both the California Air Resources Board (CARB) and BAAQMD offered comments on the Proposed Decision. CARB and BAAQMD, along with Mr. Sarvey, proposed that the CEC consider additional information about air quality and public health impacts of the project, particularly in light of the energy emergencies caused by heat storms and public safety power shutoffs in August and September 2020.

After conducting the public hearing on the Proposed Decision and deliberating in a properly-noticed closed session, the CEC returned to the public portion of the hearing. The CEC then made a motion to remand the proceedings back to the Committee to consider air quality and public health impacts in light of the recent energy emergencies (Motion to Remand).<sup>19</sup> The CEC adopted the Motion to Remand but did not receive any additional public comment before doing so.

On September 10, 2020, the Applicant filed a Petition for Reconsideration and Appeal of Committee Ruling.<sup>20</sup> On September 18, 2020, the CEC noticed, on its own motion, a hearing on the Motion to Remand to determine whether it should be affirmed, affirmed with modifications, or vacated.<sup>21</sup> The notice of the hearing was revised several times<sup>22</sup>, but, ultimately, a hearing on the Motion to Remand was scheduled for November 16, 2020.<sup>23</sup>

On October 15, 2020, as discussed during the September 9, 2020, public hearing, CARB filed additional written comments, expanding on their initial verbal comments.<sup>24</sup> CARB challenged the sufficiency of the environmental analysis in the Proposed Decision (and the IS/PMND) of the Project's potential to cause significant air quality impacts. CARB's written comments also outlined additional analyses CARB stated were required as a matter of law.

Consistent with the notices, the CEC invited comments on the Motion to Remand and requested that any such comments be filed on or before October 30, 2020. Comments were filed on October 30, 2020, by Staff,<sup>25</sup> Mr. Sarvey,<sup>26</sup> and Applicant.<sup>27</sup> In addition,

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<sup>19</sup> See TN 234840, at pp.25-26. On August 16, 2020, and September 3, 2020, the Governor proclaimed a state of emergency that allowed the emergency use of stationary generators during extreme heat events that were deemed an emergency event. (See August 16, 2020, Governor's [Proclamation of a State of Emergency](https://www.gov.ca.gov/wp-content/uploads/2020/08/8.16.20-Extreme-Heat-Event-proclamation.pdf), available at <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.16.20-Extreme-Heat-Event-proclamation.pdf>, and September 3, 2020, Governor's [Proclamation of a State of Emergency](https://www.gov.ca.gov/wp-content/uploads/2020/09/9.3.20-Extreme-Heat-Event-Proclamation.pdf), available at <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.3.20-Extreme-Heat-Event-Proclamation.pdf>.)

<sup>20</sup> TN 234649.

<sup>21</sup> TN 234821.

<sup>22</sup> TNs 234898, 235020.

<sup>23</sup> TN 235467.

<sup>24</sup> TN 235271.

<sup>25</sup> TN 235472.

<sup>26</sup> TN 235475.

<sup>27</sup> TN 235476.

Clair Warshaw filed comments on November 4, 2020,<sup>28</sup> and Earthjustice and Sierra Club jointly filed comments on November 13, 2020.<sup>29</sup> The latter late-filed comments expressed generalized concerns about the Project's use of diesel-fired backup generation.

On November 16, 2020, pursuant to California Code of Regulations, title 20, section 1203, subdivision (c), the CEC conducted a public hearing to reconsider its September 9, 2020 adoption of its Motion to Remand. During the November 16 hearing, the CEC received comments from Mr. Sarvey, Applicant, Staff, CARB, BAAQMD, Claire Warshaw, Earthjustice/Sierra Club, and the Santa Clara and San Benito Counties Building and Construction Trades Council on the Motion to Remand. At the conclusion of the hearing, the CEC voted to affirm the Motion to Remand with modifications. The CEC also ordered that this order be prepared.

### **FINDING**

While we acknowledge the importance of the comments raised by Staff and Applicant in support of the analysis contained in the Proposed Decision and its related initial study/mitigated negative declaration, we nonetheless find that CARB is an agency with considerable air quality expertise and that it is appropriate to allow the Committee the opportunity to further explore CARB's concerns.

### **ORDER**

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

1. The Committee is directed to conduct limited additional proceedings to consider those comments raised by the California Air Resources Board and the Bay Area Air Quality Management District in this proceeding that address 1) input assumptions regarding NO<sub>2</sub> impacts from routine testing and maintenance; and 2) direct and cumulative impacts of emergency operations of the Project's backup generators. The Committee may address additional issues that arise during those proceedings.
2. In order to facilitate a timely resolution of this matter, the Committee is directed to report on progress in this proceeding to the full California Energy Commission at the January 2021 business meeting.

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<sup>28</sup> TN 235512.

<sup>29</sup> TN 235600.

