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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:

***SEQUOIA BACKUP GENERATING
FACILITY***

Docket No. 19-SPPE-03

CEC Staff Motion Requesting that the Committee Direct Intervenor Robert Sarvey to Identify which Issue that Requires a Factual Determination Each of His Cross-Examination Questions Falls within

The Sequoia Backup Generating Facility has been extensively analyzed and considered in the almost two years since the application was filed on August 4, 2019. That review appeared to be nearing its end when, on June 5, 2020, the Committee held an evidentiary hearing to accept testimony, evidence, and public comment into the record and subsequently presented a proposed decision for Commission approval on September 9, 2020. However, due to comments made by CARB and BAAQMD at that business meeting, the CEC voted to remand the proceeding to the Committee to address the agencies' stated concerns. On December 14, 2020, CARB and BAAQMD submitted a joint recommendation advocating that the project use Tier 4 engines instead of the proposed Tier 2 engines with diesel particulate filters, concluding that

[w]hen all components are operating, Tier 4 engines are cleaner than the Tier 2 engines proposed, and Tier 4 engines would further reduce this project's potential emissions, most critically during those rare occasions the project may have to run more than one engine at a time. CARB and BAAQMD agree the use of Tier 4 engines is adequate in this case and, given the circumstances, further modeling of emissions may not be necessary if the project applicant agreed to this project change. (TN 235939.)

On December 22, 2020, BAAQMD declared Tier 4 engines Best Available Control Technology (BACT) for engines of the size proposed for this project. (TN 236088.) On January 25, 2021, the project applicant submitted a revised project description modifying the project to include Tier 4 engines and provided updated project information relating to this change. (TN 236429 and 236443.) On February 5, 2021, the

Committee issued the Second Revised Scheduling Order (TN 236651) setting forth deadlines and, in accordance with this order, staff published a Revised Initial Study and Proposed Mitigated Negative Declaration analyzing the applicant's project change on February 26, 2021, concluding the project as proposed would not result in any significant, adverse environmental impacts. (TN 236919.)

On April 12, 2021, the Committee issued a NOTICE OF PREHEARING CONFERENCE, EVIDENTIARY HEARING, SCHEDULING ORDER, AND FURTHER ORDERS (Notice and Orders) (TN 237428.) In the Notice and Orders the Committee noticed that it would be reopening the hearing record only to consider four distinct and narrow topic areas: 1) input assumptions regarding NOx impacts from routine testing and maintenance; 2) direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators; 3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description; and 4) new Additional Information (limited to four pieces of information the Committee specifically requested from staff or the applicant on pages 6-8 in the Notice and Orders.)

As specified in the Notice and Orders, pre-filed written cross-examination questions would be required of anyone who wanted to question the witnesses and each these questions must identify the witness(es) the questions were directed to *and* "the issue(s) that require a factual determination by the Committee." By necessity, the issues that require a factual determination must fall within the four topic areas specified by the Committee.

On April 30, 2021, Intervenor Robert Sarvey filed his cross-examination questions, failing to identify the witness(es) each question was directed to and the issue requiring a factual determination each falls within. On May 3, 2021, the Committee directed Mr. Sarvey to amend his questions to identify the witness(es), but did not direct him to identify for each question which of the four stated issue(s) requiring a factual determination that it falls within. Staff is concerned that Mr. Sarvey is using this proceeding to re-litigate issues that have already been extensively litigated and for which the Committee has not re-opened the hearing record. The majority of Mr. Sarvey's Reply Testimony filed on April 28, 2020, fits within this category, as does a number of his exhibits and several of the questions presented by Mr. Sarvey on April 30, 2021.

In order to ensure the upcoming evidentiary hearing is focused on the topic areas identified by the Committee in the Notice and Orders, in accordance with title 20, California Code of Regulations, section 1211.5(a), staff respectfully requests the Committee direct Mr. Sarvey to specify in his responsive filing due on May 4, 2021,

which of the four topic areas that require a factual determination specified by the Committee does each of his questions fall within.

DATED: May 3, 2021

Respectfully submitted,

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