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State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Docket 19-SPPE-03

Sequoia Data Center

Intervenor Sarvey's Response to: "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"

On May 3, 2021 CEC Staff filed a motion to direct me to, *"Identify which Issue that Requires a Factual Determination Each of His Cross-Examination Questions Falls within."* In the motion CEC staff also makes accusations without specificity that my reply testimony and the majority of my exhibits do not address the issues in the committee notice. CEC Staff reiterated the same accusations at the evidentiary hearing moving to block admission of some exhibits and reply testimony. The Committee responded to staff's objections by stating, *"I believe that the Committee has sufficient argument from the parties on these objections. And again, pursuant to Title 20, Section 1211.5(c), the Committee will rule on your objections in the CPD, Committee Proposed Decision."* Title 20 CCR § 1211.5 (c) provides that, *"Requests for action made during any hearing may be made orally to the presiding member and need not be in the form of a written motion. Rulings by the presiding member may be made orally. **If the presiding member does not make a ruling on the motion by the end of the hearing, the motion is deemed denied.**"*

In reality no evidentiary hearing was conducted since no one was allowed to question the responses provided by the staff and the applicant to my questions. Other contested issues were never discussed. The hearing notice stated. *"The Committee may allow parties who filed cross-examination in accordance with this notice, limited*

cross-examination of witnesses during the Evidentiary Hearing upon a showing of good cause.” Good cause was not defined in the hearing order but the committee created a bar that could not be overcome. At the hearing the committee stated, *“in showing good cause the person requesting oral cross-examination should be prepared to show extraordinary circumstances, such as illness, and other excusable circumstances beyond the requester’s control that prevented him or her from asking questions. Mere disagreement with an answer is not sufficient for a showing of good cause. In addition, you will need to identify the witness to be cross-examined, and tell us the availability of the witness today and any time constraints the witness may have.”* Essentially there was no evidentiary hearing as no one was allowed to cross examine the answers to the questions I submitted or any other matter that remained in dispute.

Evidentiary hearing questions

Staff objected to the evidentiary hearing questions I submitted in its May 3 motion. Staff did not identify any individual question which it objected to. Staff merely stated in its May 3, 2021, motion, *“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.”* Each question and the issue it is associated with is provided below. Issue is stated in red.

1) A lead agency is required to re-circulate a MND when the document must be substantially revised after public notice of its availability has previously been given, but prior to its adoption. A “substantial revision” of the MND means a new, avoidable significant effect is identified and mitigation measure[s] or project revision[s] must be added in order to reduce the effect to insignificance. CARB and BAAQMD have identified NOx emissions from emergency operation as a probable significant effect and BAAQMD has prescribed SCR to mitigate that impact on all engines of that size in the district. The original 321 page IS/MND was filed on January 1, 2020 by staff at the State Clearinghouse so other agencies could comment. Now on March 23, 2021, 14 months later CEC Staff has filed a 401 page revised compiled IS/MND that contains substantial revisions to the original project to mitigate potential NO2 violations. When will staff refile the latest IS/MND with the State Clearinghouse and if not why not? (CEC Staff No witness specified)

Not related to any specific issue.

2) On Page 5.3-31 of the latest version of the Initial Study it states, “**The staff’s cumulative HRA includes four major types of sources: (1) San Jose International Airport emissions sources located within 2,000 feet of the boundaries proposed for the Walsh (19-SPPE- 02) and Sequoia (19-SPPE-03) projects combined; (2) existing stationary sources; (3) surrounding highways, major streets, and railways; and (4) the proposed Sequoia project, the proposed Walsh project, and the approved McLaren project (17-SPPE-01).** There is currently 25 existing data centers in Census Tract 6085505202 which of these data centers was included in staff’s updated analysis. (Staff Witness Wenjun Qian, any Staff Air Witness)

2) direct and cumulative impacts of emergency operations of the Revised Project’s Tier 4-compliant backup generators

3) Did staff include the Lafayette Data Center and the Santa Clara Data Center in its cumulative impact analysis. (Staff Witness Wenjun Qian, any Staff Air Witness)

2) direct and cumulative impacts of emergency operations of the Revised Project’s Tier 4-compliant backup generators

4) In the cumulative impact analysis did staff consider impacts to the employees at any of the businesses within 1,000 feet of the project fenceline? (Staff Witness Wenjun Qian, any Staff Air Witness)

2) direct and cumulative impacts of emergency operations of the Revised Project’s Tier 4-compliant backup generators

5) Staff normally uses a 6-mile radius when considering cumulative impacts for a project application. The maximum cumulative impacts are reported to be at the Off the Wall soccer facility which is located approximately 2,300 feet away from the SDC. How is a 1,000-foot radius representative of the cumulative impacts from this project? (Staff Witness Brewster Birdsall, Any Staff Air Quality witness)

According to the Revised Initial Study and Proposed Mitigated Negative Declaration on Page 4-10, “The SCR system would use urea which will be stored in one 1,500-gallon tank for each pair of generators.” That would lead to a potential of $1,500 \times 27 = 40,500$ gallons of urea stored on site. The IS/MND further states that, “The projects ammonia emission would be 0.21 lb/hr and 0.278 tons/yr (557 lbs/yr) as estimated by the applicant (Sequoia 2021b).¹

¹ TN 236919 Revised Initial Study and Proposed Mitigated Negative Declaration Page 5.3-28

6) What are the GHG emissions from the urea transportation, production, storage, and usage? (Staff Witness Jacquelyn Leyva Record, Any Staff Witness)

2) direct and cumulative impacts of emergency operations of the Revised Project’s Tier 4-compliant backup generators

7) Urea has a storage expectancy of 2 years. If the project only uses 557 lbs a year and stores 40,500 gallons of urea. How much excess urea will be disposed of? (Any Staff Witness)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

8) In the Great Oaks South proceeding the applicant has filed a new noise assessment for the application of SCR to the backup diesel generators. (Exhibit 317) The noise assessment states on page 1, "Noise data provided for generators equipped with the Tier 4 treatment indicates an increase in sound power level of about 5 dBA and a substantial shift in sound energy from higher to lower frequencies. Additionally, Tier 4 treatment would increase the height of the exhaust stack, the location where most noise originates. No other aspects of the project are anticipated to be affected." What is the expected increase in sound from application of the SCR? If there is no expected sound increase why would this project not have an increase in sound with application of SCR like the GOSBGS? (Staff Witness Kenneth Salyphone)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

9) According to the updated sound analysis performed for application of SCR at the Great Oaks South Data Center, "This change in the frequency spectrum of generator noise would affect how the noise propagates throughout the site vicinity as lower frequency sound propagates further by diffracting around structures and through receiving less attenuation provided by absorption in the air." Where is staff's revised noise analysis to reflect the change in frequency spectrum of the generator noise form the application of SCR. (Staff Witness Kenneth Salyphone)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

10) What is the increase in stack height with the application of SCR for the project? If there is no increase in stack height why is this project different than the Great Oaks South project? (Staff Witness Kenneth Salyphone, **Wenjun Qian**)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

11) How will the stack exit velocity change with the application of SCR? (Staff Witness Kenneth Salyphone, **Wenjun Qian**)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

12) What is the expected energy penalty from the application of SCR? (Staff witness **Shahab Khoshmashrab**)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

13) What is the expected energy penalty from the conversion of urea for use in the SCR? (Staff witness **Shahab Khoshmashrab**)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

14) The California Public Utilities Commission just approved the use of backup diesel generators in demand response programs for the upcoming several years in Decision D.21-03-056. The decision provides payment of \$1,000 per MWh for energy from backup diesel generators. Does the applicant intend to participate in this program? Applicant has proposed condition PD-3 as follows:

Condition of Exemption PD 3

The granting of the Small Power Plant Exemption for the Sequoia Backup Generating Facility is specifically conditioned on the provision that at no time shall the Project owner of the Sequoia Data Center participate in a load shedding and/or demand response program that would allow it to voluntarily use electricity generated by the Sequoia Backup Generating Facility in order to participate in any load shedding and/or demand response request from the CEC, any utility, or any State agency.

15) Does the applicant still propose PD-3? (Any Applicant Witness, Scott Galati)

2) direct impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators

16) Considering the CPUC's latest decision does Staff support PD-3 to prevent the SDC from participating in any demand response program? (Any CEC Staff witness)

2) direct impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators

17) What increase in nitrogen deposition did staff determine will be experienced from the use of urea in the SCR. Did staff model that increase? (Staff Witness Wenjun Qian, any Staff Air Witness)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

18) What is the expected ammonia slip from the project? (Staff Witness Wenjun Qian, any Staff Air Witness)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

19) The revised compiled IS/MND states on page 5.3-30 that Ammonia would be emitted from the urea used in the SCR system (Sequoia 2021a), increasing the health risk Has staff included the ammonia emissions in its health risk assessments? (Staff Witness Wenjun Qian, any Staff Witness)

3) other matters discussed and evaluated by the Parties as result of Applicant changing the project description

Exhibits

Staff's motion also states without specificity that, *"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, 20 21."*

At the evidentiary hearing Staff identified, *"Exhibits 313 through 319, and Exhibit 321"* as exhibits they object to being outside the scope of the evidentiary hearing.

Exhibit 313 and 321

Exhibit 313 and 321 are a list of data centers which serve as emission sources near the project. All of these 25 emission sources are located in the same census tract as the Sequoia Data center. As the Air Resources Board stated in its comments on Staff's air quality analysis (Exhibit 320 Page 5,6), *"Furthermore, 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."* These two exhibits are related to direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators. Staff didn't consider these projects in its previous analysis in the original IS/MND as CARB notes in its comments on Staff's air quality analysis.

Exhibit 315 and 316

Staff also objects to exhibits 315 and 316. These two exhibits contain the emergency operations data for data centers in the Bay Area collected by BAAQMD. In the April 12 hearing order, the committee stated, *"Staff is **hereby ordered** to analyze the information submitted by BAAQMD in the Great Oaks South SPPE (20-SPPE-01) and San Jose City SPPE (19-SPPE-04) and explain whether this information alters the prior analysis and conclusion in the IS/PMND that the modeling of emergency operations is speculative."* Staff here is asking the committee to exclude the documents that they ordered staff to analyze to determine the frequency of backup generator operation in the project area. This demonstrates how meritless Staff's motion and objections are as they don't even want the actual data on emergency operations in the record of the proceeding. The only thing more pathetic is the fact that this committee

wouldn't even rule on the admission of the two exhibits they requested analyzed for this proceeding.

Exhibit 317

Exhibit 317 is the engineering evaluation performed by BAAQMD for the Santa Clara Data Center. Staff's revised IS/MND states that, "*Staff's review of the **air quality agency** guidance suggests that modeling to evaluate ambient air quality impacts for criteria pollutants, specifically for the 1-hour NO2 standard, due to a hypothetical emergency scenario, is not warranted.*" One of the main issues of the evidentiary hearing was direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators." Staff's statement that modeling air quality impacts of emergency operations is inaccurate as demonstrated by this exhibit which is squarely in the scope of the evidentiary hearing.

Exhibit 318

Exhibit 318 is the revised noise analysis for the Great Oaks South Backup Generating Facility. The committee here allowed a revised project description without allowing any discovery. Exhibit 318 describes the noise effects of applying SCR to backup diesel engines at a similar data center. Neither Staff nor applicant have analyzed the increase in sound and tonal effects from applying SCR and the projects compliance with the City of Sant Clara Noise ordinance. Since this is almost the same committee that is conducting the Great Oaks South Data Center proceeding, I would assume the committee would address the noise issues from the application of SCR. This was supposed to be part of the evidentiary hearing as a rebuttal exhibit related to changes in the environment from the application of the Tier 4 engines.

Exhibit 319

Staff has not enumerated any reason to deny the submission of Exhibit 319. Exhibit 319 is CEC Staff's jurisdictional letter on the Santa Clara Data Center. The exhibit clearly demonstrates and refutes staff testimony in the revised IS/MND that emergency operations modeling is speculative and unnecessary. Exhibit 319 states,

“Moreover, the potential for the generators to operate simultaneously should be analyzed in a comprehensive environmental document in accordance with the California Environmental Quality Act. Such analysis would identify the project's emissions, assess their impacts, identify feasible mitigation, and assess the potential health risks from this concentration of diesel engines.” Exhibit 319 is relevant to issue number 2 the direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators.

Exhibit 312 Reply Testimony of Robert Sarvey

Staff seems to object to page 4-13 of my reply testimony. Pages 4 through 6 are related to issue of direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators. Staff's revised IS/MND still concludes that emergency operations are speculative and meaningless and should not be performed. Page 4 details the fact that air quality impacts from emergency operations have already been conducted for CO emissions by the applicant in this proceeding. Page 5 is related to direct and cumulative impacts of emergency operations as it describes previous CEC Staff's requirements for operating multiple backup generators at the Santa Clara Data Center. Page 6 is again related to direct and cumulative impacts of the Tier 4 generators as it describes CARB and BAAQMD's attempts to get the CEC Staff to model emergency operations. Page 6 also provides that the ambient air quality standards are the standard of significance for impacts as CEC staff could not identify one in its revised IS/MND.

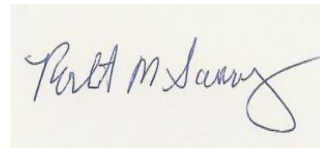
CEC Staff's revised IS/MND testifies that other air districts do not model the emergency operations of multiple backup diesel generators. Page 6 and 7 explains that BAAQMD and CARB are the relevant authorities and they requested an emergency operations air quality evaluation initially in this proceeding and currently in other data center proceedings. This testimony addresses direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators.

Pages 7-11 are all related to the direct and cumulative impacts of emergency operations of the Revised Project's Tier 4-compliant backup generators.

Conclusion

Staff's motion is meritless and nothing more than an attempt to stifle opposition testimony which they cannot refute.

Respectively submitted,

A handwritten signature in blue ink on a light-colored rectangular background. The signature is cursive and appears to read "Robert M. Sarvey".

Robert Sarvey