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Docket Number:	20-SPPE-01
Project Title:	Great Oaks South Backup Generating Facility Small Power Plant Exemption
TN #:	239639
Document Title:	Sarvey's Reply To Applicant's Motion To Strike Reply Testimony
Description:	Sarvey's Reply To Applicant Motion To Strike Reply Testimony
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Submission Date:	9/8/2021 4:09:08 PM
Docketed Date:	9/8/2021

State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Great Oaks South Backup
Generating Facility

Docket 20-SPPE-01

Intervenor Sarvey's Reply To Applicant's Motion To Strike Reply Testimony.

On August 27, 2021 the applicant filed a motion to strike the reply testimony that I submitted on August 24, 2021.¹ The Committee then ordered the parties to respond to the motion to strike by September 8, 2021.² In the following intervenor responds to the applicant's motion to strike.

The applicant's first complaint is that I waited until the last minute to intervene and therefore my reply testimony should be stricken. I intervened according to the committee schedule issued on June 24, 2021 which listed the last day to intervene as July 6, 2021. I'm not aware of any requirement that I file for intervention before the committee deadline in order to be allowed to file testimony in any proceeding. The applicant provides no authority in his motion that would require me to intervene early in order to be able to provide testimony.

Next the applicant complains that I failed to file comments on the DEIR. I can find no requirement in the rules of practice and procedure that I file comments on the DEIR to be able to file testimony in any proceeding. The applicant fails to list any authority that requires comments on the DEIR in order to file testimony.

¹ TN 239458

² TN 239599

Next the applicant complains that my reply testimony was actually opening testimony. I had no opening testimony. I specifically replied to staff's testimony and the applicant's GHG-1 mitigation proposal.³ The first part of my testimony (pages 1,2) addresses staff's cumulative analysis and identifies projects in the Great Oaks Mixed Use development that were not included in the Staff's cumulative public health and air quality analysis. The second part of my testimony (pages 2-5) is rebuttal to staff's testimony on the air quality impact analysis of emergency operations. The third part of my testimony is rebuttal to the applicants 33-page GHG-1 mitigation proposal that was presented by the applicant on August 6, 2021⁴ and the 33-page addendum to the FEIR that was issued by staff on August 18.

The applicant's motion states that, *"Intervenor Sarvey filed his Purported Reply Testimony one day before the deadline to file Reply Testimony to ensure that the parties would not have an opportunity to provide written expert testimony to refute his contentions."* There is absolutely no requirement that I file my reply testimony before the date it was due. The applicant provides no authority that requires me to file my reply testimony before the committee's deadlines require.

The applicant's motion then asserts that, *"Intervenor Sarvey failed to file Opening Testimony in order to prevent the parties from being able to provide written Reply Testimony to refute his contentions."* Applicant's complaint that CEC Staff was unable to respond to my reply testimony is moot as CEC Staff filed a sur reply to my reply testimony on September 3, 2021.⁵ Applicant also had opportunities to file additional testimony as the committee elicited additional information from the parties including comments on their GHG-1 proposal.⁶ The applicant declined to provide any expert testimony in response to the committee questions.

³ TN 239199 SV1 Alternative Measure to Comply with the City of San Jose GHGRS Plan

⁴ TN 239199 SV1 Alternative Measure to Comply with the City of San Jose GHGRS Plan

⁵ TN 239587 CEC Staff's Response to Intervenor Sarvey's Reply Testimony

⁶ TN 239482

Conclusion

The applicant's motion is meritless. The reply testimony I provided is directly responsive to Staff's opening testimony. The applicant's motion to strike is also moot as CEC Staff has responded to my reply testimony in its September 3, 2021, "CEC Staff's Response to Intervenor Sarvey's Reply Testimony."

Respectfully submitted,
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