

**DOCKETED**

<b>Docket Number:</b>	19-SPPE-04
<b>Project Title:</b>	SJ2
<b>TN #:</b>	242877
<b>Document Title:</b>	Sarvey San Jose Data Center Testimony #400
<b>Description:</b>	San Jose Data Center
<b>Filer:</b>	Robert Sarvey
<b>Organization:</b>	Robert Sarvey
<b>Submitter Role:</b>	Intervenor
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<b>Docketed Date:</b>	4/28/2022

State of California  
State Energy Resources Conservation and Development Commission

In the matter of:

San Jose Data Center

Docket 19-SPPE-04

Robert Sarvey's Testimony

BAAQMD and the applicant are in disagreement on whether the project would be allowed to operate its generators to participate in demand response programs. In comments on the DEIR for the San Jose Data Center BAAQMD stated, *"The California Public Utilities Commission has prohibited the use of certain resources from load-shedding and demand response programs. As outlined in Decision 16-09-056, prohibited resources include distributed generation technologies using diesel, natural gas and other fossil fuels. For PG&E's Base Interruptible Program, the prohibited resources ban is further detailed in Electric Schedule E-BIP. Applicable requirements for operation of the project's generators during load-shedding and demand response should be discussed in the EIR."*<sup>1</sup>

The Final EIR responded to BAAQMD's concerns about prohibited resources operation in disadvantaged communities by repeating the applicant's response to BAAQMD's comments on the DEIR. As stated in the FEIR, *"The applicant filed a comment (TN 241625) in the project's docket responding to this comment. The CPUC modified Decision 16-09-056 on June 21, 2018, with Resolution E-4906 to allow the use of the natural gas generators using renewable fuels. Specifically, E-4096 modifies the*

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<sup>1</sup> San Jose Data Center FEIR Part 2 Page 7-56

*prohibition of Decision 16-09-056. In the Findings of Resolution E-4906 at paragraph 102 is the operative text, "102. If a fuel has received renewable certification from the California Air Resources Board, it is exempt from the prohibited resource policy in D.16-09-056."*<sup>2</sup> The problem is the California Air Resource Board (CARB) fuel certification program is focused on transportation fuels. The CPUC responding to this concern by parties in Rulemaking 20-11-003 modified Resolution E-4906. In CPUC Decision 21-12-015 issued on December 6, 2021 the CPUC modified Resolution E-4906 to include CEC certified renewable fuels.<sup>3</sup> As stated in Attachment 1 of the decision, *"Resolution E-4906 is modified to include in its definition of allowable renewable fuels the Renewable Portfolio Standard-eligible fuels certified by the California Energy Commission (CEC). Behind-the-meter generators utilizing CEC-certified Renewable Portfolio Standard-eligible fuels are exempt from the prohibited resources policy in D.16-09-056 and permitted for use in Demand Response programs. The IOUs are directed to update their tariffs and contracts to incorporate the updated prohibited resources policy effective March 1, 2022"*.<sup>4</sup>

CPUC Decision 21-12-015 also eliminates the use of prohibited resources in load reduction programs when the prohibited resources are located in disadvantaged communities. As the decision states on page 42, *"Prohibited resources, except those operated by non-residential customers located in Disadvantaged Communities, may be used when permitted by a Governor's Executive Order and in compliance with Rule 21 and other applicable regulations and permits, during an ELRP event to achieve Incremental Load Reduction, including during the overlapping period with an independently triggered event in a dual-enrolled DR program, but only for achieving*

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<sup>2</sup> San Jose Data Center FEIR Part 2 Page 7-58

<sup>3</sup> Exhibit 402 CPUC Decision D. 21-12-015 PHASE 2 DECISION DIRECTING PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY TO TAKE ACTIONS TO PREPARE FOR POTENTIAL EXTREME WEATHER IN THE SUMMERS OF 2022 AND 2023 Attachment 1 Page 1 <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M428/K821/428821475.PDF>

<sup>4</sup> Exhibit 402 R. 20-12-015 PHASE 2 DECISION DIRECTING PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY TO TAKE ACTIONS TO PREPARE FOR POTENTIAL EXTREME WEATHER IN THE SUMMERS OF 2022 AND 2023 Attachment 1 Page 4 <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M419/K191/419191939.PDF>

*load reduction incremental to any other existing commitment (e.g., under a dual-enrolled DR program). The existing Prohibited Resources policy still applies to IOU and third-party managed DR programs, excluding ELRP.<sup>5</sup>*

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<sup>5</sup> Exhibit 401 Page 42 - CPUC Decision D. 21-12-015 PHASE 2 DECISION DIRECTING PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY TO TAKE ACTIONS TO PREPARE FOR POTENTIAL EXTREME WEATHER IN THE SUMMERS OF 2022 AND 2023  
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M428/K821/428821475.PDF>

## RESUME OF ROBERT SARVEY

### Academic Background

**BA Business Administration California State University Hayward, 1975**

**MBA Tax Law California State University Hayward, 1985**

### Experience

**CPUC Proceeding R. 20-11-003: Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in California in the Event of an Extreme Weather Event in 2021.** Provided testimony on enormous number of diesel generators operating in environmental justice communities. Testimony detailed concerns of BAAQMD and the California Air Resources Board over the enormous buildup of backup generators in the Bay Area. Testimony advocated for not allowing prohibited resources to operate in environmental justice and disadvantaged communities.

**Proceeding A.11-12-003: Application of PG&E for Approval of Amendments to Qualifying Facility Power Purchase Agreement with Thermal Energy Development Partnership.** Decision 13-06-022 in the proceeding stated my testimony, *“Demonstrated that the Facility is aging and better priced alternatives may exist in the future, Demonstrated that the firm Capacity amendment is not cost effective. The facility is not needed to meet PG&E’s RPS Requirements in later years. The additional 5 MW of capacity is not needed to meet PG&E’s RPS goals. Better alternatives exist and an RFO should be held for additional Generation. The commission has previously allowed the price amendment to be paid from the date of execution of the contract in Resolution E-4412, E-4427, and E- 4455.”*

<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=70757356>

**CPUC Proceeding A. 09-09-021: Application of Pacific Gas and Electric Company for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms (U 39 E)** Provided Testimony as consultant for CARE. Decision D.11-03-020 credited my testimony for demonstrating that PG&E failed to follow the Commissions protocol in evaluating the environmental impacts of the project. Decision credited my testimony for demonstrating that PG&E’s demand had fallen since its procurement authorization in D. 07-12-052 and its procurement should be limited to the lower range of need. Decision concluded that my testimony demonstrated that PG&E was seeking unauthorized procurement in other CPUC proceedings. Decision credited my testimony that demonstrated that the Oakley PSA was not fairly valued or just and reasonable.

<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=446662>

**CPUC Proceeding A. 09-04-001:** Demonstrated PG&E had violated terms of Mariposa Settlement Agreement. PG&E was fined \$25,000 for breach of settlement.

**CPUC Proceeding A. 09-10-022:** Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC - Provided Testimony on behalf of CALifornians for Renewable Energy. Decision 11-01-024 credited my analysis that the, *“Upgrades were not needed because of recent developments altering the forecast in D.07-12-052. California Energy Commission’s (CEC’s) more recent 2009 forecast shows that peak demand in 2015 will be 597 MW (4.48%) lower than the 2007 forecast, CEC issued a report which forecasts that exports will be 100 MW to 1,100 MW in 2015. The CEC issued an incremental demand forecast which showed additional energy efficiency savings not included in forecast in D. 07-12-052.”* Decision states that my testimony, *“presented an analysis of the cost of the Upgrade Purchase Power Agreements (PPAs). The details of the analyses and conclusions are confidential. In general, they state that the 254 MW of incremental capacity provided the Upgrade PPAs has a substantial negative market value (as calculated by the IE) in both absolute terms and relative to other projects.”* <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=441638>

**CPUC Proceeding C. 07-03-006:** Negotiated a settlement with PG&E to voluntarily revoke Resolution SU-58 which was the first and only pipeline safety waiver of GO112-E granted in the State of California. Provided risk assessment information that was critical in the adoption of the Settlement Agreement with PG&E which, amongst other issues, resulted in PG&E agreeing to withdraw its waiver application and agreeing to replace the 36-inch pipeline under the sports park parcel after construction.

**CPUC proceeding 08-07-018:** Tesla Generating Station CPCN participated in proceeding which was dismissed due to motion by IEP. Reviewed all filings, filed protest, signed confidentiality agreement and reviewed all confidential testimony.

**Tesla Power Project 01- AFC-04:** Participated as an Intervenor and provided air quality testimony on local land use and air quality impacts. Participated in the development of the air quality mitigation for the project. Provided testimony and briefing which resulted in denial of the PG&E’s construction extension request.

**East Shore Energy Center: 06-AFC-06:** Intervened and provided air quality testimony and evidence of CPUC cancellation of Eastshore’s power purchase agreement with PG&E.

**Oakley Generating Station 09-AFC-04:** Participated as an intervenor. Provided testimony in Alternatives, Air Quality, Environmental Justice, and Water Quality. Negotiated settlement with CCGS to not use ERC’s and instead exclusively use 2.5 million dollars to create real time emission reductions through BAAQMD real time emission reduction programs.

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA**

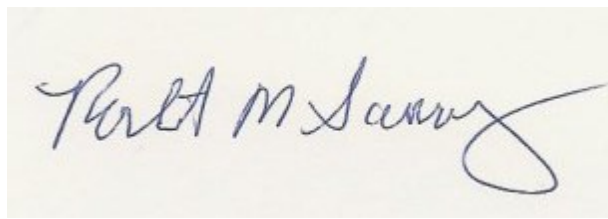
In the Matter of the San Jose Data Center  
Docket Number 19-SPPE-04

Declaration of Robert Sarvey

I Robert Sarvey Declare as Follows:

1. I prepared the attached testimony for the San Jose Data Center.
2. A copy of my professional qualifications and experience is included with this Testimony and is incorporated by reference in this Declaration.
3. I am personally familiar with the facts and conclusions related in the attached prepared testimony and if called as a witness could testify competently thereto.
4. It is my professional opinion that the attached prepared testimony is valid and accurate with respect to issues that it addresses.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Tracy, California on April 28, 2022.

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

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Robert M. Sarvey  
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