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Sarvey comments on SPPE amended regulations

Additional submitted attachment is included below.

State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Rulemaking to amend regulations for Small
Power
Plant Exemptions

Docket # 21-OIR-04

Robert Sarvey's Comments on Regulations to Amend SPPE Regulations.

Staff's latest proposal to amend SPPE regulations seeks to eliminate intervenors, the committee, and the adjudicatory process for Small Power Plant Exemptions. All of the SPPE applications before the Commission in the last five years have been data centers. According to CEC Staff the "*The specific purpose of the proposed amendments to the regulatory language is to streamline the SPPE application review process by eliminating the adjudicatory components, specifically those provisions for presenting evidence, conducting proceedings and hearings, preparing a proposed and final decision, the content of that committee decision, and modification of deadlines.*"

The SPPE projects before the commission have been very complicated. Because of the complexity of the projects and the changing air quality regulations concerning diesel engines it has taken CEC staff over 200 days on average to just complete the environmental document. (See Table 1 below) The existing regulation Section 1944 (b) which requires that, "*Unless otherwise directed by the presiding member, evidentiary hearings on the application shall commence no later than 100 days after the filing of the application.*" This would require staff to present the environmental document in a timely manner something staff has failed to do in all of the recent SPPE

proceedings due to the complexity of the SPPE applications before them. If the CEC wants to expediate the process it dosent need to change the SPPE regulations it merely needs to comply with the existing regulation Section 1945 (b) which requires that, **“The final decision shall be issued by the commission within 135 days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues.”**

Table 1 Days to Complete SPPE Environmental analysis

Project	Date application filed	Staff Environmental Document Final	Days
McLaren	12/26/ 2017	MND 7/23/2018	204
Laurelwood	3/5/2019	MND 9/27/ 2019	206
Mission College	11/25/2019	MND 5/23/2020	179
Sequoia	8/12/2019	MND 2/28/2020	200
Walsh	6/28/2019	MND 3/23/2020	268

The Committee and an Adjudicative Process is Necessary due to the Complexity of the SPPE Applications and the Changing Regulatory Environment.

The SPPE applications that have been recently filed are so complicated and the requirements for diesel engines changing so rapidly that in each and every one of these proceedings after the environmental document has been filed the committee, which staff now seeks to eliminate in this proceeding, has required additional clarification of the law or facts. As CEC Staff stated in 21-SPPE-1.

10 MS. DECARLO: Hi, Lisa DeCarlo, Energy Commission
 11 Staff Attorney. I just want to thank the Committee for your
 12 thoroughness and diligence in ensuring the record is complete
 13 and accurate. We appreciate your help in that regard. And
 14 we're available if there are any questions stemming out of
 15 the closed session or any further follow-up you need from
 16 staff.¹

¹ 21 SPPE-01 TN 244367 Transcript of July 27, 2022 Committee Conference (closed session
[file:///C:/Users/sarve/Downloads/TN244367_20220808T154622_Transcript%20of%20July%2027,%202022%20Co](file:///C:/Users/sarve/Downloads/TN244367_20220808T154622_Transcript%20of%20July%2027,%202022%20Committee%20Conference%20(closed%20session).pdf)
[mmittee%20Conference%20\(closed%20session\).pdf](mmittee%20Conference%20(closed%20session).pdf) Page 11

As The CEC website states, *“Once the FSA has been published, the committee holds a prehearing conference to assess the adequacy of available information, identify issues, and determine the positions of the parties. Based on information presented at the conference, the committee issues a hearing order to schedule formal evidentiary hearings.”* The SPPE data center applications that have been before the commission have been more environmentally damaging and regulatory challenging than the same size AFC applications, and even larger AFC applications, and all of the data center SPPE applications have been sited in minority communities.

For example, the 100 MW Stanton Electrical Reliability Project (SERC) an AFC project of similar size to the data centers is estimated to emit 3.92 tons per year of NOx generating 86,000 MW while operating with a permit limit of 900 hours per year.² In comparison the six CEC SPPE data centers evaluated by the CEC had estimated NOx emissions of 25 to 40 tons per year from data center backup generator operations of just 50 hours per year which generate no usable megawatts. (see table 2 below) The potential for even larger impacts are possible considering emergency operations impacts which despite pleas from the local air district, intervenors and CARB, the CEC has refused to analyze. All of these data centers are in close proximity to one another and located in EJ communities. The impacts from the most recent SPPE filings have been so severe that CEC Staff has prepared EIR's instead of NMD's which recognizes the complexity of the projects and the severity of the impacts.

Table 2 Estimated Annual NOx Emissions from SPPE CEC reviewed Data Centers³

CEC Data Centers	Address	NOx tpy
Mission Data Center	2305 Mission College Boulevard	33 ¹
Walsh Avenue Data Center	651 Walsh Avenue	34.9 ¹
Sequoia Data Center	2600 De La Cruz Blvd	35.9 ¹
McLaren Data Center	651, 725, and 825 Mathew Street	40 ¹
San Jose Data Center	1657 – Alviso-Milpitas Road in San Jose	36 ¹
Laurelwood Data Center	2201 Laurelwood Road	24.7 ¹
Tons NOx per year		205.56

² SERC Final Decision Page 6.2-12 TN 225870

[file:///C:/Users/sarve/Downloads/TN225870_20181109T145652_Final_Commission_Decision%20\(2\).pdf](file:///C:/Users/sarve/Downloads/TN225870_20181109T145652_Final_Commission_Decision%20(2).pdf)

³ This does not include the NOx emissions from the Memorex or Sycamore Data centers

The potential GHG emissions from operation of the 100 MW SERC project reviewed under the AFC process is estimated to be 49,486 tpy.⁴ The GHG emission impacts from the data centers operations reviewed under the SPPE process is much higher as illustrated in the table below. All of the GHG emissions from these approved data centers identified below were not fully mitigated resulting in millions of tons of unmitigated GHG emissions over the life of these projects despite pleas from the air district and the intervenors to fully mitigate them.

Table 3 Unmitigated GHG Emissions From Data Center SPPE's

Project	CEC #	Testing	Construction	Other	Electricity
Mission College	19-SPPE-05	3,875 ⁵	1,231 ⁶	2,663 ⁷	136,384 ⁸
Laurelwood	19-SPPE-01	2,583 ⁹	1,043 ¹⁰	1,600 ¹¹	170,170 ¹²
Sequoia	19-SPPE-03	4,301 ¹³	1,395 ¹⁴	5,640 ¹⁵	170,865 ¹⁶
McLaren	17-SPPE-01	5,044 ¹⁷	2,539	1,048 ¹⁸	116,848 ¹⁹
Walsh	19-SPPE-02	2,313 ²⁰	970 ²¹	756 ²²	108,396 ²³

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⁵ Exhibit 200 Page 209 of 402

⁶ Exhibit 200 Page 208 of 402

⁷ Exhibit 200 Page 212 of 402

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⁹ TN 229584 Laurelwood Data Center Initial Study and Proposed Mitigated Negative Declaration Page 160 of 291

¹⁰ TN 229584 Laurelwood Data Center Initial Study and Proposed Mitigated Negative Declaration Page 160 of 291

¹¹ TN 229584 Laurelwood Data Center Initial Study and Proposed Mitigated Negative Declaration Page 163 of 291

¹² TN 229584 Laurelwood Data Center Initial Study and Proposed Mitigated Negative Declaration Page 163 of 291

¹³ TN 231651 Sequoia Data Center Initial Study and Proposed Mitigated Negative Declaration Page 169 of 322

¹⁴ TN 231651 Sequoia Data Center Initial Study and Proposed Mitigated Negative Declaration Page 169 of 322

¹⁵ TN 231651 Sequoia Data Center Initial Study and Proposed Mitigated Negative Declaration Page 168 of 322

¹⁶ TN 233095 CEC Staff Responses to Committee Questions Page 16 of 39

¹⁷ TN 223911 McLaren Data Center Project Initial Study and Proposed Mitigated Negative Dec. Page 106 of 329

¹⁸ TN 223911 McLaren Data Center Project Initial Study and Proposed Mitigated Negative Dec. Page 106 of 329

¹⁹ TN 223911 McLaren Data Center Project Initial Study and Proposed Mitigated Negative Dec. Page 106 of 329

²⁰ TN 232078 Walsh Data Center Initial Study and Proposed Mitigated Negative Declaration Page 173 of 352

²¹ TN 232078 Walsh Data Center Initial Study and Proposed Mitigated Negative Declaration Page 172 of 352

²² TN 232078 Walsh Data Center Initial Study and Proposed Mitigated Negative Declaration Page 176 of 352

²³ TN 232078 Walsh Data Center Initial Study and Proposed Mitigated Negative Declaration Page 176 of 352

Intervenors are necessary as they provide important information to the process.

CEC Staff's proposed modifications to the SPPE regulations also seek to eliminate intervenors from the proceedings. The adjudicatory process and intervenors are an important part of the Small Power Plant Exemption process. As Commissioner Vaccaro stated at the prehearing conference for the San Jose Data Center on June 3, 2022.

14 Because I do think hearing what Mr.
15 Sarvey had to say today, positions that he's
16 taken in the past, information that he's brought
17 into various records, and seeing how this project
18 is unfolding, I just think that's really
19 important and powerful. I mean, that's, again,
20 why it's important to have intervenors and why
21 it's important to listen.²⁴

CEC Staff seeks to eliminate all formal opposition in these proceedings. As the CECs public participation website states, *"Intervenors can testify at formal hearings, present evidence and witnesses, and cross-examine other witnesses. Since testimony is given under oath, it is afforded more weight than public comments when facts are being considered."*²⁵

CEC Staff seeks to limit public participation

CEC Staff seeks to limit the public participation in SPPE proceedings. Staff states in its Initial Statement of Reasons that, *"The specific purpose of the proposed amendments to the regulatory language is to streamline the SPPE application review*

²⁴ San Jose Data Center TN 234431 Transcript of the Prehearing conference
[file:///C:/Users/sarve/Downloads/TN243431_20220603T170214_Transcript%20of%20Prehearing%20Conference%20on%20May%2018,%202022%20\(1\).pdf](file:///C:/Users/sarve/Downloads/TN243431_20220603T170214_Transcript%20of%20Prehearing%20Conference%20on%20May%2018,%202022%20(1).pdf) Page 36

²⁵ <https://www.energy.ca.gov/programs-and-topics/topics/power-plants/public-participation-siting-cases>

process by eliminating the additional notice and outreach requirements required by an adjudicative process and instead use the existing process and procedures set forth in CEQA.”

Staff proposal eliminates an important function of the CEC process. According to the CEC public outreach page Staff is required to conduct, *“public outreach to encourage awareness of the proposed project and obtain necessary technical information. **Staff holds public workshops so intervenors, agency representatives, and members of the public can meet with Energy Commission staff and the applicant to discuss, clarify, and negotiate pertinent issues.**”*

Power plants have local, regional, and statewide impacts that other CEQA projects do not have which led to the creation of the Warren Alquist Act. These complicated power projects need more public input and committee guidance than other regular CEQA projects.

Purpose of the Amendments?

CEC Staff's proposal claims there is a, *“problem with the SPPE process because since the 1970s, many changes have occurred in California's electricity sector and related regulatory and market environments, changes that are not reflected in the processes and procedures the CEC currently uses.”* CEC staff merely provides a conclusion without citing one concrete example of how the regulatory market has changed necessitating these changes to SPPE procedures.” The only reason provided by the CEC for the draconian changes to the SPPE process is that, *“the electricity market has been deregulated so that independent companies propose and operate electrical generating facilities and sell them to the market, as opposed to those facilities being owned by the investor-owned utilities.”* The SPPE applications before the commission have all been data centers who don't even participate in California's electricity market. The data centers are not owned by a utility or a merchant generator. Staff is trying to solve a problem that doesn't exist. Staff should concentrate on Article 2 which are the NOI provisions of the rules of practice and procedure. The regulatory

market has not impacted the SPPE projects that have been before the commission as these projects do not participate in the electricity markets.

Changes to the regulatory environment surrounding the diesel engines employed by these data centers has become more complicated requiring additional public, committee, and agency participation in these SPPE proceedings not less.

Conclusion

The proposed amendments to the SPPE regulations are a solution in seek of a problem. Staff has not identified one change in the regulatory environment that impacts the backup generators proposed for the data centers in these SPPE proceedings. If the CEC wishes to improve the time it takes to process these applications it needs to comply with Section 1945 (b) which requires that, ***“The final decision shall be issued by the commission within 135 days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues.”***

Environmental Review of SPPE projects definitely needs a committee to oversee CEC Staff. The outreach functions in the SPPE process ensure that the public and interested parties stay informed and also inform commission staff of issues surrounding the siting of these data centers. The SPPE procedures should not be modified. Removing CEC Staff as an independent party has significant ramifications to the integrity of these SPPE proceedings. The CEC needs to consider the judicial review implications should the CEC adopt these ill-advised changes to the SPPE process.