

2024 JUN 25 PM 2:42

*J. Arnold
Over the Counter*

June 24, 2024

Hosam Haggag
City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Claim Against the City of Santa Clara Regarding False Promises Made by Silicon Valley Power

Dear Mr. Haggag:

Pursuant to City of Santa Clara Code § 1.15.020, I am submitting a claim on behalf of 1220 Santa Clara Propco, LLC against the City of Santa Clara for actions taken by Silicon Valley Power (“SVP”). The information required by City of Santa Clara Code § 1.15.030 and California Government Code § 910 is set out below along with the required information.

(a) The name and post office address of the claimant.

1220 Santa Clara Propco, LLC
1100 Memorex Dr,
Santa Clara, CA 95050

(b) The post office address to which the person presenting the claim desires notices to be sent.

1220 Santa Clara Propco, LLC
c/o STACK Infrastructure, Inc.
1700 Broadway, Suite 1750
Denver, Colorado 80290
Attn: Timothy Kuester, Chief Legal and Administrative Officer

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

1220 Santa Clara Propco, LLC, a Delaware limited liability company (“STACK”) is the current owner of SVY02A, a data center facility it constructed at 1200 Memorex Drive in Santa Clara, CA. STACK became the owner of SVY02A in 2022 and head of the Development Team.

When the original developer of the facility came to Santa Clara in 2018, it detailed its intention to develop a data center that would effectively require 90 MW of load, *i.e.* 100 MVA, by 2023. In the summer of 2021, the developer updated the load forecast as follows:

2022	2023	2024	2025	2026-31
18 MVA	35 MVA	53 MVA	70 MVA	86 MVA

The final EIR, entitlements and building permit approved by the City Council on November 9, 2021, was for a data center with a substation capacity of a nominal 100 MVA. At that point in time, neither the City nor SVP provided any indication that SVP would be unable to serve this load or load ramp. With Santa Clara’s and SVP’s full knowledge and approval, the Development Team commenced construction in January 2022 on a building that would require 86 MVA.

Only *after construction had begun* and the Development Team had made firm commitments to the project – including execution of contracts and commitments required for construction to proceed – did SVP provide the developer with a draft substation agreement, entitled *Substation Agreement by and between the City of Santa Clara, California and 1220 Santa Clara Propco, LLC* (hereinafter “Substation Agreement”). With that document, SVP indicated for the first time that it might have serious difficulties meeting the project’s electrical requirements. Instead of reflecting the load ramp previously provided to SVP, the Substation Agreement proposed a flat load ramp that topped out at roughly a third of the building design capacity. Specifically, the Substation Agreement provided the following load ramp, one that fell massively short at every milestone:

2022	2023	2024	2025	2026	2027-31
1 MVA	4.5 MVA	5 MVA	18 MVA	28 MVA	31 MVA

The Development Team expressed immediate concerns about the enormous discrepancy between what the Substation Agreement draft provided and what the Development Team needed for the building to serve its intended use and design as a data center facility. SVP told the Development Team not to worry because SVP “was in the business of selling power” and if more power was needed, SVP would provide it. Based on those statements by SVP, the Development Team continued construction and signed the Substation Agreement on May 5, 2022, only after being induced by and relying upon SVP’s repeated assurances that SVP would be able to supply the capacity needed by the data center.

The following year, at a meeting with SVP representatives on June 27, 2023, SVP dramatically changed its position regarding the ability to provide the required power to the data center. At that meeting, SVP told STACK that it should not expect any electrical capacity beyond what was stated in the Substation Agreement. At that point, the data center building construction was largely complete, leaving STACK and its partners with a building that could not be leased for anything approaching its designed capacity.

SVP’s failure to make good on its promises that it would provide the electrical capacity needed by STACK and its partners to lease the data center building is the basis for a claim of promissory estoppel against SVP. By 2024, STACK and its partners expected, based on previous assurances by SVP, that SVP would be able to serve 53 MVA of load at the building. Currently, SVP is only willing or able to

serve barely one tenth of this figure, *i.e.*, only 4.5 MVA. This has severely impacted the commercial viability of a data center building specifically designed for tenants with substantial electrical demand. STACK's and its partners' reasonable reliance on SVP's representations that SVP would provide the needed capacity that was communicated to SVP at multiple stages of planning has led to this situation.

Three months after completing construction in December 2023, things got even worse. On March 14, 2024, SVP told STACK that it should not expect even the Substation Agreement's already insufficient load ramp schedule to be achieved. On that day, STACK and its partners learned that SVP would not provide more than 18 MVA until 2028, at the earliest, effectively delaying capacity increases at the building by three years relative to the already insufficient capacity set forth in the Substation Agreement. Thus, while the Substation Agreement said STACK could expect 28 MVA in 2026 and 31 MVA by 2027, SVP was now saying it would be capped at 18 MVA starting in 2025 until, at least, 2028. (And, even then, if and when SVP is able to supply the 31 MVA stated in the Substation Agreement, that would still only be a third of what STACK has continuously communicated the building needs for it to be fully utilized for its intended and designed purpose.)

This delay is a breach of the Substation Agreement. It provides:

SVP will use **commercially reasonable efforts** to provide the Customer with the requested Available Capacity as described in the Available Capacity Schedule in Exhibit E attached hereto and this will be the Customer's obligation to utilize the Available Capacity based upon the Available Capacity Schedule in Table E1.¹

Substation Agreement at Recital E (emphasis added).

SVP breached the Substation Agreement commitment by failing to make “commercially reasonable efforts” given its inaccurate load forecasting and inexplicable delays in commencing projects which it knew were necessary for SVP to provide the electrical capacity promised in the Substation Agreement. This is evident from SVP's own documents.

Inaccurate Load Forecasting

SVP failed to make commercially reasonable efforts to provide the Customer with the requested Available Capacity by deliberately understating to California energy regulators and transmission planners the expected load of the data center. SVP is required to give its load estimate to the California Energy Commission (“CEC”) for its Integrated Energy Policy Report (“IEPR”) every year as required by California Code of Regulations, Title 20, section 1345. This information is used for, among other things, transmission planning decisions made by the California Independent System Operator (“CAISO”) and participating transmission owners about what transmission upgrades or projects should be advanced.

When SVP asked the original developer of the project for a load estimate on September 1, 2020, the original developer provided the expected load ramp at that time, which was:

2021	2022	2023	2024
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¹ Table E-1 indicates that 18 MW of load can be served starting in 2025, 28 MW in 2026, and 31 MW in 2027.

16	23 MVA	67 MVA	86 MVA
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Unbeknownst to STACK, however, SVP did not provide the load ramp information that had been provided and instead provided a false load forecast to the CEC on December 17, 2020, one that suggested SVP would only serve half of the requested capacity and do so at a much slower pace.

2022	2023	2024	2025	2026	2027-31
0	9 MVA	21 MVA	33 MVA	45 MVA	48 MVA

See The City of Santa Clara dba Silicon Valley Power Comments on December 17, 2021, Docket No 20-IEPR-03, Document No. 235998.²

SVP never told the facility developer in 2020, more than a year before construction began, that it was only planning to serve a small portion of the projected load. This was no more commercially reasonable than for SVP to mislead the CEC and the other state energy authorities, including the CAISO which rely upon the CEC's load forecast for its planning of the transmission lines needed to get electricity from the CAISO controlled grid to SVP. By understating the load ramp SVP laid some of the groundwork for SVP's current capacity shortfall.

Delays in Construction of SVP's Network Upgrades

Soon after the Substation Agreement was signed in December 2022, SVP provided a *Customer System Impact Report Summary*, which indicated that there would be 31.4 MW available at Memorex Junction in 2027. The availability of this amount of capacity was premised on the following SVP upgrades being completed by the dates shown below:

- Northern Receiving Station Upgrades – **5/30/2025**
- Scott Receiving Station rebuild – **4/30/2025**
- Kifer Receiving Station rebuild – **4/30/2025**
- New 115 kV Tx line between Northern and Kifer Receiving Stations – **6/1/2027**

SVP has not met (or even tried to meet) these dates. In a bi-annual report to the Santa Clara City Council in March 2024, SVP indicated that the key projects needed for SVY02A to exceed 18 MVA were years behind schedule, including:

- Northern Receiving Station Upgrades: not complete until **mid-2027 (2 years behind schedule)**.
- Scott Receiving Station work: not complete until **late 2028 (more than 3 years late)**;

² This document is available at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-IEPR-03> .

- Kifer Receiving Station work: not complete until **early 2029 (almost 4 years behind schedule)**; and
- New 115 kV Tx line between Northern and Kifer Receiving Stations: not complete until, at the earliest, **end of 2027**.³

The delayed in-service dates for these projects constitute breaches by SVP to make the commercially reasonable efforts required under the Substation Agreement to construct the necessary infrastructure to provide the load ramp provided in the Substation Agreement. Instead of making commercially reasonable efforts to meet the in-service dates, SVP has simply extended the dates to STACK's detriment and in breach of the Substation Agreement. SVP's failure to make commercially reasonable efforts to build the required network upgrades on schedule has contributed to STACK's inability to lease the empty data center.

Timeline

To facilitate review of this claim, STACK has included a timeline in the attached appendix which briefly sets forth the key dates relating to this claim, including the Memorex facility's load energization request, the response of SVP to that request, the false load forecast reports SVP provided to the CEC, and SVP's delayed construction schedule for upgrades required to meet the already much-reduced required capacity for the facility.

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

STACK has incurred substantial losses as a result of its reliance on SVP's promises that adequate electrical capacity would be provided. SVP's breach of those promises has resulted in losses due to STACK's inability to make productive use of the fully constructed data center building, which, with the land and interest expense, cost in excess of \$300 million. STACK has also suffered the loss of rent for the data halls which STACK cannot lease because SVP has failed to provide the promised additional electrical capacity required by the customers who have use of this type of data center building.

STACK's losses include not only past lost rents but also lost future rents because of the ongoing uncertainty regarding if and when SVP will complete the necessary infrastructure required to provide even the much-diminished electrical capacity stated in the Substation Agreement versus what SVP originally promised it would serve.

In sum, SVP failed to make good on its original promise to meet STACK's needs notwithstanding the Substation Agreement's terms and then its failure, as promised in the Substation Agreement, to even deliver the reduced amount of capacity stated there. As a result, STACK's ability to lease SVY02's data halls now or in the future has been severely compromised. The facility is ready for use, but potential customers have not leased the available data hall space given continuing uncertainty about SVP's ability to make good on its representations regarding capacity. Thus, STACK has a substantial claim for damages for lost lease payments both now and in the future and other damages to be proven

³ It is all but certain that the current six-month delay for the in-service date of the new 115 kV transmission line between the Northern and Kifer Receiving Stations will slip further because SVP has only just begun the environmental review process for this project.

at trial should a lawsuit be necessary. STACK estimates that the leasing delays thus far have cost STACK in excess of \$13 million for every 6 MW of capacity SVP is unable to serve as originally promised.

In addition to the substantial claim for damages, STACK will also be seeking reimbursement for costs intended to mitigate its damages. In that vein, STACK is considering the installation of onsite generation to make up for some of the current capacity shortfall that was previously promised by SVP, which is estimated to cost in excess of \$50 million over five years.

(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Manuel Pineda, Chief Electric Utility Officer of Silicon Valley Power

(f) The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

The amount of the claim exceeds \$10,000 and the claim would not be a limited civil case. If you need further information regarding this claim, please let me know. I can be reached by email at tkuester@stackinfra.com.

Sincerely,



Timothy Kuester
On behalf of 1220 Santa Clara Propco, LLC
Chief Legal and Administrative Officer

APPENDIX: Timeline

DATE	EVENT
DATES RELATING TO STACK LOAD REQUEST	
2018	Memorex facility developer informs SVP that the facility's load will be 90 MW, <i>i.e.</i> 100 MVA.
September 1, 2020	Memorex facility developer provides load ramp to SVP indicating load will be 86 MVA by 2024.
December 17, 2020	SVP provides a false load forecast to California Energy Commission (CEC) indicating that SVP would only serve 48 MVA from 2027-31; SVP never informs Memorex facility developer that it does not intend to provide the 86 MVA as requested.
July 23, 2021	Memorex facility developer provides load ramp forecast to SVP indicating that load will be 86 MVA by 2026.
November 9, 2021	City of Santa Clara approves EIR for the nominal 100 MVA data center.
January 2022	STACK commences construction of data center.
January 2022	SVP subsequently provides STACK with draft Substation Agreement that limits capacity to 31 MVA but assures STACK "it is in the business of selling power" and if "if more power was needed, SVP would provide it." Construction on project continues.
February 16, 2022	SVP reports to CEC that the 10-year load forecast is 31 MVA for 2028-2032
April 25, 2022	Substation Agreement executed with maximum of 31 MVA for 2027-31
Throughout 2022 and until June 26, 2023	SVP repeatedly assures STACK that SVP will be able to provide additional energization capacity beyond what is provided for in the Substation Agreement

June 27, 2023	At meeting to discuss capacity issue, SVP tells STACK for the first time that it should not expect any electrical capacity beyond the 31 MVA stated in Substation Agreement.
March 14, 2024	SVP tells STACK not to expect more than 18 MVA until 2028 (despite Substation Agreement promising 31 MVA and the developer having requested 86 MVA).
DATES RELATING TO CONSTRUCTION OF SVP'S NETWORK UPGRADES	
December 5, 2022	SVP provides system impact study to STACK indicating that all network upgrades on SVP's system needed to serve STACK's load will be in operation in time to meet the schedule in the Substation Agreement
March 2024	SVP provides update to Santa Clara City Council regarding progress on the network upgrades on SVP's system needed to serve STACK's load and reports that all of the projects required for the Memorex project are significantly delayed, in some cases by as much as four years.

CITY OF SANTA CLARA
OFFICE OF THE CITY CLERK

2024 JUN 25 PM 2: 42

Morgan Lewis

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Palo Alto, CA 94304
United States

TO: Hosam Haggag
City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050