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Document Title:	Executive Director's Recommendation on AVAO Infrastructure Small Power Plant Exemption Application
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Filer:	Ali Jahani
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Memorandum

To: Chair David Hochschild
Vice Chair Siva Gunda
Commissioner Noemi Gallardo
Commissioner J. Andrew McAllister, Ph.D.
Commissioner Nancy Skinner

Date: November 24, 2025

From: Drew Bohan, Executive Director
California Energy Commission
715 P Street
Sacramento, California 95814

Subject: Executive Director's Recommendation on AVAIO Infrastructure Small Power Plant Exemption Application for the AVAIO Pittsburg Backup Generating Facility

I. Introduction

On February 29, 2024, AVAIO Infrastructure filed an application for a Small Power Plant Exemption (SPPE) in accordance with Public Resources Code, section 25541, for the AVAIO Pittsburg Data Hub backup generating facility (24-SPPE-01). The application seeks to exempt the facility from the Application for Certification provisions of the California Energy Commission's (CEC) power plant licensing process. The backup generating facility would be part of the Pittsburg Data Hub proposed in the city of Pittsburg, Contra Costa County, which together constitute the project under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). California Code of Regulations, title 20, sections 1936 and 1940 through 1942, set forth the procedures for the CEC's review of an SPPE application. Section 1942 requires the Executive Director to recommend findings to the CEC on whether the application meets the requirements of Public Resources Code, section 25541. The Executive Director recommends the SPPE be granted for the AVAIO Pittsburg Data Hub backup generating facility, exempting the facility from the CEC's jurisdiction.

II. Background

Under the Public Resources Code section 25500, the CEC has the exclusive jurisdiction to approve or deny applications for the construction and operation of thermal power plants that have the capacity to generate 50 megawatts (MW) or more of electricity. Under Public Resources Code, section 25541, the CEC may exempt from its exclusive jurisdiction thermal power plants with a generating capacity of up to 100 MW if the CEC finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility. Public Resources Code, section 25519(c) designates the CEC as the "lead agency" under the CEQA for SPPE applications.

Under my direction, staff analyzed all three requirements of Public Resources Code, section 25541: 1) generating threshold, 2) no substantial adverse impacts on the environment, and 3)

no substantial adverse impacts on energy resources. Following the procedures required in CEQA, staff received and reviewed the application, obtained additional information necessary to evaluate the project impacts, and published a Final Initial Study (IS)/Mitigated Negative Declaration (MND) to the docket on November 21, 2025 (TN 267708). The Draft IS/MND was filed to the docket on October 14, 2025 (TN 266581) and underwent all required public review and comment periods.

Eleven comment letters were received on the Draft IS/MND, including nine letters of support. While not required, staff prepared written responses to comments received on the IS/MND from 1) the California Department of Fish and Wildlife, and 2) the Contra Costa Water District which are included in Appendix E of the Final IS/MND. Changes to the Draft IS/MND are identified by strikethroughs for deleted text and underlines to indicate where text was added. This includes revisions to and additions of mitigation measures as recommended by the public commentors. As described in Appendix E, the revised and added mitigation measures do not require recirculation of the IS/MND.

Appendix A of the Final IS/MND contains CEC staff's engineering analysis of the project's generating capacity which considers the capacity and configuration of the generators and the project's demand. The analysis provides substantial evidence supporting staff's conclusions that the project's maximum electrical load would not exceed 92 MW, thus satisfying the generating capacity threshold requirements of Public Resources Code, section 25541.

The CEQA analysis and findings in the Final IS/MND submitted for CEC approval adequately support the conclusion that the construction and operation of the project will not have substantial adverse impacts on the environment. The Final IS/MND dedicates considerable analysis on environmental topics including air quality, biological resources, cultural and tribal cultural resources, geology and soils (paleontology), greenhouse gas emissions, hazards and hazardous materials, and hydrology and water quality. Substantial evidence supports staff's conclusions that with implementation of the required mitigation measures, the project will not have any significant adverse environmental impacts. The adoption of the Mitigation Monitoring and Reporting Program will ensure that the project features and mitigation measures will be implemented.

In Section 5.6 (Energy and Energy Resources) of the Final IS/MND, CEC staff analyzed the project's impacts on energy resources. The analysis found that the project's consumption of energy resources during operation would not be wasteful, inefficient, or unnecessary. The project's use of renewable diesel fuel (and ultra-low sulfur diesel (ULSD) as backup fuel) would constitute a small fraction of available resources. The annual average Power Usage Effectiveness for the project would be at a level considered very efficient. Finally, the project would be constructed in accordance with the 2022 California Green Building Standards Code and would include green building measures to reduce energy consumption. As such, the Final IS/MND contains substantial evidence supporting the conclusion that the project will not result in any substantial adverse impacts on energy resources and therefore comports with the requirements of Public Resources Code, section 25541.

III. Recommendation

Based on the entire record of this proceeding, including the SPPE application, Final IS/MND, and proposed Mitigation Monitoring and Reporting Program, I recommend the CEC make the following findings consistent with Public Resources Code, section 25541:

1. The generating capacity of the project will not exceed 100 megawatts.
2. The construction and operation activities of the project will not create a substantial adverse impact on the environment.
3. The construction and operation activities of the project will not create a substantial adverse impact on energy resources.

Therefore, I recommend the CEC:

1. Adopt the Final IS/MND,
2. Adopt the Mitigation Monitoring and Reporting Program, and
3. Grant the AVAIO Pittsburg Backup Generating Facility an SPPE from the Application for Certification provisions of the CEC's power plant licensing process in accordance with California Public Resources Code, section 25541.