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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Small Power Plant
Exemption
**VERNON BACKUP GENERATING
FACILITY**

DOCKET NO: 25-SPPE-01

**GIC VERNON LLC'S RESPONSE TO
COMMUNITIES FOR A BETTER
ENVIRONMENT'S COMMENTS ON
THE NOTICE OF PREPARATION**

GIC Vernon LLC files these Responses to Communities For a Better Environment (CBE)¹ Comments on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) in the Vernon Backup Generating Facility (VBGF) Small Power Plant Exemption (SPPE) process², hereinafter referred to as "CBE Comments." GIC Vernon LLC has provided this response to assist California Energy Commission (CEC) Staff in addressing the comments by correcting the record and providing historical background developed in previous SPPE Application proceedings and past data center-related generation capacity determinations.

CBE Comments relate to topic areas of Generation Capacity and Air Quality, Public Health, Cumulative Impacts, Energy, Air Quality, Greenhouse Gas Emissions and Hazardous Materials. Each of the CBE comments is addressed below.

¹ The comment letter was submitted on behalf of Communities for a Better Environment, Center for Biological Diversity, Owens Valley Indian Water Commission, River in Action, No Data Center Monterey Park, No Data Centers San Gabriel Valley, Coalition. Latino Equality Alliance, California Latinas for Reproductive Justice, Center for Race, Poverty & the Environment, and Physicians for Social Responsibility Los Angeles.

² TN 272337

GENERATION CAPACITY AND CEC JURISDICTION

CBE wrongly asserts that the Soto DC LLC LAX01 project should be treated as part of the Goodman Energy Project (GEP) Project, which is supported by the VBGF. CBE then concludes that the generation capacity of the generators from the Soto DC LLC LAX01 project should be added to the generation capacity of the VBGF. To support the contention, CBE conflates the South Coast Air Quality Management District (District) rules related to treating two emission sources as a single source with the CEC's rules and precedent in determining if two backup generating facilities should be treated as one. The District's 'facility' definition under Rules 1470 and 1472 is an air-district permitting concept governing stationary source permits. It does not govern CEC generating-capacity calculations and jurisdiction under the Warren-Alquist Act. Even if SCAQMD were to aggregate the two sites for its own permitting purposes, that determination would not bind or affect the CEC's independent jurisdictional analysis.

The CEC has considered and ruled on this exact question in the Walsh Backup Generating Facility (WBGF) SPPE proceeding³. In that case an Intervenor Mr. Sarvey also alleged the generating capacity of a backup generating facility for a nearby data center⁴ should be aggregated with the generating capacity of the WBGF by relying on the same set of air district rules relating to aggregation of emission sources for permitting purposes, that CBE asserts in its comments on the NOP. The CEC, after legal briefs and oral argument at hearing, held:

7. The California Energy Commission considered the contention that the Walsh and Lafayette projects should be reviewed as a single project. The Applicant responded to and refuted the claim at the August 12, 2020, public hearing before the adoption of the Final Decision. Mr. Sarvey has not presented any new evidence to support the argument that the relevant legal standard to find that Walsh and Lafayette are a single project has been met nor has he shown a change in law supporting the argument.⁵

Finding 7 refers to Applicant's refutation of the claim at the August 12, 2020 public hearing. As explained at the August 12, 2020 Business Meeting at pages 124 and 125 of the official transcript, the projects are separate – they are owned and proposed by distinct entities, on two different sites, separated by a public road, and ***are independent with no shared infrastructure***.⁶ The CEC did not determine whether Walsh and Lafayette should be treated as one emission source pursuant to District rules because

³ TN 235709, Final Order on Petition For Reconsideration, 19-SPPE-02

⁴ Lafayette Backup Generating Facility (20-SPPE-02)

⁵ TN 235709, Final Order on Petition For Reconsideration, 19-SPPE-02, Finding 7.

⁶ August 12, 2020 Business Meeting at pages 124 and 125

that determination would be made by the District pursuant to its air permitting authority at the time when both projects have submitted air permits, and the determination is not necessary nor dispositive for the CEC to determine generation capacity or jurisdiction.

In another case where a new backup generating facility was proposed on the same parcel as an existing backup generating facility, the CEC Staff analysis focused on whether the two projects were so intertwined that the two projects were not distinct and must have been master-planned to work together.⁷ For CEC jurisdictional and generating capacity determinations, the fact that facilities do not share infrastructure such that one facility needs the other in order to operate is a key factor.

CBE claims that because Goodman is involved in the ownership of both of the entities that own LAX01 and the GEP, the CEC should treat both independent projects as one. As described in Section 1 of the SPPE Application GIC, Vernon LLC is the owner of the GEP and the VBGF. GIC is a wholly owned subsidiary of Goodman. Soto DC LLC owns the LAX01. Soto DC LLC is a 50/50 joint venture between Goodman and DataBank. As a joint venture Goodman does not exclusively control Soto DC LLC.

Common corporate parentage is a feature of many large-scale developers that own and operate multiple independent facilities across a region. If common ownership alone were sufficient to aggregate generating capacity, any developer with more than one backup generating facility would face aggregation regardless of whether those facilities share any infrastructure or operational interdependence. The CEC has not adopted that standard.

For the VBGF, the following facts show separation at least as pronounced as the record articulated in the Walsh SPPE Proceeding:

Factor	Soto DC LLC (LAX01)	VBGF
Ownership	Soto DC LLC, a 50/50 joint venture between Goodman and DataBank, not solely controlled by Goodman	GIC Vernon LLC, wholly owned subsidiary of controlled by Goodman.
Location	3094 East Vernon Avenue, on a separate parcel, separated by a public road from VBGF	3049, 3095, and 3163 East Vernon Avenue, on adjacent but separate parcels, separated by a public road from LAX01

⁷ Equinix SV11 Jurisdictional Letter issued by CEC to DayZen LLC, July 22, 2019.

Air permits	40 District permits issued August 4, 2026	No District permit application filed
Regulatory path	District permitting for LAX01 equipment	CEC SPPE proceeding, Docket 25-SPPE-01
Shared infrastructure	None. Separate substation to provide electricity, separate generators connected only to LAX01; separate security entrances; separately leasable to a data center user; separate water and sewer infrastructure	None. Separate substation to provide electricity, separate generators connected only to the GEP; separate security entrances; separately leasable to a data center user; separate water and sewer infrastructure.
Operations	Independent data-center operations, can operate without the VBGF or the GEP	Proposed independent operations; project not yet built, can operate without the LAX01 or its backup generators

In addition, the VBGF SPPE Application identifies the LAX01 project as a separate project for cumulative impacts analyses, refuting CBE's claim that GIC Vernon LLC failed to disclose to the CEC the adjacent LAX01 project.

CBE's reliance on the rules for treating two sources of emissions as one for CEC jurisdiction and generating capacity determinations is misplaced, has been rejected by the CEC, and fails to consider the independent utility of the two facilities.

Lastly, the CEC has revised its definition of "related facilities" to exclude the data center and its ancillary facilities from the backup generating facilities. With the revision to the definitions the legal question is narrowed from that determined in Walsh. The relevant question is whether the **two backup generating facilities share any infrastructure as to be master planned**. In addition to the facts that the data center buildings of the two projects do not share any utility, the VBGF and the generators for LAX01 are each interconnected solely to separate data center buildings and also share no infrastructure.

The CEC should reject CBE's contention that the generating capacity of VBGF should include any of the generators for LAX01.

PUBLIC HEALTH

CBE provides background information about the region and then concludes without any supporting evidence that the VBGF is “likely to significantly worsen the health outcomes” for residents in the City of Vernon and the SELA communities. The SPPE Application contains a detailed air quality and public health modeling analysis in Section 4.3.3.6 and Appendix B. The analyses meet SCAQMD and CEC established regulatory approved modeling methods and practices and show that the VBGF will not result in significant air quality or public health impacts from construction or operation emissions.

CUMULATIVE IMPACTS AND AIR QUALITY

CBE asserts that the Commission must evaluate the impacts of all of the existing data centers in Vernon operating continuously and simultaneously for a prolonged period during an emergency. The Commission has previously adjudicated the issue of how to evaluate emergency operations and correctly concluded that CEQA does not require speculative analyses of unforeseeable events⁸. CBE provides no evidence that such an event has or will occur. The only evidence in the record relating to outage frequency has been provided by Vernon Public Utilities and was provided to the CEC in GIC Vernon LLC’s Supplemental Response to Data Request PROJ DESCRIP-3,-4, and -5⁹. With infrequent outage history in VPU’s service territory and the redundancy of two radial feed transmission lines that will be constructed to serve the GEP, an outage is unforeseeable.

Additionally, the CEC Staff has consistently concluded that the emission plumes from generator testing and maintenance are exceedingly small and extremely unlikely to intermix with the emission plumes of other projects.

CBE also claims that the CEC must include specific mitigation measures in its DEIR relating to GIC Vernon LLC’s commitment to operate its backup generators only during emergencies. CBE inaccurately asserts that data centers commonly run generators in order to participate in demand response programs. In support of its contention, CBE cites three 2015 studies that are irrelevant because the studies focused on data centers outside of California that are not subject to California law or policies. Air permits issued

⁸ Final Decisions for: TN 234408 Walsh Data Center (19-SPPE-02); TN 244835 Microsoft SJC02 (19-SPPE-04); TN240902 Great Oaks South Backup Generating Facility (20-SPPE-01)

⁹ TN 267853

by the SCAQMD and its rules prohibit operation of the VBGF for demand responses programs.¹⁰

Lastly, CBE relies on the Microsoft SJ02 Notice of Determination, which identified that its backup generators could be used for a specified number of hours for local demand response programs. The SJ02 generators operate on natural gas, which for some demand response programs is not a prohibited fuel. The mitigation measure suggested by CBE is not required because CEQA allows an agency to rely on an Applicant complying with existing law. The VBGF will operate its diesel generators in accordance with District rules and state law which limit operation of the generators for testing and maintenance to 50 hours per generator, and during emergencies as defined by SCAQMD Rules.

GREENHOUSE GAS EMISSIONS

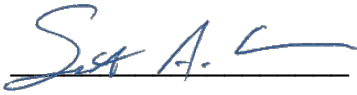
GIC Vernon LLC agrees that the CEC must thoroughly evaluate the potential significant greenhouse gas emissions (GHG) for the VBGF and the GEP. That is why the SPPE Application includes quantification of all GHG emissions from every aspect of construction and operation of the project. CBE asserts correctly that the GEP would use refrigerants. The specific refrigerants are identified at page 4.8-8 of the SPPE and the GHG emissions from the leakage of those refrigerants are quantified at pages 4.3-3 and Appendix B, Subappendix AQ-1 of the SPPE. CEC Staff is well aware that existing law phases out refrigerants with high potential GHG emissions and therefore existing law ensures that the GEP would be required to use the lower GHG emission refrigerants that are not prohibited for use at the time of the purchase of the cooling equipment. No mitigation measure is required because the GHG emissions from refrigerant leakage is below any established CEQA significance threshold and the choice of refrigerant is already regulated by state law.

¹⁰ SCAQMD Permits include a prohibition of operating diesel-fired emergency generators during non-emergencies except for testing and maintenance for up to 50 hours.

GIC Vernon LLC has provided this response to assist Staff in preparing a legally defensible and accurate Environmental Impact Report by correcting the record and providing historical background developed in previous SPPE Application proceedings.

Dated: October 13, 2026

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Scott A. Galati", is written over a horizontal line.

Scott A. Galati
Counsel to GIC Vernon LLC