

## DOCKETED

<b>Docket Number:</b>	17-SPPE-01
<b>Project Title:</b>	McLaren Backup Generating Facility
<b>TN #:</b>	222381
<b>Document Title:</b>	Vantage Data Center's Proposed SPPE Schedule for McLaren Backup Generating Facility
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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application For Certification  
**MCLAREN BACKUP GENERATING  
FACILITY**

**DOCKET NO. 17-SPPE-01**

**VANTAGE DATA CENTER'S  
PROPOSED SPPE SCHEDULE**

In accordance with the Committee Memorandum of January 22, 2018 Vantage Data Center (Vantage) proposes the Committee adopt the following as its Scheduling Order for processing the McLaren Backup Generating Facility (MBGF) Application for a Small Power Plant Exemption (SPPE).

<b>MILESTONE</b>	<b>DATE</b>	<b>DAY</b>
Application For SPPE Filed	December 26, 2018	1
Staff Issues Data Requests	January 25, 2018	30
Vantage Responds to Data Requests	February 5, 2018	41
Staff Publishes IS/MND	February 26, 2018	62
Close of Public Comment Period on IS/MND	March 19, 2018	83
PreHearing Conference/Evidentiary Hearing	Week of March 19 <sup>th</sup> , 2018	83-87
Committee Proposed Decision	April 12, 2018	108
Commission Business Meeting	May 9, 2018	135

Vantage believes that the schedule proposed above is feasible. In order to ensure the schedule is achieved it is important for the Commission Staff (Staff) to concentrate its efforts on reviewing the MBGF. We understand that Commission Legal Staff (Legal) has directed Staff to analyze the MBGF and the McLaren Data Center (MDC), which will be served by the MBGF. We understand that Legal is relying on Public Resources Code (PRC) Section 25519 (c) which designates the Commission as the lead agency as defined in the California Environmental Quality Act (CEQA) for projects that seek certification and

for those such as the MBGF which request an SPPE. We agree that PRC Section 25519 (c) is applicable to the MBGF. However, the lead agency status identified in PRC Section 25519 (c) does not extend the Commission's jurisdiction to the MDC because the MDC is not a thermal power plant nor is it an appurtenant part of the power plant.

The Commission is the lead agency and required to evaluate the potential impacts of its action, which is simply, "whether or not the Commission should grant the exemption to the MBGF". Specifically, PRC Section 25541 identifies what the Commission should consider in making its determination on this SPPE. PRC Section 25541 provides:

The commission may exempt from this chapter thermal powerplants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities that do not add capacity in excess of 100 megawatts, ***if the commission finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility*** or from the modifications. ***(Emphasis Added)***

PRC Section 25541 directs the Commission to focus its analysis on the thermal powerplant. Nothing in Section 25541 directs the Commission to evaluate the impacts of MDC because it is not appurtenant to the powerplant. If the Commission makes the findings pursuant to PRC Section 25541 and grants the exemption, the lead agency that can grant authority to construct and operate the MBGF is the City of Santa Clara (City) because the Commission would no longer have exclusive permitting authority over the MBGF. If the Commission does not grant the exemption, only the Commission could authorize construction and operation of the MBGF. In neither case would the Commission's exclusive siting jurisdiction extend to permitting the MDC. The land use authority for the MDC will always remain with the City of Santa Clara, which would be the lead agency under CEQA.

We understand that the Legal has directed Staff to evaluate the "whole of the action" and that in order to achieve that objective, Staff must evaluate the impacts of the MDC. We agree that Staff should evaluate the "whole of the action" but believe it is an inaccurate interpretation of the "whole of the action" to include the MDC when applied to an SPPE. If the Commission was being asked to approve the construction and operation of the MBGF pursuant to an Application For Certification (AFC), we believe that the Commission may have an obligation to evaluate the impacts of the MDC because the Commission would be approving the actual construction and operation of the MBGF and the "whole of the action" could include certain aspects of the MDC. However, for an SPPE, the "the whole of the action" must be considered in light of the action the Commission is taking. That action is not approval of construction and operation of the MBGF, but rather whether the MBGF qualifies for an SPPE pursuant to the factors outlined in PRC Section 25541, which are limited to the impacts of the thermal powerplant and its generating capacity. If the Commission were to act as lead agency for the MDC it would encroach upon and interfere with the City's obligation as lead agency to prepare its own CEQA analysis of the MDC.

For the MDC, the City has already prepared an Initial Study/Mitigated Negative Declaration (IS/MND) and granted approval of construction of the MDC. Demolition of the site has

been completed in accordance with that approval. Vantage has proposed minor changes to the square footage of the facility including modifications to the site layout. The modifications also prompted increase of the number of backup generators from 32 to 48. If the Commission grants the SPPE, the City will prepare an Addendum to the IS/MND for the MDC and in order for it to consider the “whole of the action” it will incorporate the environmental analysis prepared by the Commission to identify the impacts of the MBGF. Vantage’s proposed schedule will allow the City the time necessary to prepare its Addendum to allow the modifications of the MDC in a timely matter for construction to continue. If the Staff inappropriately evaluates the impacts of the MDC in its environmental analysis, it could include findings and conclusions that conflict with the approved IS/MND and the City’s Addendum. These potential conflicts are simply not warranted and can easily be avoided as evaluation of the impacts of the MDC is not necessary for the Commission to discharge its duties as lead agency for considering the project under PRC Section 25541.

Therefore, we recommend that the Committee direct Staff to prepare its environmental document evaluating the impacts of the MBGF, relying on the base work performed by the City related to site impacts as identified in the IS/MND and restrict its analysis of the MDC to those technical areas where the MBGF cumulatively contributes to an MDC impact identified by the City.

We acknowledge that the Commission processing of the the Santa Clara Data Center SPPE included a summary of the impacts of the Data Center as well as the impacts of its backup generation facility. However that decision was not adopted by the Commission as a precedential decision and therefore is not binding on this Committee. It is also important to note that in the Santa Clara Data Center Staff simply incorporated the analyses contained in the IS/MND approved by the City. Staff did not re-evaluate the impacts identified in the IS/MND for the Data Center, which it is now doing for the MBGF SPPE.

Dated: January 26, 2018

Respectfully Submitted,



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