

DOCKETED

Docket Number:	17-SPPE-01
Project Title:	McLaren Backup Generating Facility
TN #:	224822
Document Title:	Notice of Status Conference and Further Orders
Description:	Status Conference to be held on October 10, 2018, at 10:00 a.m. in Sacramento.
Filer:	Susan Cochran
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	9/28/2018 2:49:22 PM
Docketed Date:	9/28/2018



Before the Energy Resources Conservation and Development
Commission of the State of California
1516 Ninth Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov

**APPLICATION FOR A SMALL POWER PLANT
EXEMPTION FOR THE:
MCLAREN BACKUP GENERATING
FACILITY PROJECT**

Docket No. 17-SPPE-01

NOTICE OF STATUS CONFERENCE AND FURTHER ORDERS

PLEASE TAKE NOTICE that the California Energy Commission (Energy Commission) Committee¹ (Committee) assigned to conduct proceedings on the Application for a Small Power Plant Exemption (Application)² for the McLaren Backup Generating Facility Project (Project) has scheduled a Status Conference on:

**WEDNESDAY, OCTOBER 10, 2018
10:00 a.m.**

**California Energy Commission
Art Rosenfeld Hearing Room (Hearing Room A)
1516 Ninth Street
Sacramento, CA 95814
(Wheelchair Accessible)**

Remote Access Available by Computer or Phone via WebEx™
(For instructions, please see the **Remote Attendance** section on page 7 below.)

BACKGROUND

The Energy Commission is responsible for reviewing, and ultimately approving or denying, applications for thermal electric powerplants with a generating capacity of 50 megawatts (MW) and greater, proposed for construction and operation in California.³ For projects less than 100 MW that are found to have no substantial adverse impact on the

¹ The Committee consists of Commissioner Karen Douglas, Presiding Member, and Commissioner Janea A. Scott, Associate Member. The Energy Commission made this Committee assignment at the January 17, 2018 Business Meeting (TN 22286).

² The original Application can be found at TN 222041-1 through 222041-13; 222097 and 222104. The revised Application can be found at TN 223483 and 223484.

³ Cal. Pub. Resources, §§ 255120, 25500.

environment or energy resources, the Energy Commission may grant an exemption to this authority – called a small power plant exemption (SPPE) – and allow project proponents to seek project approval through local agencies.⁴

On December 21, 2017, Vantage Data Centers (Applicant), filed the Application for the proposed Project with the Energy Commission. The Applicant amended its Application on May 21, 2018, and now seeks to build 47 diesel generators and three lifesaving emergency generators to provide backup generation to support the McLaren Data Center (Data Center) when electricity is unavailable. The Project's generators would not be interconnected to the electric transmission grid.

To approve the Application, the Energy Commission must find that the proposed project would not create a substantial adverse impact on the environment or on energy resources.⁵ On June 22, 2018, Energy Commission staff (Staff) filed an Initial Study/Mitigated Negative Declaration (IS/MND) containing its analysis of the Project's potential impacts on the environment and energy resources.⁶

ISSUES IN CONTENTION

Generating Capacity

Parties' Positions

On August 30, 2018, the Committee held a Prehearing Conference/Evidentiary Hearing (August 30 Hearing). One focus of the hearing was whether an SPPE is available for this Project. The discussion was prompted by a Motion to Dismiss filed by Intervenor Helping Hand Tools (Helping Hand) on August 3, 2018.⁷

Helping Hand argued that calculation of the 100 MW for SPPE jurisdiction should be based on California Code of Regulations, title 20, section 2003 (Section 2003). Applying this regulation, Helping Hand argues that the generating capacity of the Project is 131.05 MW⁸. Helping Hand continued by noting that calculation of generation could not be temporarily reduced as any reduction in generating capacity required permanent modification to the generator.⁹

The Applicant filed its opposition to the Motion to Dismiss on August 6, 2018, arguing that the generators to be used were not turbine generators and therefore Section 2003 is not

⁴ Cal. Pub. Resources, §25541.

⁵ Cal. Pub. Resources, §25541, subd. (a).

⁶ TN 223911.

⁷ TN 224402.

⁸ 131.05 MW was calculated by adding the total nameplate generating capacity of the 47 backup diesel generators (129.25 MW) and the 3 lifesaving generators (1.8 MW). 47 backup diesel generators at 2.75 MW per generator = 129.25 MW. 3 lifesaving generators at 0.6 MW/lifesaving generator = 1.8 MW.

⁹ Cal. Code Regs., tit. 20, 2003, subd. (b)(3).

the only way to calculate whether a project is eligible for an SPPE.¹⁰ Applicant also contended at the August 30 Hearing that, regardless of the gross output possible, the generators would not be connected to the electric grid, would only be providing electricity to a single user (the Data Center), and the *net* generating capacity is limited by the demand of the Data Center. The Applicant further stated that, while it could be argued that the Project is not a power plant because it would not deliver electricity to the grid, the Applicant had decided it was prudent to still file an application for an SPPE with the Energy Commission.

Staff filed its response to the Motion to Dismiss in an omnibus filing that also included its response to comments on the IS/MND. Staff concurred with Applicant that the essential factor for determining capacity is the maximum demand of the Data Center, not the nameplate capacity of the generators.¹¹

The Committee questioned the parties, both before and during the August 30 Hearing, as to what regulations apply to the calculation of generating capacity for SPPE jurisdiction and did not receive any additional citations.

Air Quality Impacts

Parties' Positions

Another topic discussed during the August 30 Hearing was the potential impacts to air quality and public health when the generators were used for emergency operation.

After the August 30 Hearing, Helping Hand argued that emergency operations should have been modeled to determine the potential impacts to air quality, both for the project and cumulatively.¹²

Staff contended that such modeling was too speculative because there were few known outage incidents that would require the use of the generators. In addition, Staff stated that the conditions under which the generators would operate in an emergency (hours of operation, whether such operations would be continuous, background air quality, and local meteorological conditions) were also uncertain. Thus, Staff argues, any modeling of emergency operations would be speculative.¹³

¹⁰ TN 224411; Transcript of August 30, 2018 Prehearing Conference and Evidentiary Hearing (TN 224793) 13:8 – 14:23, 31:1 – 31:21.

¹¹ TN 224479; TN 224793, 29:2 – 30:7.

¹² TN 224681, pp. 1-6.

¹³ TN 224479, pp. 9-10; Transcript of August 30, 2018 Prehearing Conference and Evidentiary Hearing (TN 224793) 85:11 - 85:21, 87:24 – 89:5.

ORDER RE: ISSUESTATEMENTS

Generating Capacity

The term “generating capacity” appears as a minimum threshold in the definition of a “thermal power plant” in Public Resources Code section 25120, and as an upper limit on the types of thermal power plants eligible for exemption in Public Resources Code section 25541. In this context, Section 2003 interprets and adds specificity to how generating capacity is calculated for turbine generators specifically. However, the basic notion in Section 2003 that “generating capacity” is how much electricity a thermal power plant has the potential to generate, without regard to how much load it may serve, is simply a statement of the generally understood meaning of “generating capacity.”

Section 2003 does not explicitly state that it is to be used for calculating power plant generating capacity for purposes of determining Energy Commission jurisdiction under either section 25120 or 25541, nor does it specifically address how to calculate generating capacity for diesel generators, such as those proposed for this Project.

The Committee is also aware from Staff’s testimony that the Energy Commission has calculated generating capacity for purposes of determining jurisdictional questions by multiplying the nameplate capacity by the number of proposed generators and subtracting the auxiliary load.

While both Staff and Applicant support using the maximum demand of the Data Center as the generating capacity, rather than the gross generating capacity of the diesel and lifesaving generators, such an approach may conflict with the intent of Section 2003. In addition, the demand of the Data Center could be altered at the discretion of the Applicant—by reconfiguring the interior spaces of the Data Center buildings to allow additional servers, adding additional buildings, and so on.

As such, the Committee **ORDERS** that Staff and Applicant shall, and other parties may, file an Issues Statement no later than Friday, October 5, 2018, to address the following:

1. Are there any regulations, statutes, or guidance documents, other than Section 2003, that can apply to the calculation of generating capacity for determining SPPE jurisdiction?
2. Is there any regulation, statute, or other guidance document that supports the argument that the generation capacity in this proceeding can or should be based upon the data center’s demand?
3. Is there a technology or device that would allow the electricity demand of the Data Center to be met and still permanently limit the generating capacity to less than 100MW?

4. Instead of only using diesel generators, are there other devices or technology, such as battery storage, that could meet some of the backup electricity needs of the Data Center?

In addition to the foregoing, Applicant shall, but the other parties may, respond to the following:

5. Is the Applicant willing to amend its project and SPPE application to a facility whose generators have a capacity of less than 100 MW as calculated using just a generator's nameplate capacity?

In addition to items 1 through 4, above, Staff shall, and the other parties may, respond to the following:

6. What additional information would be necessary for an Application for Certification (AFC) if no changes to the Project were available or made? How long would the process take, given the existing environmental review already conducted?

Air Quality

The parties' comments filed in the record and made at the August 30 Hearing focused on whether the potential impacts to air quality when the generators are used for emergency operation had been modeled.

The evidence to date indicates that the potential impacts of the generators based on 50 hours per year per generator have been modeled.¹⁴ This same evidence establishes the actual testing time per year per generator. Given that the single instance of outage in the vicinity of the Data Center was 19 hours, it seems reasonable that the 50 hours of modeling would adequately address the potential air quality impacts for both the number of actual testing hours and the hours of emergency operation.

Thus, while separate modeling for emergency operations distinct from that already done for the maximum hours per year of testing authorized under the applicable permit from the air pollution control district does not appear necessary, the modeling discloses that, when operated for 50 hours per year per generator, the Project would exceed the air district's threshold of significance for nitrous oxide (NOx).¹⁵

The Committee therefore **ORDERS** that Staff and Applicant shall, and other parties may, file an Issues Statement no later than Friday, October 5, 2018, to address the following:

1. What measures, if any, are available to mitigate the Project's potential to exceed the threshold of significance for daily and annual NOx emissions to a less than significant level?

¹⁴ TN 223911, p. 5.3-14-5.3-17.

¹⁵ TN 223911, p. 5.3-14-5.3-17.

Purpose of the Status Conference

The purpose of this Status Conference is to provide the Committee, the parties, and the public with a forum to discuss the proceeding and to receive additional input on the Issue Statements discussed above. The Committee may reopen the evidentiary record to receive additional testimony and other evidence regarding the issues described above.

NOTICE OF CLOSED SESSION DELIBERATIONS

At any time during the Status Conference, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

TRANSCRIPTS

Parties are responsible for identifying errors in the transcripts of the proceedings. Corrections to the transcripts must be filed within 30 days of the filing of a transcript.

AGENCY AND PUBLIC PARTICIPATION

Local, state, federal, and tribal governmental agencies and members of the public are welcome to attend and offer oral or written comments at the Status Conference. It is not necessary to be an intervenor to participate in the public process. Comments may be submitted electronically by email at:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=17-SPPE-01>

Otherwise, written comments may be submitted for posting on the proceeding docket by handing them directly to the Public Adviser, e-mailing them to docket@energy.ca.gov, or by U.S. Mail to:

California Energy Commission
Docket Unit
Docket number: 17-SPPE -01
1516 Ninth Street, MS-4
Sacramento, CA 95814

For all comments, please include the docket number and proceeding name “**Docket No. 17-SPPE-01, McLaren Backup Generating Facility**” in the subject line and on the cover page.

Please note: Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via search engines such as Google and Yahoo.

PUBLIC ADVISER AND OTHER ENERGY COMMISSION CONTACTS

The Energy Commission Public Adviser's Office is available to assist the public with understanding the proceedings and to facilitate meaningful participation. For assistance, please contact Alana Mathews, Public Adviser at publicadviser@energy.ca.gov or (916) 654-4489, or toll free at (800) 822-6228.

Questions of a procedural nature should be directed to Susan Cochran, Hearing Officer, by e-mail at susan.cochran@energy.ca.gov or (916) 654-3965.

Technical questions concerning the Project should be addressed to Leonidas Payne, Staff Project Manager, by e-mail at leonidas.payne@energy.ca.gov or (916) 651-0966.

Media inquiries should be sent to the Media and Public Communications Office at mediaoffice@energy.ca.gov or (916) 654-4989.

If you have a disability and require assistance to participate in this event, please contact Erica Rodriguez at erica.rodriguez@energy.ca.gov or (916) 654-5146 at least five days in advance.

REMOTE ATTENDANCE

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Muting

We greatly appreciate your cooperation in reducing noise on the audio connection by muting your line when you are not speaking. Mute your line rather than placing your phone on hold. Using WebEx, you may mute yourself by right clicking on your name in the panelists or attendees list and selecting "Mute." If you are only using a telephone connection, press "*6" once to mute and again to unmute.

Availability of Documents

Information regarding the status of the Project, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the Energy Commission's web page at <http://www.energy.ca.gov/sitingcases/mclaren/>.

Dated: September 28, 2018, at Sacramento, California

ORIGINAL SIGNED BY:

ORIGINAL SIGNED BY:

KAREN DOUGLAS
Commissioner and Presiding Member
McLaren Backup Generating Facility Project
Committee

JANEA A. SCOTT
Commissioner and Associate Member
McLaren Backup Generating Facility Project
Committee

**McLaren Backup Generating Facility Project (17-SPPE-01)
Status Conference**

Wednesday, October 10, 2018

10:00 a.m.

**California Energy Commission
Art Rosenfeld Room (Hearing Room A)
1516 Ninth Street
Sacramento, CA 95814**

1. Call to Order
2. Status Conference
3. Public Comment

Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

4. Closed Session
Committee closed session consideration of the following item:

***SMALL POWER PLANT EXEMPTION FOR THE McLAREN BACKUP
GENERATING FACILITY PROJECT***

5. Adjourn

Agency Contact: Susan Cochran, Hearing Officer, phone: (916) 654-3965, or e-mail at susan.cochran@energy.ca.gov.