

DOCKETED

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Project Title:	McLaren Backup Generating Facility
TN #:	224975
Document Title:	Orders after October 10 2018 Status Conference
Description:	Full title: Orders on Motions to Dismiss, to Amend Procedural Schedule, and to Strike Testimony; Order Granting Helping Hand Tools Additional Time to File Testimony; and Revised Schedule
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Before the Energy Resources Conservation and Development
Commission of the State of California
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**APPLICATION FOR A SMALL POWER PLANT
EXEMPTION FOR THE:
MCLAREN BACKUP GENERATING
FACILITY PROJECT**

Docket No. 17-SPPE-01

**ORDERS ON MOTIONS TO DISMISS, TO
AMEND PROCEDURAL SCHEDULE, AND TO STRIKE TESTIMONY;
ORDER GRANTING HELPING HAND TOOLS ADDITIONAL TIME TO
FILE TESTIMONY; AND REVISED SCHEDULE**

Introduction

On December 26, 2017, Vantage Data Centers (Applicant) submitted an Application for a Small Power Plant Exemption (SPPE) to the California Energy Commission (Energy Commission) for the McLaren Backup Generating Facility (Backup Facility) project. The Applicant submitted a revised application (Revised Application) on May 21, 2018.¹ The Backup Facility would be located in the city of Santa Clara, California, and would provide power exclusively to the McLaren Data Center (Data Center).

The Energy Commission assigned a committee of two Commissioners (Committee) to conduct proceedings on the Revised Application.²

Background

As described in the Revised Application, the Applicant seeks to build 47 diesel generators and three lifesaving emergency generators to provide backup generation to support the Data Center when electricity from the grid is unavailable. The Backup Facility would not be interconnected to the electrical transmission grid. All proceeding-related documents are available at:

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

¹ TN 223483, 223484.

² The Energy Commission appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea A. Scott, Commissioner and Associate Member, at its Business Meeting on January 17, 2018 (TN 222286).

Motion to Dismiss

On August 3, 2018, Intervenor Helping Hand Tools (2HT) filed a motion to dismiss the proceeding, contending that the gross rating of the 47 generators exceeds the 100 megawatt (MW) limit for an SPPE.³ 2HT argues that generating capacity is determined according to section 2003 of the Energy Commission's regulations, as well as calculations used in prior SPPE decisions.⁴

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 does not apply. The Applicant also contended that, regardless of the gross output possible, the generators would not be connected to the electricity grid, the energy generated would be used solely to meet the needs of the Data Center, and the generation is therefore limited to the amount demanded by the Data Center.⁵

Staff's written response concurred with the Applicant that the essential factor for determining capacity is the maximum demand of the Data Center, not the nameplate capacity of the generators.⁶

Motion to Amend the Schedule

On August 10, 2018, 2HT filed a motion to amend the procedural schedule.⁷ Staff responded to this motion recommending the Committee maintain its current schedule.⁸ The Applicant did not respond to the motion to amend the schedule.

Motion to Strike Applicant's Testimony

The Committee conducted a Prehearing Conference and Evidentiary Hearing on August 30, 2018. Following the hearing, the Committee issued questions regarding the determination of the Backup Facility's generating capacity and the air quality analysis.⁹ Responses to the Committee questions were submitted by the parties¹⁰ and discussed during an October 10, 2018, Committee Status Conference.

On October 8, 2018, 2HT filed a motion to strike the proposed testimony the Applicant filed in response to the Committee questions.¹¹

³ TN 224402.

⁴ TN 224402.

⁵ TN 224411.

⁶ TN 224479.

⁷ TN 224460. The procedural schedule was set by the Committee as part of its Notice of Prehearing Conference, Evidentiary Hearing, Scheduling Order, and Further Orders on July 23, 2018 (TN 224237) (July 23 Notice and Order).

⁸ TN 224479.

⁹ TN 224822.

¹⁰ TN 224897, TN 224909, TN 224911, and TN 224912.

¹¹ TN 224913.

Discussion

The Energy Commission's regulations¹² provide that the Presiding Member rule on motions within 21 days of their filing, unless a later deadline is established.¹³ On August 2, 2018, the Committee extended the time to rule on the motions to dismiss and to amend the schedule to September 14, 2018.¹⁴ The time to rule was later extended to October 12, 2018.¹⁵

Motion to Dismiss

The Energy Commission is responsible for reviewing, and ultimately approving or denying, all thermal electric power plants 50 MW and greater proposed for construction and operation in California.¹⁶ Pursuant to Public Resources Code section 25541, the Energy Commission may grant an exemption to this authority (Small Power Plant Exemption (SPPE)) and allow applicants to obtain a license through the local review and approval process if a proposed project has a generating capacity of up to 100 MW. Section 25541 does not indicate the manner in which generating capacity is to be calculated.

In the SPPE review process, the assigned Committee publishes a recommended decision to approve or deny the SPPE request that requires a hearing and vote of the Energy Commission.¹⁷ This recommended decision also includes a jurisdictional determination; that is, whether the project has a generating capacity up to 100 MW.

We find the issue of generating capacity, and ultimately jurisdiction, is best addressed in the Committee's recommended decision. In this way, the Energy Commission will consider all aspects of the SPPE requested by the Applicant, including generating capacity.

Therefore, the Motion to Dismiss is **DENIED**, subject to determination of the Backup Facility's generating capacity in the Energy Commission's decision on the SPPE.

Motion to Amend the Schedule

As indicated above, the Committee proceeded with the Prehearing Conference and Evidentiary Hearing as set forth in the July 23 Notice and Order. Therefore, the Motion to Amend the Schedule is moot and is **DENIED**.

Motion to Strike

During the October 10 Status Conference, the Committee, following consideration of party arguments, admitted the applicant's exhibits into the evidentiary record. The motion asserts that the Committee did not invite additional testimony for the October 10 Status Conference and that the testimony offered would be prejudicial to 2HT "because it will not have had an opportunity to present contrary evidence, research the validity of the

¹² California Code of Regulations, Title 20, Division 2.

¹³ Cal. Code Regs., tit. 20, §1211.5.

¹⁴ TN 224542.

¹⁵ TN 224726.

¹⁶ Cal. Pub. Resources, §25500.

¹⁷ Cal. Code Regs., tit. 20, § 1945, subd. (b).

evidence, consider the references cited in the entire context of the documents relied upon nor cross-examine the basis and assumptions used to support the applicants unsolicited testimony.”¹⁸

In fact, the notice of the Status Conference contained a statement that “[t]he Committee may reopen the evidentiary record to receive additional testimony and other evidence regarding the issues described above.”¹⁹ The Applicant filed testimony and supporting documents in anticipation of the possible reopening of the evidentiary record; 2HT did not. Robert Sarvey, 2HT’s representative, acknowledged reading the notice and should not be surprised that another party offered evidence in response to the notice.

During the October 10 Status Conference, the Committee, following consideration of party arguments, admitted exhibits from Applicant and 2HT into the evidentiary record.²⁰ Having admitted the Applicant’s evidence, the Motion to Strike is **DENIED**.

Additional time for Helping Hand Tools to file Testimony

The Committee granted 2HT an additional week to prepare and file testimony limited to new evidence only that relates to the questions posed by the Committee in the September 28 Notice of Status Conference and Further Orders.²¹ 2HT shall identify and file any additional evidence relevant to the Committee’s questions no later than **5:00 p.m. on Wednesday, October 17, 2018**.

Revised Schedule

During the October 10 Status Conference, the Applicant requested that a recommended decision be presented to the full Energy Commission for adoption at the November 7, 2018, Business Meeting. The Committee will attempt to do so, filing the recommended decision no later than Friday, October 26, 2018, for consideration on November 7, 2018.

IT IS SO ORDERED.

Dated: October 12, 2018, at Sacramento, California

Original signed by

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

Original signed by

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

¹⁸ TN 224913, p. 1-2.

¹⁹ TN 224822, p. 6.

²⁰ See Exhibits 30-34 and 306.

²¹ TN 224822.