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M e m o r a n d u m

To: Commissioner Karen Douglas, Presiding Member
Commissioner Patty Monahan, Associate Member

Date: August 17, 2020

From: California Energy Commission
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Subject: STATUS REPORT #5 WITH STAFF PROPOSED UPDATES TO THE COMMITTEE SCHEDULE FOR THE SAN JOSE CITY DATA CENTER SMALL POWER PLANT EXEMPTION (19-SPPE-04)

In its May 12, 2020 order (Committee Scheduling Order), the Committee ordered all parties to file and serve a Status Report on the 15th of each month, beginning with May 15, 2020.

Since staff filed Status Report #4 on July 15, 2020, staff has continued with its environmental analysis. Staff recommended a schedule in Staff's Revised Issues Identification Report, Status Report, and Proposed Schedule for the San Jose City Data Center Small Power Plant Exemption (19-SPPE-04) on March 11, 2020, assuming, among other things, that its initial study would result in the issuance of a proposed mitigated negative declaration (MND) similar to what has been done in prior small power plant exemption (SPPE) proceedings.

During the course of developing the initial study and engaging with the City of San Jose, staff believes the production of an environmental impact report (EIR) for the project is prudent. Staff has reached this conclusion for a number of reasons. The City of San Jose in evaluating a prior version of the project, which included additional light industrial facilities and a smaller scale data center, issued an EIR that identified significant and unavoidable impacts. In addition, staff has identified potentially significant transportation impacts from the project necessitating consideration of alternatives. Another factor is that the project will result in the need to reconductor nine miles of transmission lines. Because staff will not be receiving the requested information regarding this activity until the end of September, utilizing an EIR provides greater flexibility to address potential impacts from these project related upgrades.

Staff's initial studies in previous SPPEs have been to the level of detail and technical analysis typically found in EIRs, or in the case of the CEC's certified regulatory program, final staff assessments. Therefore, staff does not believe preparing an EIR will have

much impact on the schedule and will allow for the acceleration of the overall process because the evidentiary component can be reduced and if exempted, the City of San Jose will be able to rely on the CEC's EIR without the need for further assessment.

Staff has notified the applicant of this change and is hereby informing the Committee that staff will prepare an EIR for this project. Staff continues to coordinate with the City of San Jose in the development of the EIR to ensure it properly incorporates the city's CEQA thresholds and policies.

Preparation of an EIR will require a few adjustments to the schedule and the addition of one section to the analysis. In regard to the schedule, a Notice of Preparation will be required to be issued, and 30 days must pass from this issuance before the EIR may be published. As the lead agency, staff also expects to hold a scoping meeting to afford responsible agencies (including the City of San Jose and the Bay Area Air Quality Management District) and the public an opportunity to help identify areas of concern for review. This meeting can occur at any point prior to publication of the EIR and should not drastically affect schedule. Additionally, the comment period on the environmental document will need to extend from 30 to 45 days. Staff has provided below proposed updates to the Committee's schedule to accommodate preparation of an EIR. Substantively, given staff's already robust analysis, little would need to change, with the exception of the addition of an analysis of alternatives. Staff has sent the applicant a request for updated information that would assist staff in the preparation and evaluation of alternatives (e.g., applicant's basic objectives of the project). Staff is awaiting the applicant's responses to Staff's Data Requests Sets 4 and 5, and the completion of responses to Set 3, anticipated to be filed by the end of September 2020. Depending upon the thoroughness and clarity of the information from the applicant, it may be necessary for staff to file data requests after reviewing information from the applicant.

Staff's Proposed Updates to the Committee Schedule

Staff has incorporated the extra tasks and comment period that the California Environmental Quality Act requires for an EIR in **bold** text for additions and ~~strikethrough~~ text for deletions and updated the Committee's schedule accordingly. Staff are respectfully proposing these updates to ensure consistency with CEQA requirements.

EVENT	DATE
All Parties file Status Reports	Beginning May 15th, the 15th of every month
Complete Applicant Responses to Data Requests Set 3	End September 2020
Applicant Responses to Data Requests Set 4	End of September 2020
Applicant Responses to Data Requests Set 5	End of September 2020
Notice of Preparation of an Environmental Impact Report (EIR) mailed and docketed	August/September 2020
Scoping Meeting	September 2020

Staff Publishes its Environmental Review Document and sends the appropriate notice to the State Clearinghouse (Draft EIR within 30 days of receipt of last information from applicant and no sooner than 30 days after issuance of Notice of Preparation)	No later than 30 days after receipt of the last information data request-response from Applicant
Public Comment Period on Staff's Environmental Review Document closes (45 days per CEQA as EIR)	45 30 days after publication of Staff's Environmental Review Document
Staff responds to comments on Staff's Environmental Review Document	14 10 days after close of public comment period
All Parties File Opening Testimony	10 days after the filing of the response to comments 30 days after publication of Staff's Environmental Review Document
Last Day to File Petition to Intervene	To be determined
All Parties to File Reply testimony	10 days after opening testimony
Prehearing Conference (PHC) statement Filed	3-5 days after reply testimony
PHC	7-10 days after PHC statement
Evidentiary Hearing (EH)	7-14 days after PHC statement
Committee files Proposed Decision	30 days after EH
Final Adoption Hearing by the Commission Decision/ Final EIR	Second Fourth quarter 2021 2020
Notice of Determination published	Within 5 working days of Commission Decision