

DOCKETED

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Memorandum

To: Commissioner Karen Douglas, Presiding Member
Commissioner Andrew McAllister, Associate Member

Date: June 28, 2021

From: California Energy Commission
1516 Ninth Street
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Subject: UPDATED ISSUES IDENTIFICATION REPORT, STATUS REPORT, AND PROPOSED SCHEDULE FOR THE GILROY BACKUP GENERATING FACILITY SMALL POWER PLANT EXEMPTION (20-SPPE-03)

In its NOTICE OF COMMITTEE CONFERENCE AND RELATED ORDERS docketed June 9, 2021, the Gilroy Backup Generating Facility SPPE Committee ordered California Energy Commission (CEC) staff to file "an Issues Identification Report, Status Report, and Proposed Schedule, summarizing the major issues identified to date, reporting the status on activities conducted to date and issues that require resolution before hearings can be conducted, and proposing a schedule for the conduct of this proceeding."

Status Report / Issues Identification

To recap developments thus far, applicant Amazon Data Services (ADS) docketed an incomplete SPPE application for the project on December 17, 2020, and shortly thereafter signaled its intention to staff to submit a revised project description confirming a switch to Tier 4 engines to conform with the December 21, 2020 letter from the Bay Area Air Quality Management District (BAAQMD) determining that Tier 4 engines are the best available control technology (BACT) for this type of facility. This revised project description was docketed on April 20, 2021, and revised air quality and other technical sections were submitted soon after by ADS, at which point staff resumed work on its analysis. In the applicant's June 21, 2021 response to staff's initial Issues Identification Report, ADS reported that it is adding a Battery Energy Storage System (BESS) component to the project to operate in the event of up to 6 hours of emergency loss of electrical service to the data center, to reduce the reliance on the backup diesel generators.

Staff is working diligently to gather information necessary for its analysis. Staff previously docketed Data Request Set 1 on January 28, 2021 on portions of the original application that were not likely to change under the anticipated project revision to switch to Tier 4 engines, and the applicant provided partial responses on February 25, 2021. After the revised project description and associated technical sections were

submitted in April 2021, staff docketed Data Request Set 2 on June 2, 2021. The applicant provided responses to Data Request Set 2 on June 22, 2021. Staff is currently preparing Data Request Set 3, which will address the topic area of Transportation and may include follow up questions to prior data requests. Staff is awaiting the revised project description detailing the addition of the BESS, and will likely have additional data requests in response.

Concurrently with staff's information gathering activities, staff is drafting its environmental evaluation document. Staff has determined, and has informed the applicant, that its environmental document for this project will be an Environmental Impact Report (EIR).

Based on our analysis of the project as it is presently described in docketed materials, and anticipating the addition of battery storage as described in the applicant's June 21, 2021 filing, staff can report that there are no apparent issues in the technical areas of Aesthetics, Agriculture/Forestry, Biological Resources, Cultural and Tribal Cultural Resources, Geology and Soils, Land Use, Minerals, Noise, Population and Housing, Public Services, Recreation, and Wildfire. For each of these technical areas, staff has drafted the corresponding technical section, and submitted them for internal review and quality control for later compilation into staff's environmental document.

Given the present status of the discovery effort, staff is not able to make any definitive statements with respect to issues in the technical areas of Air Quality, Energy and Energy Resources, Greenhouse Gases, Hazards and Hazardous Materials, Hydrology and Water Quality, Transportation, Utilities and Service Systems, Mandatory Findings of Significance, and Environmental Justice.

On May 7, 2021, staff sent tribal consultation letters to the Amah Mutsun Tribal Band, Indian Canyon Mutsun Band of Costanoan, Muwekma Ohlone Indian Tribe, North Valley Yokuts Tribe, and The Ohlone Indian Tribe.

On June 7, 2021, staff transmitted the Agency Request for Participation to the Agency Distribution List, including the City of Gilroy, BAAQMD, Santa Clara Valley Transportation Authority, Santa Clara Valley Habitat Agency, Central Coast Regional Water Quality Control Board, Native American Heritage Commission, California Department of Fish and Wildlife, California Public Utilities Commission, Pacific Gas and Electric Company, and California Independent System Operator.

Project Schedule

Because staff is awaiting a second revised project description and the information gathering phase is still ongoing, it is not possible for staff to produce a definitive estimate for publication of its environmental document at this time. Given the determination to document our analysis in an EIR, staff will conduct Notice of Preparation related activities, determine if a scoping meeting is needed, develop an Alternatives section, and potentially prepare additional rounds of data requests. As staff receives the forthcoming information, staff will communicate schedule related information in future status reports.

Staff recommends that the Scheduling Order associated with this proceeding match the language recently approved for the Lafayette SPPE proceeding, which states that publication of staff's environmental document should occur "No later than 60 days following staff acknowledgement in a status report that it has no further data requests."

Staff proposes the following schedule:

Application materials docketed	12/18/2020
Data Request Set 1 docketed	1/28/2021
Partial Responses to Set 1 docketed	2/25/2021
Data Request Set 2 docketed	6/2/2021
Staff Memo re Issue ID and Schedule docketed	6/14/2021
Responses to Set 2 docketed	6/22/2021
Committee Status Conference	6/28/2021
Data Request Set 3 docketed	TBD
Complete responses to all Data Requests provided by applicant	TBD
Staff acknowledgement of no further Data Requests in a status report	TBD
Staff's environmental document published	TBD
Deadline for comments on staff's environmental document (45 days per CEQA)	TBD
SPPE hearing related testimony and activities	TBD
Committee proposed decision	TBD
Commission Decision at Business Meeting	TBD

Staff additionally makes the following requests regarding the schedule for and conduct of the proceeding:

- Staff requests that the Committee establish the same deadline for public comment on the environmental document and Opening Testimony from any intervening parties.
- Staff requests that the Committee grant staff a minimum of 15 business days—not calendar days—following a combined CEQA commenting / Opening Testimony deadline to prepare and submit its Reply Testimony, which would include responses to any substantive comments received on the environmental document.
- Staff is open to combining the Prehearing Conference and Evidentiary Hearing and having them occur on the same day as has occurred in prior data center backup generating facility SPPE proceedings.
- Given the robust evidentiary records developed in prior data center SPPE proceedings, staff believes the conduct of the proceeding from publication of the environmental document to consideration at a business meeting can be significantly accelerated. To the extent practicable, testimony from prior cases can be admitted

into the record of this proceeding in lieu of live testimony at the evidentiary hearing. Staff also recommends that Committee-imposed limitations on testimony regarding previously settled issues (generation capacity, modeling of emergency operations, etc.) be strictly enforced.