

DOCKETED

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application For Small Power Plant
Exemption for the **CA3 BACKUP
GENERATING FACILITY**

DOCKET NO: 21-SPPE-1

**VDC RESPONSE TO STAFF'S ISSUE
IDENTIFICATION REPORT AND
PROPOSED SCHEDULE**

VDC, in accordance with the Hearing Officer Memorandum, dated, July 23, 2021 (TN 239037), hereby files its response to Staff's Issue Identification Report, Status Report and Proposed Schedule (IIR), dated August 2, 2021 (TN 239155). First, VDC believes that an Environmental Impact Report (EIR) is unnecessary as the Proposed CA3BGF and CA3DC has incorporated Proposed Design Measures that ensure that all impacts are mitigated to less than significant levels. However, since time is of the essence for the CA3BGF and CA3DC, VDC has accepted Staff's decision in order to avoid the time delay (motions, hearing, and Committee Decision) in opposing the decision. VDC's timeline to accommodate a new tenant for the CA3DC will not allow such time delays.

STAFF IDENTIFIED ISSUES

Biological Resources

VDC agrees with Staff's characterization that the only remaining data need for Biological Resources at the time of Staff's IIR was the Tree Disposition Plan. VDC docketed the Revised Tree Disposition Plan on August 2, 2021 (TN 239148). VDC believes Staff now has all the necessary information to complete its Biological Resources section of the Draft Environmental Impact Report (DEIR).

Energy and Energy Resources

Staff states in its IIR, “Staff is awaiting submittal of the impact study to better evaluate the project’s overall impact on the transmission system and on SVP’s ability to serve the project.” First, Staff does not need a system impact study to perform its CEQA review, as reflected in all of the recent data center backup generation projects recently approved by the Commission. Second, the ability of SVP to serve the CA3DC has been documented by SVP in the Attached Letter, which shows that CA3DC (identified as 2590 Walsh Avenue) can be provided with initial power. VDC understands that out of system transmission upgrades will need to be completed in order for additional electricity to be imported into the SVP system. The conceptual timeline for completion for outside the system projects is the fourth quarter of 2025. As the SVP letter states, upon completion of the additional transmission, Vantage can increase from 192.5 MVA to 273 MVA.

All of the out of system upgrades would be performed by PG&E and such upgrades will be the result of SVP’s total demand increase within its service territory, and not solely attributable to CA3. These upgrades will be subject to permitting by the California Public Utilities Commission (CPUC) and subject to CEQA when they are defined. If the PG&E upgrades require additional upgrades to the SVP system, such upgrades will be network upgrades and subject to CEQA review by the City of Santa Clara at that time. The letter showing that there is initial electrical capacity to serve CA3DC should be sufficient for Staff to conduct its CEQA-level review. As a practical matter, CA3DC cannot consume electricity than SVP can deliver to the site and as the CA3DC demand increases over time. VDC has a long history of coordinating its electrical demand with SVP and actual increases of electrical consumption at VDC’s facilities is always subject to SVP’s timing on procurement and delivery of electricity needed. Therefore, SVP’s planning, procurement, and delivery is a prerequisite to CA3DC’s use and will not cause significant impacts to energy resources.

Aesthetics and Land Use

Staff is correct that during the Project Clearance Committee (PCC) process conducted with the City of Santa Clara, City Staff required a modification to the fire road to maintain a setback from Walsh Avenue. While the City Staff did mention that moving the generator yard to rear of the site would accommodate the setback, VDC has discussed with the City that moving the generator yard to the rear of the site would put them closer to sensitive receptors and that is why the generator yard was located on the

Walsh Avenue side of the CA3DC. Eight of the generators within the generator yard have been relocated as shown in VDC's recently docketed data responses and the fire road has been modified to accommodate the setback. Air Quality modeling has been completed and docketed on August 9, 2021 with the revisions Staff requested in Data Request 2 reflecting the rearrangement of the generators within the generator yard. VDC's discussions with the City relating to the appropriate screening are ongoing. VDC is confident the generator yard can be built as modified and screened appropriately to satisfy the City requirements.

VDC believes the Staff has all it needs to prepare its Land Use, Aesthetics, and Air Quality and Greenhouse Gas Emissions section of the Draft EIR.

SCHEDULE

VDC needs to begin construction as soon as possible in 2022 to accommodate a tenant for Phase I of the building. Therefore, time is of the essence. To accommodate the timeline, VDC has responded to data requests quickly, has minimized project changes, and has agreed to the preparation of an EIR even though it strongly believes an EIR is unnecessary. VDC proposes the following modifications to the Staff proposed schedule and requests the Committee incorporate the following suggestions. Counsel for VDC has made these suggestions in other project cases, but the Committees have not explained why they cannot be implemented.

1. To avoid the delays experienced in previous projects, VDC requests that the Committee require any potential Intervenor to file a Petition to Intervene 10 days before the close of the public comment period for the DEIR. Any potential Intervenor would have had 35 days since publication of the DEIR to determine whether or not to intervene or to participate as a member of the public.
2. VDC requests that an Intervenor be required to file comments on the DEIR as a prerequisite to being allowed to present further oral and written testimony and that those comments be treated as Intervenor's Opening Testimony for each respective issue. VDC agrees to file its Opening Testimony on the same day. In this way, Staff can provide responses to such comments and/or Opening Testimony, thereby narrowing and reducing the time and issues requiring adjudication in evidentiary hearings. This does not place any undue burden on Intervenor, as they would have had the same amount of time to review the DEIR and provide comments as any agency or other member of the public. For California Environmental Quality Act (CEQA), this is the primary way for

interested persons to participate, and it is only fair to allow Staff an opportunity to consider and respond to comments.

3. The Committee should review Staff's response to the comments and Proposed Final EIR prior to requiring the standard PreHearing Conference and Evidentiary Hearings as a matter of course. Based on its review the Committee could, and should, simply move directly to an evidentiary hearing for the sole purpose of moving exhibits into the record and adopting the Final EIR with any revisions it may deem necessary. The Committee is not required to entertain oral testimony and should only do so to hear evidence that is new, unique to the CA3BGF and CA3DC, and required by CEQA. The evidentiary hearings should not be used to prolong the process and raise new issues not already handled in the public comment process for the DEIR.
4. VDC disagrees that Staff will need 60 days after VDC provides responses to Data Request Set 3. The issues have been narrowed by VDC's responsiveness to date and the Staff should be able to prepare the majority of the DEIR now. To that end VDC request that Staff be required to publish the DEIR within 30 days after full responses to any outstanding data requests are provided.
5. VDC disagrees with Staff's request for 30 days to respond to public comment on the DEIR. VDC requests Staff be required to produce Responses to Comments on the DEIR within 15 days of the close of the public comment period. The amount of public comment for a project such as the CA3BGF and CA3DC in the City of Santa Clara in the past has been light. VDC also requests that the Staff publish a Proposed Final EIR and that the Proposed EIR should not be the Final EIR until adopted by the Committee.

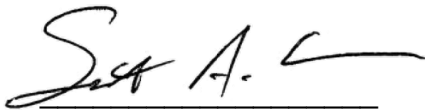
There are two reasons VDC is requesting the above suggestions. The first is to streamline the record and process to bring the proceeding more in line with a SPPE case where the focus is on compliance with CEQA and to prevent further movement towards treating the proceedings as those required for an Application For Certification (AFC). The second is that the evidentiary hearing process and Committee proposed decisions have taken a lot of time and effort to complete, often taking almost as much time as Staff required to evaluate the project and publish its environmental document. A robust record can be created by taking official notice of the information supplied in the prior projects, especially since they have been repeated multiple times in the prior data center SPPE Application proceedings. Focusing the proposed decision on items that have not yet been thoroughly adjudicated and are unique to the CA3BGF and CA3DC

would allow the Committee to significantly reduce the time to prepare the Proposed Decision, without the risk of harming the evidentiary record.

VDC will continue to work diligently with Staff to provide all the data necessary to prepare its DEIR and appreciates the Committee's consideration of our schedule-related recommendations.

Dated: August 6, 2021

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott A. Galati", written over a horizontal line.

Scott A. Galati

Counsel to Vantage Data Centers