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Document Title:	Staff Status Report #18 and Request for Scheduling Order Modification
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Memorandum

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

Date: September 15, 2021

From: California Energy Commission
715 P Street
Sacramento, CA 95814-5512

Lisa Worrall
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Subject: STATUS REPORT #18 AND REQUEST FOR SCHEDULING ORDER MODIFICATION FOR THE SAN JOSE 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.

On August 20, 2021, the applicant filed a revised project description and technical sections (as appropriate). The project now proposes the use of 244 0.45 megawatt (MW) renewable natural gas backup generators and two administrative Tier 4 compliant diesel-fired generators, rated at 1.25 MW and 0.5 MW. On September 3, 2021, the applicant filed a Final Transportation Assessment Report that responded to the City of San Jose's comments on the draft analysis. On September 14, 2021, staff filed data requests based on these materials and requested complete responses within 30 days.

On September 10, 2021, the Committee requested parties to address the issue of backup generator operations for grid related demand management. One of staff's data requests investigates how the backup natural gas generators would respond to load shedding, demand response, and resource adequacy ancillary services as part of an operational profile. With more details about the generators planned operation, staff would consider how or if the scope of analysis may need to change. The Supplemental Filing provided the applicant's updated air quality, public health, and greenhouse gas (GHG) emissions analyses, and the GHG section includes mitigation proposals to account for the natural gas generators providing grid support as well as emergency operations. Accordingly, staff is evaluating the applicability, clarity, and enforceability of the applicant's mitigation proposals.

The current schedule is not reflective of recent filings and staff recommends the Committee update the schedule in the Committee Scheduling Order. Staff is recommending two process changes that staff believes will streamline the proceeding by taking advantage of staff's preparation of an Environmental Impact Report (EIR) which, unlike an Initial Study and Mitigated Negative Declaration, requires a discussion

of alternatives and comprehensive responses to public comment on significant environmental issues raised. First, staff recommends as a co-benefit of drafting an EIR, a more streamlined evidentiary hearing limited to entering documents into the hearing record, responding to the Committee's written or oral questions, if any, and taking public comment.

Second, given the limited hearing and use of an EIR, intervention would not be allowed in this proceeding. Staff is already required to provide responses to public comments on the Draft EIR and the public is provided with additional opportunity at the evidentiary hearing to make comments, and again at the Business Meeting, thus intervention is redundant and unnecessary to inform staff, the Committee and Commission of public concerns.

Staff believes these changes will improve the efficiency of the process while preserving robust public engagement beyond the requirements of the California Environmental Quality Act. This is especially so given the Commission is not approving the project and an additional public proceeding with the City of San Jose still awaits the project before any actual approval.

Regarding the estimated publication date for the Draft EIR, due to the complexity of some of the technical sections that need to be re-analyzed and the extent of the project changes and number of technical sections affected, this work will take some time, and certainly more time than the 30 days from last data response that the current Committee Scheduling Order allows. Given the changes to the project description, combined with the need to evaluate applicant responses to recent data requests, staff is concerned that it will be unable to publish the environmental document "[n]o later than 30 days after receipt of the last data request response from Applicant" as noted in the May 12, 2020 Committee Scheduling Order. Staff suggests the following language to be inserted in the same place in the scheduling table: "No later than 60 days following staff acknowledgement in a status report that it has no further data requests."