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**State of California
State Energy Resources Conservation and
Development Commission**

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**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

CA3 BACKUP GENERATING FACILITY

Docket No. 21-SPPE-01

COMMITTEE SCHEDULING ORDER

BACKGROUND

In April 2021, Vantage Data Centers, LLC (Applicant) submitted an application (Application)¹ for a small power plant exemption (SPPE) for the CA3 Backup Generating Facility to the California Energy Commission (CEC).²

On July 27, 2021, the Committee³ issued a Notice of Committee Conference and Related Orders, which set a Committee Conference on August 10, 2021.⁴ The July 27th Notice also directed CEC staff (Staff) to file an issues identification and status report and a proposed schedule (Status Report) by August 2, 2021, and directed Applicant to file a response to Staff's Status Report by August 6, 2021.⁵ Staff met its deadline.⁶ Staff indicated that it intends to prepare an environmental impact report (EIR) as its

¹ Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [web page](https://www2.energy.ca.gov/sitingcases/ca3/) at <https://www2.energy.ca.gov/sitingcases/ca3/>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01>. The Application and related addenda are TN 237380 through 237383, TN 237423, and TN 237521.

² The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Cal. Pub. Resources Code, § 25200.)

³ On May 12, 2021, the CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Siva Gunda, Vice Chair and Associate Member, to preside over this Application. (TN 237834.)

⁴ TN 239037.

⁵ *Id.* at p. 4.

⁶ TN 239155.

environmental document for the Application.⁷ On August 20, 2021, Staff filed a notice of preparation of a draft environmental impact report.⁸

Applicant filed its response to Staff's Status Report on August 10, 2021 (Applicant's Response).⁹ Applicant made several proposals regarding the processing of the Application and seeks a final decision from the CEC by February 2022. In particular, the Applicant requests the Committee:

1. Require any potential intervenor to file a petition to intervene no later than 10 days before the close of the public comment period for the draft EIR;
2. Require an intervenor to file comments on the draft EIR, to treat those comments as the intervenor's opening testimony, and to require opening testimony to be filed on the same day as public comments are due;
3. Move directly to evidentiary hearing for the sole purpose of moving exhibits into the record based on a review of Staff's response to comments and proposed final EIR;¹⁰
4. Require Staff to file the draft EIR 30 days after the completion of discovery; and
5. Require Staff to file responses to comments 15 days after the close of the public comment period on the draft EIR.¹¹

Applicant also proposed that "Staff publish a Proposed Final EIR and that the Proposed EIR should not be the Final EIR until adopted by the Committee."

Applicant's Response was filed during the August 10, 2021, Committee Conference.¹² The Committee, Applicant, and Staff discussed the requests contained in Applicant's Response. Applicant stated its proposals were based on its desire to have a final decision from the CEC by February 2022.¹³

⁷ *Id.* at p. 2.

⁸ TN 239401.

⁹ TN 239235.

¹⁰ Under this proposal, the evidentiary hearing would be held solely for the purpose of introducing exhibits into the hearing record. TN 239235.

¹¹ *Id.* at pp. 3-5.

¹² TN 239677, hereinafter the "August 10 Transcript." Citations to the August 10 Transcript are in the format "August 10 Transcript, page:line – page:line."

¹³ August 10 Transcript, 31:15 – 31:16, 42:23 – 43:6, 56:3 – 56:5.

Staff had no objection to Applicant's proposals regarding the deadline to petition to intervene, limits on testimony, forgoing the prehearing conference, responding to comments in 15 days, and filing a proposed final EIR.¹⁴ Staff disagreed with the proposal to shorten the time to complete the draft EIR following the receipt of all discovery requests, and stated a need for 60 days due to staff resource constraints.¹⁵ Staff also suggested that the Committee consider having cross-examination conducted by written questions and responses, as was done in another SPPE proceeding recently.¹⁶

DISCUSSION

The Committee has considered the requests of both the Staff and Applicant and responds as follows:

1. The Committee agrees that, to the extent feasible, all parties, including intervenors, should raise issues in a timely manner so the other parties have an opportunity to respond with written testimony, allowing for the Committee to have more complete information on which to decide the issues that need to be adjudicated at the evidentiary hearing. Resolving petitions to intervene at an earlier date in the proceeding would facilitate the parties' ability to raise issues earlier in the proceeding. Accordingly, the attached schedule establishes the deadline for petitions to intervene during the public review and comment period on the draft EIR and ¹⁷ sets a briefing schedule that shortens the time to respond to such petitions.¹⁸
- 2 and 3. The Committee does not have enough information this early in the proceeding to allow it to determine whether these proposals will improve the efficiency of the hearing while building an adequate record to support the proceeding. At this point, there are no intervenors, the draft EIR has not yet been issued, public comments have not been received, and responses to comments have not been filed. The Committee declines to require that opening testimony be filed at the same time as public comment in this

¹⁴ August 10 Transcript, 57:4 – 58:11.

¹⁵ *Id.* at 56:6 – 57:3.

¹⁶ *Id.* at 58:23 – 59:5. The proceeding referred to was the Sequoia Data Center SPPE, Docket No. 19-SPPE-03.

¹⁷ The deadline to file a petition for intervention shall be established by the presiding member, or if no deadline is established, at least 30 days prior to the first day of the evidentiary hearing. (Cal. Code Regs., tit. 20, § 1211.7, subd. (b).)

¹⁸ "Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the service of the motions." (Cal. Code Regs., tit. 20, § 1211.5.)

proceeding. However, the Committee will take the remainder of these requests under consideration when the prehearing conference and evidentiary hearing are closer.

4. The Committee agrees with Staff that it should have up to 60 days to file the draft EIR once it has received complete responses to its data requests. The Committee notes that Staff frequently files documents more quickly but wishes to provide Staff with flexibility to meet staffing challenges and competing deadlines.
5. As Staff did not object to filing responses to comments in 15 days, the Committee has incorporated that into the scheduling order.

As to Applicant's proposal that Staff publish a Proposed Final EIR, the Committee declines to take action on this request as it appears to propose a novel approach to the typical process and thus warrants input from other parties. If the Applicant wishes to pursue this request, it should file a motion.

As to Staff's request to conduct cross-examination by written question and responses, the Committee does not have enough information this early in the proceeding to allow it to determine whether these proposals will improve the efficiency of the hearing while building an adequate record to support the proceeding. The Committee will consider this approach at the time it issues orders related to the conduct of the evidentiary hearing.

SCHEDULING ORDER

The Committee hereby adopts the schedule for the proceeding that is attached below. The Committee encourages the parties to make their best efforts to complete the milestones ahead of these dates.

The parties are ordered to submit monthly status reports as set forth in the attached schedule. Status reports shall inform the Committee whether or not the case is progressing satisfactorily and bring potential delays and other relevant matters to the Committee's attention.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor's Office provides the public with assistance in participating in CEC proceedings. For information on participation or to request interpreting services or reasonable accommodations, please contact the Public Advisor's Office at publicadvisor@energy.ca.gov, or by phone at (916) 654-4489, or toll free at (800) 822-6228.

Direct questions of a procedural nature related to the Application to Susan Cochran, Hearing Officer, at susan.cochran@energy.ca.gov or (916) 891-8078.

Direct technical subject inquiries concerning the Application to Eric Veerkamp, Project Manager, at eric.veerkamp@energy.ca.gov or at (916) 661-8458.

Direct media inquiries to mediaoffice@energy.ca.gov or (916) 654-4989.

AVAILABILITY OF DOCUMENTS

Information regarding the status of the Application, as well as notices and other relevant documents, are available on the [CA3 SPPE web page](https://www.energy.ca.gov/powerplant/reciprocating-engine/ca3-backup-generating-facility) for the CA3 Backup Generating Facility proceeding at: <https://www.energy.ca.gov/powerplant/reciprocating-engine/ca3-backup-generating-facility>.

IT IS SO ORDERED.

Dated: October 1, 2021

APPROVED BY:

Karen Douglas
Commissioner and Presiding Member
CA3 Backup Generating Facility SPPE
Committee

Dated: October 3, 2021

APPROVED BY:

Siva Gunda
Vice Chair and Associate Member
CA3 Backup Generating Facility SPPE
Committee

Mailed to list number(s): 7541

CA3 BACKUP GENERATING FACILITY SPPE (21-SPPE-01)
SCHEDULING ORDER
SEPTEMBER 2021

EVENT	DATE
All Parties File Status Reports	No later than the 20th of every month
Staff Filed Notice of Preparation of an Environmental Impact Report (EIR)	August 20, 2021
Staff Publishes its Draft EIR (DEIR) and Sends the Appropriate Notice to the State Clearinghouse	No later than 60 days after Staff notifies the Committee in a status report that is has received complete answers to its data requests
Last Day to File Petition to Intervene ¹⁹	21 days after Staff publishes the DEIR
Last Day to File Objection to any Petition to Intervene ²⁰	7 days after a Petition to Intervene is filed
Close of Public Comment Period on Staff's DEIR	45 days after Staff publishes the draft EIR ²¹
Staff Files Final EIR (FEIR) and Response to Public Comment	15 days after close of public comment period
All Parties File Opening Testimony	15 working days after Staff files the FEIR

¹⁹ The deadline to file a petition for intervention shall be established by the presiding member, or if no deadline is established, at least 30 days prior to the first day of the evidentiary hearing. (Cal. Code Regs., tit. 20, § 1211.7, subd. (b).)

²⁰ "Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the service of the motions." (Cal. Code Regs., tit. 20, § 1211.5.)

²¹ Please note that the State Clearinghouse has 3 days to distribute. (Pub. Resources Code, § 21091, subd. (c)(3).)

All Parties to File Reply Testimony. ²² Staff Files Any Errata or Addendum to FEIR.	10 days after opening testimony
All Parties File Prehearing Conference (PHC) Statements	5 days after reply testimony
PHC	7 days after PHC statement
Evidentiary Hearing (EH) ²³	To be determined
Committee Files Proposed Decision	To be determined
Adoption Hearing by the Commission	To be determined
Notice of Determination Published	Within 5 working days of Commission Decision

The Committee may modify the schedule at any time. The Committee will issue final dates in a later Order.

²² Seven days prior to the evidentiary hearing or at such other times as ordered by the presiding member. (Cal. Code Regs., tit. 20, § 1943.)

²³ Evidentiary hearings shall commence no later than 100 days after filing the application for an SPPE unless otherwise ordered by the presiding member. (Cal. Code Regs., tit. 20, § 1944 subd. (b).) In the “General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters,” the Committee extended the deadline for the hearing pursuant to California Code of Regulations, Title 20, sections 1203, subdivision (f) and 1944, subdivision (b). (TN 238522.)