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| Project Title: | Lafayette Backup Generating Facility |
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| Document Title: | Lafayette Status Report #10 |
| Description: | CEC staff status report |
| Filer: | Lon Payne |
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Memorandum

To: Commissioner Karen Douglas, Presiding Member
Chair David Hochschild, Associate Member

Date: October 8, 2021

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

Leonidas Payne
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Subject: STATUS REPORT #10 FOR THE LAFAYETTE BACKUP GENERATING FACILITY SMALL POWER PLANT EXEMPTION AND MOTION FOR MODIFICATION OF PROCEEDING ORDERS REGARDING INTERVENTION (20-SPPE-02)

In its December 23, 2020 order directing parties to file Monthly Status Reports, the Committee ordered the parties to file and serve a Status Report on or before the 10th of each month.

As outlined previously in CEC Staff Status Report #4 dated April 9, 2021, staff has not received responses to Data Request Set 3, which was docketed October 6, 2020, and included questions in the technical areas of Air Quality, Transportation, and Utilities and Service Systems, as well as Data Requests 64 to 67 (thermal plume) and 92 (below grade drawing) from Data Request Set 1, which was docketed on July 6, 2020. Staff needs those responses so that it can complete its analysis of the newly revised project.

In its Status Report docketed September 12, 2021, the applicant stated that it is currently working on responses to CEC staff's data requests, that responses "that do not need City confirmation" will be filed by September 17, 2021, and that other responses will be filed "once confirmation [is received] from the City that no new design changes are required." No responses were received by September 17, 2021, nor were any responses received prior to the docketing of this status report.

Staff has commenced work on an Environmental Impact Report (EIR), which we expect to publish within 60 days of acknowledging in a status report that we have no further data requests. Staff is currently preparing Data Request Set 4, which we expect to file following receipt of applicant's responses to prior data requests.

Consistent with staff's requests outlined in Status Report #18 for the San Jose Data Center (TN 239720, docketed September 15, 2021), staff requests that the Committee streamline the proceeding by taking advantage of staff's preparation of an 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. Since 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, staff believes intervention is redundant and unnecessary to inform staff, the Committee, and Commission of public concerns, and staff requests that the Committee affirm this in an upcoming order. With no intervention allowed, the Committee can conduct 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. 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 would not be approving the project and if the project is exempted, an additional public proceeding by the City of Santa Clara would still await the project before any actual approval.

To the degree that intervention is allowed, staff requests that the Committee adopt an order requiring potential intervening parties to file substantive comments on the Draft EIR by the commenting deadline as a prerequisite to filing subsequent testimony—this will ensure that all relevant comments are known and available to staff and can be considered in advance of preparing a Final EIR.