

**DOCKETED**

<b>Docket Number:</b>	19-SPPE-04
<b>Project Title:</b>	SJ2
<b>TN #:</b>	242485
<b>Document Title:</b>	Order Shortening Time on Applicant's Motion for Adjustments to the Scheduling Order
<b>Description:</b>	N/A
<b>Filer:</b>	Patricia Carlos
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	3/28/2022 5:34:28 PM
<b>Docketed Date:</b>	3/28/2022



**State of California**  
**State Energy Resources Conservation and**  
**Development Commission**  
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**APPLICATION FOR SMALL POWER PLANT  
EXEMPTION FOR THE:**

***SAN JOSE CITY BACKUP  
GENERATING FACILITY***

**Docket No. 19-SPPE-04**

## **ORDER SHORTENING TIME ON APPLICANT’S MOTION FOR ADJUSTMENTS TO THE SCHEDULING ORDER**

### **BACKGROUND**

On November 15, 2019, Microsoft Corporation (Applicant) submitted an application for a small power plant exemption (SPPE) for the San Jose City Backup Generating Facility (Application)<sup>1</sup> to the California Energy Commission (CEC).<sup>2</sup> On December 17, 2019, the CEC appointed a committee consisting of Karen Douglas, Commissioner and Presiding Member, and Patricia Monahan, Commissioner and Associate Member, to preside over this Application.<sup>3</sup>

On February 4, 2020, Presiding Member Karen Douglas issued “General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters,” which, among other things, specify the requirements for motions.<sup>4</sup> Those Orders say that “(w)ritten motions submitted by a party shall state the motion clearly in the document’s title and include a statement of the relief or action requested, the grounds for the requested relief or action, and citation to a rule, law, or other authority authorizing the Committee or CEC to grant the request.”

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<sup>1</sup> Information about this proceeding, including a link to the electronic docket, may be found on the San Jose Data Center SPPE [web page](https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center) at <https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04>. The application is TNs 230741, 230762, 230763, 230765, and 230770, and a supplemental application is TNs 239409, 239410, 239411, 239412, 239413, 239419, 239420, 239421, 239422, and 239597.

<sup>2</sup> The CEC is formally known as the “State Energy Resources Conservation and Development Commission.” (Pub. Resources Code, § 25200.) All further references are to the Public Resources Code unless otherwise specified.

<sup>3</sup> TN 231265.

<sup>4</sup> TN 231937.

On December 23, 2021, Staff published a Draft Environmental Impact Report for the Application.<sup>5</sup> After receiving public comments on the document, Staff published a Final Environmental Impact Report on February 28, 2022.<sup>6</sup>

On March 15, 2022, Chair David Hochschild of the CEC issued a revised Scheduling Order,<sup>7</sup> which extended the time to file opening testimony to April 14, 2022, to file reply testimony and any errata to the Final Environmental Impact Report to April 28, 2022, and to file prehearing conference statements and conduct the prehearing conference on to be determined dates

On March 24, 2022, the CEC amended the committee appointments for this Application, appointing Patricia Monahan, Commissioner and Presiding Member, and Kourtney Vaccaro, Commissioner and Associate Member (Committee).<sup>8</sup>

### **APPLICANT’S MOTION FOR ADJUSTMENTS TO THE SCHEDULING ORDER**

On March 25, 2022, Applicant filed “Microsoft’s Motion for Adjustments to the Scheduling Order and Order Shortening Time for Response to this Motion” (Applicant’s Motion).<sup>9</sup> Applicant’s Motion requests changes to the scheduling order that would accelerate the times to file opening and reply testimony to April 1, 2022, and April 8, 2022, respectively, and to combine the prehearing conference and evidentiary hearing, to occur on a date immediately after the filing of testimony.<sup>10</sup> Applicant’s Motion further requests that the Committee require each intervenor to explain why issues raised in opening testimony were not previously identified in comments on the Draft Environmental Impact Report.<sup>11</sup> Applicant’s Motion states that these changes will not inhibit any member of the public from participating as they would under the current schedule.<sup>12</sup> Finally, Applicant’s Motion requests the Committee grant an order shortening time to require responses to its motion no later than March 29, 2022.<sup>13</sup>

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<sup>5</sup> TN 241076.

<sup>6</sup> TN 241977-1 and TN 241977-2.

<sup>7</sup> TN 242335.

<sup>8</sup> TN 242445.

<sup>9</sup> TN 242468.

<sup>10</sup> *Id.* at p. 3.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Id.* at p. 4.

<sup>13</sup> *Ibid.*

## DISCUSSION AND ORDER

In general, responses to motions are due within 14 days after the motion is filed.<sup>14</sup> The Presiding Member has authority to regulate the conduct of the proceeding, including the discretion to shorten the time allowed to respond to motions in a manner that preserves the parties' notice and provides an opportunity to be heard.<sup>15</sup>

Here, the fourteenth day after the date Applicant's Motion was filed is April 8, 2022, after the dates requested for a revised scheduling order. Therefore, the Presiding Member will issue an order shortening the time to be able to rule on Applicant's Motion prior to its proposed scheduling order revisions to ensure proper management of the proceeding.

The Presiding Member therefore **GRANTS** the request for an order shortening time to respond to Applicant's Motion and **ORDERS** as follows: the parties shall file any response to Applicant's Motion no later than 5:00 p.m. on March 29, 2022. No further briefing or oral argument will be allowed.

The Presiding Member or Committee will rule on the remaining items from Applicant's motion following receipt of any responses to the motion.

## PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor's Office provides the public 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](mailto:publicadvisor@energy.ca.gov), or by phone at (916) 957-7910.

**Direct questions of a procedural nature** related to the Application to the Hearing Officers, [Caryn Holmes](mailto:Caryn.Holmes@energy.ca.gov) at Caryn.Holmes@energy.ca.gov, and [Deborah Dyer](mailto:Deborah.Dyer@energy.ca.gov) at [Deborah.Dyer@energy.ca.gov](mailto:Deborah.Dyer@energy.ca.gov). From the date of this Order until April 14, 2022, questions may be directed to [Kristen Driskell](mailto:Kristen.Driskell@energy.ca.gov) at Kristen.Driskell@energy.ca.gov.

**Direct technical subject inquiries** concerning the Application to Lisa Worrall, Project Manager, at [lisa.worrall@energy.ca.gov](mailto:lisa.worrall@energy.ca.gov) or (916) 661-8367.

**Direct media inquiries** to [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

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<sup>14</sup> TN 231937, p. 1; Cal. Code Regs., tit. 20, § 1211.5, subd. (a).

<sup>15</sup> Cal. Code Regs., tit. 20, § 1203, subds. (c) and (f), 1210; see Gov. Code, § 11425.10.

## **AVAILABILITY OF DOCUMENTS**

Information regarding the status of the Application, as well as notices and other relevant documents are available on the [San Jose Data Center SPPE web page](https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center) at <https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center>.

**IT IS SO ORDERED.**

Dated: March 28, 2022

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Patricia Monahan  
Commissioner and Presiding Member  
San Jose City Backup Generating Facility  
SPPE Committee