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**State of California
State Energy Resources Conservation and
Development Commission**
715 P Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov

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

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

Docket No. 19-SPPE-04

**RULING 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)¹ to the California Energy Commission (CEC).² 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.³

On February 4, 2020, Presiding Member Karen Douglas issued “General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters,”⁴ which, among other things, specify 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,

¹ 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 includes TNs 230741, 230762, 230763, 230765, 230770, and supplemental application materials including TNs 239409, 239410, 239411, 239412, 239413, 239419, 239420, 239421, 239422, and 239597.

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

³ TN 231265.

⁴ TN 231937.

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.⁵

On February 18, 2020, the Committee granted a petition to allow California Unions for Reliable Energy (CURE) to intervene as a party to the proceeding.⁶

On November 29, 2021, the Committee granted a petition to allow Robert Sarvey (Sarvey) to intervene as a party to the proceeding.⁷

On December 23, 2021, CEC Staff (Staff) published a Draft Environmental Impact Report for the Application.⁸ Staff,⁹ the Applicant, CURE, and Sarvey are each a “Party” and collectively the “Parties.” The deadline to comment on the Draft Environmental Impact Report was February 7, 2022.¹⁰ After receiving public comments on the document, Staff published a Final Environmental Impact Report on February 28, 2022.¹¹

On March 15, 2022, Chair David Hochschild of the CEC issued a Revised Scheduling Order, which extended the time to file opening testimony to April 14, 2022, the time to file reply testimony and any errata to the Final Environmental Impact Report to April 28, 2022, and the time to file prehearing conference statements and conduct the prehearing conference to dates yet to be determined.¹²

On March 24, 2022, the CEC amended the members of the committee appointed to preside over this Application, appointing Patricia Monahan, Commissioner and Presiding Member, and Kourtney Vaccaro, Commissioner and Associate Member (Committee).¹³

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).¹⁴ Applicant’s Motion requests the Committee accelerate the dates that the Parties are required to file opening and reply testimony to April 1, 2022 and April 8, 2022, respectively, and to combine the prehearing conference and the evidentiary

⁵ TN 231937, p. 1.

⁶ TN 232066.

⁷ TN 240731.

⁸ TN 241076.

⁹ Cal. Code Regs., tit. 20, § 1937.

¹⁰ See TN 241077, p. 1.

¹¹ TN 241977-1 and TN 241977-2.

¹² TN 242335.

¹³ TN 242445.

¹⁴ TN 242468.

hearing to “a date immediately after the filing of [t]estimony.”¹⁵ Applicant’s Motion further requests the Committee order each intervenor to explain why any issues they may raise in opening testimony were not previously identified in comments on the Draft Environmental Impact Report.¹⁶ Applicant’s Motion states that these changes will not inhibit any member of the public from participating because the public’s participation would remain the same as it is under the current schedule.¹⁷ Finally, Applicant’s Motion requests the Committee grant an order shortening the Parties’ time to respond to Applicant’s motion to no later than March 29, 2022.¹⁸

On March 28, 2022, the Presiding Member issued an “Order Shortening Time on Applicant’s Motion for Adjustments to the Scheduling Order” that requested any response to Applicant’s Motion be filed by March 29, 2022.¹⁹ Staff timely filed a response to Applicant’s Motion, stating that it had no objection.²⁰ No other Party filed a response.

DISCUSSION AND RULING

Applicant’s Motion speculates that the reason for the Revised Scheduling Order was to accommodate then-Commissioner Karen Douglas’s departure from the CEC and the need to appoint new members of the Committee.²¹ This is not accurate. The Revised Scheduling Order reflects the availability of the hearing officers assigned to this proceeding due to matters that arose after issuing the original Scheduling Order. Because no hearing officers are available until the times identified in the scheduling order, the Presiding Member **DENIES** the motion to adjust the scheduling order.

The Presiding Member may revisit combining the prehearing conference and evidentiary hearing at a later date (with no further motion necessary to do so), but at this time **DENIES** the motion to combine the two hearings and setting it for a date immediately after the filing of testimony.

Applicant’s Motion also 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. Applicant’s Motion presupposes that intervenors will raise new issues in opening testimony that were not identified in comments on the report. Applicant’s Motion is premature, as no intervenor has filed opening testimony yet. Therefore, the Presiding Member **DENIES** Applicant’s Motion to require intervenors

¹⁵ *Id.* at p. 3.

¹⁶ *Ibid.*

¹⁷ *Id.* at p. 4.

¹⁸ *Ibid.*

¹⁹ TN 242485.

²⁰ TN 242494.

²¹ TN 242468, p. 2.

to explain why issues raised in opening testimony were not previously identified in comments on the Draft Environmental Impact Report.

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, 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. 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 or (916) 661-8367.

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 [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: April 4, 2022

APPROVED BY:

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