

DOCKETED

Docket Number:	21-SPPE-01
Project Title:	CA3 Backup Generating Facility-Vantage
TN #:	242724
Document Title:	Notice of Prehearing Conference and Evidentiary Hearing, Revised Scheduling Order, and Further Orders
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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:**

Docket No. 21-SPPE-01

***CA3 BACKUP GENERATING
FACILITY***

**NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING,
REVISED SCHEDULING ORDER, AND FURTHER ORDERS**

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

PLEASE TAKE NOTICE that the Committee³ has scheduled a **PREHEARING CONFERENCE** and an **EVIDENTIARY HEARING**:

The PREHEARING CONFERENCE and EVIDENTIARY HEARING will be held on:

**Tuesday, May 10, 2022
10:00 a.m. – 3:00 p.m.**

In-person at:

**Warren-Alquist State Energy Building
Rosenfeld Hearing Room, First Floor
1516 Ninth Street, Sacramento, CA 95814**

¹ Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [web page](https://ww2.energy.ca.gov/sitingcases/ca3/) at <https://ww2.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." (Pub. Resources Code, § 25200.) All further references are to the Public Resources Code unless otherwise specified.

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.) On March 24, 2022, the CEC amended the committee appointments for this Application, appointing Siva Gunda, Vice Chair and Presiding Member, and Kourtney Vaccaro, Commissioner and Associate Member (TN 242447).

(Wheelchair accessible)

Remote Option via Zoom™

<https://zoom.us>, webinar ID: **996 6845 1531** and passcode: **CSPPE@0510**

Please note that the CEC aims to begin promptly at the start time, and the end time is an estimate based on the agenda proposed. The event may end sooner or later than the time indicated depending on various factors.

To submit comments in advance of the Prehearing Conference and Evidentiary Hearing, please see the instructions below under the section “AGENCY AND PUBLIC PARTICIPATION”.

ATTENDANCE INFORMATION

In-person: Participants may join in-person at the following location: Warren-Alquist State Energy, Rosenfeld Hearing Room, First Floor, 1516 Ninth Street, Sacramento, California. Please sign in at the security desk. Masks and social distancing are encouraged, but not required.

Remote Attendance: You may participate in this meeting through the on-line meeting service, Zoom. Please be aware that the meeting may be recorded.

[Learn about joining a Zoom meeting](https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting) at <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>. You may [download Zoom software](https://zoom.us/download) at <https://zoom.us/download>.

Zoom technical support is available at (888) 799-9666, ext. 2 and you may visit [Zoom's help center](https://support.zoom.us/hc/) at <https://support.zoom.us/hc/>. Or you may email the CEC's Public Advisor to seek help at publicadvisor@energy.ca.gov, and by phone at (916) 957-7910.

Via Computer: Participants may join noticed events by clicking on the links below. You may also [access Zoom](https://join.zoom.us) at <https://join.zoom.us> and entering the Webinar ID and password for the event (listed below). To comment, use Zoom's “raise hand” feature and unmute. If interpreting services are provided, to use the service, click Zoom's interpretation icon and select the language. Interpreting services are not available by phone.

Prehearing Conference and Evidentiary Hearing.

[Click to join](https://energy.zoom.us/j/99668451531?pwd=MDJxWisyoE44SHlwZ2tZV0RvY1JuQT09) May 10, 2022, 10:00 a.m. or
<https://energy.zoom.us/j/99668451531?pwd=MDJxWisyoE44SHlwZ2tZV0RvY1JuQT09>

Webinar ID: **996 6845 1531**

Password: **CSPPE@0510**

Via Telephone (No Visual Presentation): Dial (877) 853-5257 (toll free), (888) 475-4499 (toll free), or (669) 219-2599. When prompted, input the unique Webinar ID (listed above). To comment or ask a question over the telephone, dial *9 to “raise your hand” and *6 to mute/unmute your phone line.

Via Mobile Device: Access to Zoom meetings is available from your mobile device. To download the app, [visit the Zoom Download Center](https://zoom.us/download) at <https://zoom.us/download>.

BACKGROUND

The Application⁴

The Applicant applied in April 2021 for a small power plant exemption (SPPE) for the proposed CA3 Backup Generating Facility (Backup Generators) that will support the CA3 Data Center (Data Center) and related accessories (collectively, the Project). The Data Center is proposed to be built on 6.69 acres at 2590 Walsh Avenue in Santa Clara, California (Project Site). The Project Site is currently developed with an approximately 115,000 square foot single-story office and warehouse building and associated paved surface parking and loading dock; the buildings would be demolished in order to construct the proposed project.

The Data Center would consist of a four-story, 469,482 square foot data center building, which would provide secure and environmentally controlled structures to house computer servers. Related accessories include a new utility substation, generator equipment yard, surface parking, landscaping, and a recycled water pipeline.

The Backup Generators will ensure an uninterruptible power source to the Data Center in the event of a loss of power, and normally would operate only for testing and maintenance. The Applicant proposes to install 44 diesel-fired, backup generators, each with a maximum peak rating of 2.75 megawatts (MW), located on the Project Site. Forty of the generators would provide backup power to the computer servers, and four would provide emergency response power to the administrative building and features. The Backup Generators would generate up to 96 MW, the maximum building load of the Data Center. None of the generators will be interconnected to the electrical transmission system, and therefore no electricity can be delivered off site. The Backup Generating Facility would supply power only to the Data Center.

⁴ The information in this section is taken from section 2 of the Application (TN 237380).

Environmental Documents

On August 20, 2021, CEC staff (Staff) filed a Notice of Preparation (NOP) informing the responsible agencies, trustee agencies, and public about Staff's intent to prepare a draft Environmental Impact Report (DEIR) for the project and the opportunity to provide comment on its preparation.⁵

On January 21, 2022, Staff filed a DEIR that found no potentially significant and unavoidable environmental impacts.⁶ The DEIR concluded that, with the implementation of the design and mitigation measures identified in the DEIR, potentially significant impacts in the areas of air quality (including public health), biological resources, cultural and tribal cultural resources, geology and soils (paleontology), greenhouse gas emissions, hazards and hazardous materials, noise, and transportation would be avoided or reduced to less than significant levels. The DEIR also concluded that the Project would result in no impacts to agriculture and forestry resources, mineral resources, and wildfire, and would have less than significant impacts, with no mitigation required, on aesthetics, energy and energy resources, hydrology and water quality, land use, and utilities and service systems. On January 27, 2022, Staff filed a Memorandum and Errata to the DEIR, which did not change any of the conclusions in the DEIR.⁷ Public comment on the DEIR concluded on March 9, 2022.⁸

On March 24, 2022, Staff filed a final Environmental Impact Report (FEIR) that included responses to public comments.⁹ The FEIR also included a mitigation monitoring or reporting program for the design features and mitigation measures described in the DEIR. With the imposition and implementation of the design features and mitigation measures, the FEIR reached the same conclusions as the DEIR.

Small Power Plant Exemptions

The CEC has the exclusive authority to consider and ultimately approve or deny applications for the construction and operation of thermal powerplants that have the capacity to generate 50 MW or more of electricity.¹⁰ If a proposed project will generate between 50 MW and 100 MW of electricity, the CEC may grant an exemption to this exclusive certification jurisdiction through an SPPE if it makes three distinct findings:

⁵ TN 239401.

⁶ TN 241264.

⁷ TN 241294.

⁸ See TN 241590 (clarifying the comment period).

⁹ TN 242451 through TN 242454.

¹⁰ §§ 25120, 25500.

- the proposed powerplant has a generating capacity up to 100 MW;
- no substantial adverse impact on the environment will result from the construction or operation of the powerplant; and
- no substantial adverse impact on energy resources will result from the construction or operation of the powerplant.¹¹

For purposes of reviewing an SPPE, the CEC is the “lead agency”¹² under the California Environmental Quality Act (CEQA).¹³ In reviewing an SPPE application, the CEC considers the “whole of an action.”¹⁴ For the Application, the “whole of an action” means the Backup Generators, the Data Center, and the other project features, such as the substation.

If an SPPE is granted, responsible local land use authorities and other agencies, most notably any local air management or air pollution control district, will conduct further review of the project, including any necessary additional environmental review as “responsible agencies” under CEQA.

Parties to the Proceeding

The parties to the proceeding are:

- 1) Applicant; and
- 2) Staff.¹⁵

Parties have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing party witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.¹⁶

SCHEDULING ORDER

The schedule attached to this Notice *supersedes* all other schedules issued by the Committee.

¹¹ § 25541; Cal. Code Regs., tit. 20, § 1934 et seq.

¹² § 25519(c).

¹³ The CEQA statutes, sections 21000 *et seq.*, and CEQA Guidelines, California Code of Regulations, title 14, section 15000 *et seq.* (Guidelines), detail the protocol by which state and local agencies comply with CEQA requirements. We refer to the statute and the Guidelines collectively as “CEQA.”

¹⁴ Cal. Code Regs., tit. 14, § 15378.

¹⁵ Cal. Code Regs., tit 20, § 1937.

¹⁶ Cal. Code Regs., tit. 20, § 1212(a).

PURPOSE OF THE PREHEARING CONFERENCE

The Prehearing Conference is a public forum where the Committee will identify matters in dispute and discuss the remaining schedule and procedures necessary to conclude the SPPE process.

PURPOSE OF THE EVIDENTIARY HEARING

The Committee's review is primarily conducted through an administrative adjudicatory process. As part of the review process, the Committee will conduct an evidentiary hearing and receive public comment.¹⁷ The Evidentiary Hearing is a major component of the administrative adjudicatory proceeding where evidence is received into the hearing record from the parties to the proceeding. Only the parties (Applicant and Staff) may present evidence for inclusion into the hearing record. Members of the public may present comments at the Evidentiary Hearing that become part of the hearing record.¹⁸

Notice of Committee's Intention to Use Informal Hearing Procedures

Pursuant to the California Administrative Procedure Act¹⁹ and the CEC's regulations²⁰, the Committee intends to conduct the evidentiary hearing using an informal procedure. The parties will identify witnesses and exhibits prior to the hearing. During the hearing, all of the witnesses for a topic will be seated as a panel to answer questions from the parties and the Committee. While a question may be directed to a particular witness in the first instance, the other panelists may also answer the question if they choose. Panelists may also ask questions of each other. The Committee reserves the right to convert to a more formal process for any issues and may, in its discretion, allow the parties to engage in more formal direct and cross-examination if circumstances so require.

The informal hearing process will generally proceed in the following order:

Examination of Witnesses:

- 1) All parties' witnesses on the topic at hand are sworn in as a panel.
- 2) Petitioner's witnesses may provide a brief opening statement summarizing the key points and conclusions of their testimony.
- 3) Staff's witnesses may provide a brief opening statement summarizing the key points and conclusions of their testimony.

¹⁷ Cal. Code Regs., tit. 20, § 1212, subd. (b).

¹⁸ Cal. Code Regs. tit. 20, § 1212, subds. (b)(1)(B), (c)(4).

¹⁹ Gov. Code §§ 11400-11474.70.

²⁰ Cal. Code Regs., tit. 20, § 1217.

- 4) Open discussion between the witnesses led by the Committee.
- 5) Attorneys may follow up with questions of their own or other expert witnesses to the extent the Committee finds the questioning productive.
- 6) At the conclusion of the attorney's examination of the experts, the Committee may ask witnesses additional questions or allow panelists to ask additional questions of each other and to offer follow-up answers.

Use of Documents:

- 1) No party may use a document that is not included on the Exhibit List.
- 2) If a party wishes to use a document during opening, rebuttal, or cross-examination, including for the purpose of impeachment, the document shall be identified at least one (1) business day prior to the start of the Evidentiary Hearing by reference to its number on the Exhibit List. This identification will allow for the documents to be available at the start of the Evidentiary Hearing, to be shared with the participants to the hearing, and to avoid delays in locating documents for use. When documents are used during the questioning of witnesses, the questioner shall provide cites to the page(s) of the relevant document.

NOTICE OF CLOSED SESSION DELIBERATIONS

At any time during the Prehearing Conference and Evidentiary Hearing, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

ORDERS REGARDING RESPONSES TO COMMITTEE QUESTIONS, PREFILING EVIDENCE, EXHIBIT LISTS, AND PREHEARING CONFERENCE STATEMENTS

Committee Question

All parties are **ORDERED** to respond to the following question in an attachment to their rebuttal testimony.

On pages 4.3-52 through 4.3-55 of the FEIR, the cumulative Health Risk Assessment (HRA) identifies four areas in which the impacts from cumulative sources exceed the Bay Area Air Quality Management District's thresholds of significance: (1) cancer risk at the maximally exposed individual sensitive receptor (MEISR); (2) cancer risk at the maximally exposed individual resident (MEIR); (3) annual particulate matter (PM2.5) concentrations at the MEISR; and (4) annual PM2.5 concentrations at the maximally

exposed individual worker (MEIW).²¹ Staff states that “the cumulative impacts are the summation of each category (cancer risks, PM 2.5 concentrations) from all the sources to each receptor, and the exceedances in cancer risk (Table 4.3-12) and PM2.5 concentration (Table 4.3-14) are because the background values (i.e., sources of surrounding highways, major streets, and railways) are already very high or even have already exceeded the thresholds.” Staff further states that the incremental contributions from the project are “not cumulatively considerable” and therefore the project does not cause cumulatively considerable impacts.

Please explain in greater detail for each exceedance why the incremental effects of the project are not “cumulatively considerable” when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. Include a discussion of CEQA case law that is relevant to this issue.

Prefiling Evidence

All written testimony (whether opening or rebuttal) and documentary evidence must be filed in this proceeding’s docket (21-SPPE-01) and have a transaction number (TN) assigned by the CEC Docket Unit in accordance with the Amended General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters, filed December 24, 2021.²²

All parties intending to submit evidence for consideration at the Evidentiary Hearing are **ORDERED** to docket evidence and exhibit lists no later than 5:00 p.m. on the dates specified in the attached Schedule, unless otherwise directed by the Committee.

Failure by a party to comply with the filing requirements stated in this Order shall preclude that party from participating in the Evidentiary Hearing. Any party precluded may still offer public comment.

Prefiling Testimony

The parties are hereby **ORDERED** to submit opening and rebuttal testimony as established in the attached Schedule. Failure by a party to file opening testimony shall preclude that party from filing rebuttal testimony. Any party precluded may still offer public comment.

²¹ TN 242452.

²² TN 241085 (Spanish language version), 241086 (Vietnamese language version), 241087 (Simplified Chinese language version), 241088 (English language version).

Prehearing Conference Statements

All parties are **ORDERED** to file a Prehearing Conference Statement by 5:00 p.m. on the date specified in the attached Schedule. The Prehearing Conference Statement must include the following information under separate headings:

- 1) The subject areas that remain disputed and require adjudication, the issues in dispute, and the precise nature of the dispute for each issue, if any.
- 2) The identity of each witness the party intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witness(es) will offer testimony, whether the testimony will be oral or in writing, a brief summary of the testimony to be offered by the witness(es), qualifications of each witness, the time required to present testimony by each witness, and whether the witness seeks to testify telephonically.
- 3) Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions (including questions regarding witness qualifications), the issue(s) to which the questions pertain, and the time desired to question each witness. (Note: a party who fails to provide, with specificity, the scope, relevance, and time for questioning other parties' witness(es) risks preclusion from questioning witnesses on that subject area.)
- 4) A list identifying exhibits with transaction numbers (TN) that the party intends to offer into evidence during the Evidentiary Hearing and the technical subject areas to which they apply (see below for further details on Exhibit Lists).

Exhibit List

The parties shall exchange documentary evidence, including written testimony, by filing an **Exhibit List**. Each document shall be numbered and identified on the Exhibit List as follows:

- Applicant's exhibits shall be numbered consecutively as **Exhibits 1 through 199**.
- Staff's exhibits shall be numbered consecutively as **Exhibits 200 through 299**.

The Exhibit Lists shall be formatted with four columns. The first column shall list the proposed exhibit number. The second column shall identify the TN of the corresponding document. The third column shall state the title of the document as shown in the docket. The fourth column shall state the subject area(s) to which the exhibit applies. The Hearing and Advisory Unit of the CEC's Chief Counsel's Office will ensure the addition of the exhibit number information into the e-filing system and the issuance of a Master Exhibit List.

Exhibits without a TN, or not filed in this proceeding's docket, will not be received into evidence.

AGENCY AND PUBLIC PARTICIPATION

Local, state, and federal agencies, tribal governments, and members of the public are welcome to attend and offer oral comments at the Prehearing Conference and Evidentiary Hearing. It is not necessary to be an Intervenor to participate in the public process.

The Public Advisor may, upon the request of public participants who may be absent from the CEC's place of business or during the Prehearing Conference and Evidentiary Hearing when a matter of interest to them is being considered, neutrally and publicly relate those participants' points to the CEC on behalf of members of the public. If you are interested in this service, please email concise comments, specifying your main points, before the start of the Prehearing Conference and Evidentiary Hearing to the Public Advisor at publicadvisor@energy.ca.gov. Comments submitted after the Prehearing Conference and Evidentiary Hearing starts will be filed in the CA3 Backup Generating Facility docket. The CEC will work diligently to accommodate all requests.

Written comments may be submitted electronically at:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=21-SPPE-01>.

Otherwise, written comments may be submitted for posting on the proceeding docket by handing them directly to the Public Advisor, e-mailing them to docket@energy.ca.gov, or by U.S. Mail to:

California Energy Commission
Docket Unit
Docket number: 21-SPPE-01
715 P Street, MS-4
Sacramento, CA 95814

For all comments, please include the docket number and proceeding name "**Docket No. 21-SPPE-01, CA3 Backup Generating Facility.**"

Please note: Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail address, etc.) become part of the viewable public record. Additionally, this information may become available via search engines.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor 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 at publicadvisor@energy.ca.gov, or by phone at (916) 957-7910. Requests for interpreting services in Spanish, Vietnamese, Mandarin, or other languages and reasonable accommodations should be made as soon as possible or before 5:00 p.m. at least five days in advance of the Prehearing Conference and Evidentiary Hearing. The CEC will work diligently to accommodate all requests.

Direct questions of a procedural nature related to the Application to the Hearing Officers, [Susan Cochran](mailto:susan.cochran@energy.ca.gov) at susan.cochran@energy.ca.gov, or at (916) 891-8078, or [Kristen Driskell](mailto:kristen.driskell@energy.ca.gov) at kristen.driskell@energy.ca.gov.

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

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

Muting

We greatly appreciate your cooperation in reducing noise on the audio connection by muting your line when you are not speaking. Mute your line rather than placing your phone on hold. Using Zoom, you may mute yourself by right clicking on the mute icon. If you are only using a telephone connection, press “*6” once to mute and again to unmute.

AVAILABILITY OF DOCUMENTS

Information regarding the status of the Application, as well as notices and other relevant documents are available on the [CA3 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>.

IT IS SO ORDERED.

Dated April 20, 2022

APPROVED BY:

Siva Gunda
Vice Chair and Presiding Member
CA3 Backup Generating Facility SPPE
Committee
Mailed to list number: 7541

AGENDA

CA3 Backup Generating Facility SPPE (21-SPPE-01) Prehearing Conference, Evidentiary Hearing, and Possible Closed Session

**May 10, 2022
10:00 a.m. - 3:00 p.m.***

*Please note that the CEC aims to begin promptly at the start time and the end time is an estimate based on the agenda proposed. The event may end sooner or later than the time indicated depending on various factors.

- 1) Call to Order.
- 2) Prehearing Conference.

Report from the Applicant and Staff regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses; Committee discussions with the parties about the order of subject areas, use of informal procedures and any objections, and other matters in preparation for the Evidentiary Hearing.

- 3) Evidentiary Hearing.

Receipt of evidence from the Applicant and Staff on the application for a small power plant exemption for the CA3 Backup Generating Facility.

- 4) Public Comment.

Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

- 5) Committee closed session deliberations on the application for a small power plant exemption for the CA3 Backup Generating Facility.²³
- 6) Adjourn.

²³ The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

**CA3 BACKUP GENERATING FACILITY SPPE (21-SPPE-01)
APRIL 2022 REVISED SCHEDULE**

EVENT	DATE
Staff Published the Draft Environmental Impact Report (DEIR)	January 21, 2022
Public Comment Period on the DEIR closed	March 9, 2022²⁴
Staff filed Final EIR	March 24, 2022
All Parties file Opening Testimony	April 14, 2022
All Parties file Rebuttal Testimony and Response to Committee Question	April 25, 2022
All Parties file Prehearing Conference Statements, including Exhibit Lists	May 2, 2022
Prehearing Conference and Evidentiary Hearing	May 10, 2022
Committee files Committee Proposed Decision	May 27, 2022
Final Decision Adoption Hearing at CEC Business Meeting	June 8, 2022

²⁴ Per the State Clearinghouse. [CA3 Data Center](https://ceqanet.opr.ca.gov/2021080438/2), <https://ceqanet.opr.ca.gov/2021080438/2>.