

**DOCKETED**

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**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**

**RULING ON APPLICANT’S MOTION FOR ADJUSTMENTS TO THE  
SCHEDULING ORDER**

**BACKGROUND**

In April 2021, Vantage Data Centers (Applicant) submitted an application for a small power plant exemption (SPPE) for the CA3 Backup Generating Facility (Application)<sup>1</sup> to the California Energy Commission (CEC).<sup>2</sup> On May 18, 2021, the CEC appointed a committee consisting of Karen Douglas, Commissioner and Presiding Member, and Siva Gunda, Commissioner and Associate Member, to preside over this Application.<sup>3</sup>

On December 24, 2021, Presiding Member Karen Douglas issued “Amended 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, in part:

Written motions may only be submitted by a party. The document’s title shall include the word “motion” and shall include a statement of all relief or action requested in the first paragraph. In addition, the document shall

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<sup>1</sup> 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.

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

<sup>3</sup> TN 237834.

<sup>4</sup> TN 241085 (Spanish language version), 241086 (Vietnamese language version), 241087 (Simplified Chinese language version), 241088 (English language version).

include 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 motion.

CEC staff (Staff) published the draft Environmental Impact Report (DEIR) on January 21, 2022<sup>5</sup> and filed errata to the DEIR on January 27, 2022.<sup>6</sup> The 45-day public comment period closed on March 9, 2022.<sup>7</sup> After receiving public comments on the document, Staff published a Final Environmental Impact Report (FEIR) on March 24, 2022.<sup>8</sup>

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 (Committee).<sup>9</sup>

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

The Scheduling Order for this proceeding was filed on October 6, 2021.<sup>10</sup> Based on the milestones created in the Scheduling Order, opening testimony is due April 14, 2022. Rebuttal testimony and any errata or addendum to the FEIR is due April 25, 2022. Prehearing conference statements are due five days after rebuttal testimony or the filing of errata or addendum to the FEIR, on May 2, 2022. The dates for prehearing conference and evidentiary hearing were undefined, as were the dates for the issuance of the Committee Proposed Decision and the final adoption hearing.

On March 29, 2022, Applicant filed “Vantage Data Centers’ Motion for Modification to the Scheduling Order and Order Shortening Time for Response to this Motion” (Applicant’s Motion).<sup>11</sup> Applicant’s Motion requests changes to the Scheduling Order as follows:

1. Combine the prehearing conference and evidentiary hearing into a single event and have that event scheduled as soon as possible.
2. Require the filing of opening testimony and exhibit lists five days before the combined prehearing conference/evidentiary hearing.

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<sup>5</sup> TN 241264.

<sup>6</sup> TN 241294.

<sup>7</sup> The Notice of Availability of a Draft Environmental Impact Report set a deadline of March 7, 2022 (TN 241260). State Clearinghouse set a deadline of March 9, 2022 (Staff Status Report #5, TN 241590).

<sup>8</sup> TN 242451, 242452, 242453, 242454.

<sup>9</sup> TN 242447.

<sup>10</sup> TN 239992.

<sup>11</sup> TN 242495.

3. Eliminate the need for reply/rebuttal testimony, prehearing conference statements, and post-hearing briefing.
4. Provide that all evidence be submitted by written declaration.
5. Schedule consideration of the final decision on the Application for the CEC's May business meeting.

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>12</sup>

On April 1, 2022, Staff filed "Staff's Response to Vantage Data Center's Motion to Modify the Scheduling Order."<sup>13</sup> Staff made no objection to the Applicant's Motion and deferred to the Committee about the timing of the Committee Proposed Decision and its consideration by the CEC at a business meeting.

On April 20, 2022, the Committee filed the "Notice of Prehearing Conference and Evidentiary Hearing, Revised Scheduling Order, and Further Orders" (Notice and Orders).<sup>14</sup> In the Notice and Orders, the Committee scheduled the prehearing conference and the evidentiary hearing for the same date: May 10, 2022. The Notice and Orders also require the parties to file prehearing conference statements to list topics in controversy and to file exhibit lists for the identification of exhibits to be included in the hearing record for the proceeding. The Committee removed some requirements for the prehearing conference statement due to the lack of issues in controversy at this stage of the proceeding. The Notice and Orders also included a question from the Committee and required responses to the question to be filed with rebuttal testimony. Finally, the Notice and Orders indicated that the Committee Proposed Decision would be considered at the CEC's June business meeting.

## **DISCUSSION AND RULING**

The Presiding Member has authority to regulate the proceedings, including disposing of procedural requests and scheduling hearings.<sup>15</sup> Having reviewed each of the requests in Applicant's Motion and for good cause appearing, the Presiding Member hereby **GRANTS in part** and **DENIES in part** Applicant's Motion as follows:

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<sup>12</sup> *Ibid.*

<sup>13</sup> TN 242519.

<sup>14</sup> TN 242724.

<sup>15</sup> Cal. Code Regs., tit. 20, § 1203, subd. (c) and (d).

1. Order to Shorten Time. Given that Staff, the only other party to the proceeding, has already responded to Applicant's Motion, the need to issue an order shortening time is moot. The motion for an order shortening time is **DENIED**.
2. Combine the Prehearing Conference and Evidentiary Hearing. The Notice and Orders schedule the Prehearing Conference and Evidentiary Hearing for the same day. The motion to combine the two events on a single day is **GRANTED**. The Committee has scheduled the prehearing conference and evidentiary hearing at the earliest date of availability. The motion to schedule the prehearing conference and evidentiary hearing as soon as possible is **GRANTED**.
3. Eliminate Rebuttal Testimony, Filing of Prehearing Conference Statements, and Post-Hearing Briefs. The Notice and Orders include a Committee question to be responded to in rebuttal testimony. As such, rebuttal testimony is critical to the findings this Committee must make in order to consider the Application. The motion to eliminate the filing of rebuttal testimony is **DENIED**.

Similarly, the filing of prehearing conference statements provides the Committee with important information for the orderly conduct of the evidentiary hearing, including what exhibits and other evidence are part of the record on which to make the ultimate findings of fact and conclusions of law. The motion to eliminate the need to file prehearing conference statements is **DENIED**. Nonetheless, the Committee has minimized the requirements of the prehearing conference statements due to the lack of issues in controversy at this stage of the proceeding.

The CEC has in the past allowed post-hearing briefs that act as a summary of the parties' arguments and positions on the ultimate question in the proceedings: whether to grant the requested SPPE. Since neither party anticipates the need for briefing, the motion to eliminate the filing of briefs after the evidentiary hearing is **GRANTED**.

4. Presentation of Evidence by Declaration Only. Because of the Committee question, the Committee may need to ask additional questions to follow up on the answers received in the rebuttal testimony. While the Committee is committed to providing a more streamlined proceeding to receive evidence, we cannot predict at this point whether live testimony may be required to resolve any additional Committee questions following the parties' rebuttal testimony. The motion requesting that testimony be submitted by written declaration only is **DENIED**.
5. Scheduling Consideration of the Committee Proposed Decision for the May business meeting. The Notice and Orders include a prehearing conference and evidentiary hearing on May 10, 2022. The CEC business meeting is currently

scheduled for May 11, 2022—insufficient time to prepare and publish the Committee Proposed Decision before the CEC acts on it. The motion seeking consideration of the Application at the May 2022 business meeting is **DENIED**.

## **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, [Kristen Driskell](mailto:Kristen.Driskell@energy.ca.gov) at [Kristen.Driskell@energy.ca.gov](mailto:Kristen.Driskell@energy.ca.gov) or [Susan Cochran](mailto:Susan.Cochran@energy.ca.gov) at [susan.cochran@energy.ca.gov](mailto:susan.cochran@energy.ca.gov), or at (916) 891-8078.

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

**Direct media inquiries** to [mediaoffice@energy.ca.gov](mailto: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 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>.

Dated: April 20, 2022

### **APPROVED BY:**

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