

DOCKETED

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Document Title:	Notice of Continuance of Evidentiary Hearing, Notice of Intent to Take Official Notice of Bay Area Air Quality Management
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State of California
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

**NOTICE OF CONTINUANCE OF EVIDENTIARY HEARING, NOTICE OF
INTENT TO TAKE OFFICIAL NOTICE OF BAY AREA AIR QUALITY
MANAGEMENT DISTRICT'S JUSTIFICATION REPORT, AND RELATED
ORDERS**

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)¹ to the California Energy Commission (CEC).² Applicant proposes to construct and operate the CA3 Backup Generating Facility (Backup Generators) to provide an uninterrupted power supply for the CA3 Data Center (Data Center). Applicant will also construct an electrical substation for use by Silicon Valley Power, the local power provider. The Backup Generators, Data Center, substation, and other features are referred to as the "Project."

On May 18, 2021, the CEC appointed a committee consisting of Karen Douglas, Commissioner and Presiding Member, and Siva Gunda, Commissioner and Associate

¹ Information about this proceeding, including a link to the electronic docket, may be found on the [CA3 web page](https://www2.energy.ca.gov/sitingcases/ca3/) at <https://www2.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.

Member, to preside over this Application.³ 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).⁴

CEC staff (Staff) published the draft Environmental Impact Report (DEIR) on January 21, 2022⁵ and filed errata to the DEIR on January 27, 2022.⁶ The 45-day public comment period closed on March 9, 2022.⁷ After receiving public comments on the document, Staff published a Final Environmental Impact Report (FEIR) on March 24, 2022.⁸

On April 20, 2022, the Committee provided notice of a prehearing conference and evidentiary hearing (Notice of PHC and EH) for May 10, 2022.⁹

DISCUSSION

Continuation of the Evidentiary Hearing

The Notice of PHC and EH included a question directed to the parties concerning the adequacy of the FEIR's analysis and conclusions regarding the significance of cumulative impacts related to the health risk assessment prepared for the Project. The Notice of PHC and EH provided that the parties should include any response to the question in their rebuttal testimony.¹⁰ Applicant¹¹ and Staff¹² both timely responded to the Committee question.

The Committee has reviewed the parties' responses and continues to have questions about the FEIR discussion and conclusions regarding impacts from cumulative sources that exceed the thresholds of significance for (1) cancer risk

³ TN 237834.

⁴ TN 242447.

⁵ TN 241264.

⁶ TN 241294.

⁷ 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).

⁸ TNs 242451, 242452, 242453, 242454.

⁹ TN 242812 (Spanish language version); 242813 (Chinese language version); 242814 (Vietnamese language version); 242815 (revised English language version).

¹⁰ TN 242815.

¹¹ TN 242755. Applicant also filed two documents relating to the Caltrain Electrification Project. (TNs 242753 and 242754).

¹² TN 242803.

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). The Committee is not persuaded that the identified exceedances would result in less than significant impacts. The Committee wishes to further explore this topic with the parties, including, if applicable, what mitigation would reduce the cumulative impacts to less than significant levels. Given the scope of the Committee's questions and the importance of providing the parties with adequate time to respond, the **Evidentiary Hearing will be continued to May 24, 2022**, beginning at 1:30 p.m. Additional information about the Evidentiary Hearing and the additional Committee questions will be filed as soon as practicable.

The Committee will conduct the Prehearing Conference on May 10, 2022. Due to an unavoidable scheduling conflict, the Hearing Officer will open the meeting at 10:00 a.m. and then immediately continue the Prehearing Conference to 2:00 p.m. No action will be taken until after 2:00 p.m., and the parties are not required to attend until 2:00 p.m.

Intent to Take Official Notice

The FEIR included several mitigation measures, including Mitigation Measure GHG-1:

If the Bay Area Air Quality Management District (BAAQMD) has adopted a new threshold of significance for stationary sources on or before CA3 receives its Authority to Construct permit, the project shall reduce the time the engines operate for readiness testing and maintenance on an annual basis to ensure the project complies with the new limit. . . .¹³

The FEIR concluded that, with the imposition and implementation of GHG-1 and other mitigation measures for greenhouse gas emissions (GHG), the potential impacts from the Project have been mitigated to a level of less than significant.¹⁴

On April 22, 2022, BAAQMD published a document entitled "Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans" (Justification Report).¹⁵ The Justification Report

¹³ TN 242453, p. 4.8-31.

¹⁴ *Id.* at 4.8-1, 4.8-5 – 4.8-6, 4.8-18 – 4.8-20.

¹⁵ [CEQA Thresholds and Guidelines Update](https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines) at <https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines>

establishes new “fair share” mitigation for both land use projects and larger planning documents, such as general and specific plans.

The consideration of SPPEs, such as presented by the Application, are adjudicative in nature.¹⁶ The CEC has adopted certain provisions of the California Administrative Procedure Act (APA), Government Code sections 11425.10 et seq., to guide the conduct of adjudicative proceedings.¹⁷ The APA authorizes administrative agencies, like the CEC, to take official notice of documents of which courts would be able to take judicial notice.¹⁸ Judicial notice may be taken of “regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States” or official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.¹⁹

Prior to taking official notice, the administrative agency must give notice of the intent to take such notice and to provide opportunity for any party to refute the officially noticed matters and may specify the manner by which a party may do so.²⁰

Because of the importance of BAAQMD’s actions to create fair share measures to mitigate GHG and the inclusion of language in GHG-1 that references updates to BAAQMD’s new GHG thresholds for stationary sources, the Committee hereby notifies the parties of the intent to take official notice of the Justification Report.

Any party wanting to refute or object to the taking of official notice of the Justification Report is hereby **ORDERED** to file its objection and the basis therefore no later than 3:00 p.m., on Monday, May 9, 2022.

Committee Question

The parties are hereby **ORDERED** to respond to the following question in writing filed no later than 3:00 p.m. on Monday, May 9, 2022.

Mitigation measure GHG-1 in the FEIR requires the Project to reduce the time the backup generators operate for readiness testing and maintenance on an

¹⁶ See, e.g., Cal. Code Regs., tit. 20, §§ 1943-1945 (describing hearing and decision requirements for SPPEs).

¹⁷ Cal. Code Regs., tit. 20, § 1210.

¹⁸ Gov. Code, § 11515.

¹⁹ Evid. Code, § 452(b), (c).

²⁰ Gov. Code, § 11515.

annual basis to comply with any new threshold of significance for stationary sources adopted by BAAQMD on or before CA3 receives its Authority to Construct permit. How do BAAQMD's new thresholds of significance for land use plans and projects affect GHG-1 or any other mitigation measure in the FEIR, if at all?

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.

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

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

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 [CA3 Online Docket](#) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01>.

Dated: May 6, 2022

APPROVED BY:

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

Dated: May 6, 2022

APPROVED BY:

Kourtney Vaccaro
Commissioner and Associate Member
CA3 Backup Generating Facility SPPE
Committee