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Filer:	Scott Galati
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RESPONSE TO COMMITTEE QUESTIONS

Air Quality Committee Question 1a.

On page 4.3-33 of the FEIR, CEC Staff discuss the anticipated cumulative contributions from particulate matter. The FEIR states that both the modeled 24-hour and annual PM10 concentrations would exceed the applicable significant impact levels (SILs). The FEIR then predicts PM10 concentration at the fenceline and states that the 24-hour PM10 concentration would be below the SILs, and that the annual PM10 emissions at the nearest residential receptors would be "much lower than the maximum shown." Similarly, for PM2.5, the FEIR states that the maximum modeled 24-hour PM2.5 concentration "would decrease rapidly with distance from the fence line," while annual PM2.5 would be less than applicable significance thresholds.

i. What are the estimated annual PM10 concentrations at the nearest residential receptor? Does it fall below the applicable significance thresholds?

Response: As stated on Page 4.3-13 of the FEIR, the nearest residential receptor is approximately 0.3 mile south of the project site. During construction, the estimated annual PM10 concentration at the nearest residential receptor is 0.155 $\mu g/m^3$, which is less than the SIL of 1 $\mu g/m^3$. During operation, the estimated annual PM10 concentration at the nearest residential receptor is 0.016 $\mu g/m^3$, which is less than the SIL of 1 $\mu g/m^3$.

ii. What are the estimated 24-hour PM2.5 concentrations at the nearest residential receptor? Does it fall below the applicable significance thresholds?

Response: During construction, the estimated 24-hour PM2.5 concentration at the nearest residential receptor is 0.297 $\mu g/m^3$, which is less than the SIL of 1.2 $\mu g/m^3$. During operation, the estimated 24-hour PM2.5 concentration at the nearest residential receptor is 0.827 $\mu g/m^3$, which is also less than the SIL of 1.2 $\mu g/m^3$.

Air Quality Committee Question 1b.

On page 4.3-34 of the FEIR, as part of its air quality impact analysis (AQIA) for criteria pollutants, the FEIR estimates the emissions from the natural gas-fired generators when operating "load shedding and demand response under various load scenarios," in addition to routine maintenance and testing. This operation is due to the project's anticipated participation in PG&E's Base Interruptible Program (BIP). (Page 3-17.) BIP is triggered "when the California Independent System Operator issues a curtailment notice." (Page 3-17.) Page 3-17 of the FEIR describes the scenarios in which the generators are anticipated to operate for participation in BIP and for maintenance. In contrast, the FEIR states that use of the natural gas-fired generators and diesel-fired administrative generators for emergency operations is typically not evaluated during facility permitting

and air districts do not conduct such an assessment. (Page 4.3-46.) The FEIR states that modeling air quality impacts from emergency operations "would require a host of unvalidated, unverifiable, and speculative assumptions" that "would not provide meaningful information by which to determine project impacts." (Page 4.3-46.) As a result, the FEIR assesses air quality impacts from participation in BIP, which occurs under emergency reliability conditions, but not for other types of emergency operations.

Please explain whether the air quality impact analysis modeling assumptions and scenarios used to assess emissions, including BIP participation, are or are not appropriate for assessing emissions from emergency operations.

Response: The FEIR's use of modeling assumptions and scenarios related to use of the natural gas back-up generators as a result of BIP participation are appropriate for assessing emissions given the available data regarding historical participation in PG&E's BIP, which is a program geared toward summer-peak and winter-peak energy demands. As shown in the Applicant's response to Data Request 84, between the period of 2009 and 2021, there were 31 BIP events, with a total of 95 BIP hours across the same period. The same data shows a maximum of 28 hours in a single year. BIP program guidelines provide it will not exceed 180 hours per year. Thus, for modeling purposes, both historical data and maximum annual BIP hours are available to evaluate estimated emissions. The modeling of BIP participation requires the BAAQMD permit to specifically authorize the amount and conditions the generators could run in a "non-emergency" voluntary mode. Therefore, Microsoft evaluated a specific amount of limited operation for foreseeable BIP operations. It is important to note that in an event where the facility is called upon to operate pursuant to the BIP, the vast majority of such events would not result in actual curtailment of the facility if the facility had not participated in the BIP.

The same modeling assumptions and scenarios are not, however, directly transferrable to the assessment of impacts associated with operation of the standby generators due to true emergencies occurring due to unforeseen and unpredictable events, equipment failures, or accidents. CEQA requires the evaluation of "reasonably foreseeable" impacts. (CEQA Guidelines, § 15064(d)(3).) "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." (CEQA Guidelines, § 15145.) The current legal framework for operating the generators during an emergency requires an actual curtailment of electricity to the site that is beyond Microsoft's control. Such events are exceedingly rare, extremely uncertain to predict, and are evaluated at the level they can be without significant speculation in the FEIR Appendix B. As provided in the Applicant's response to Data Request 61, Table DR61, the 115 kV lines for the Los Esteros Substation shows that since 2007, there were five outages with a total outage duration of 18 hours and 20 minutes. Yet, since 2010, the duration of outages has been *less than 3 minutes*. The FEIR's statement that "assessing the air quality impacts of

emergency operations would require a host of unvalidated, unverifiable, and speculative assumptions about when and under what circumstances such a hypothetical emergency would occur," is factually supported and complies with CEQA's requirements. (FEIR, p. 4.3-36.)

The FEIR's evaluation of emissions impacts from the backup generators assumed 509 hours per year for both generator testing and participation in the BIP program. Given the historical data provided above, this analysis constitutes a sizeable over-estimation of potential emissions impacts given that testing would require 9 hours per year, the maximum number of annual hours of load shedding requested over the past 12 years was 28 hours, and the duration of emergency outages since 2010 was *less* than three minutes. (FEIR, 4.3-47.)

In addition, the FEIR's evaluation of emergency operations of the backup generators is completely consistent with previous SPPE decisions which have determined that the speculation necessary to model potential air quality emissions for emergency operations would lead to unreliable and unpredictable quantification. For these reasons, BIP operations and emergency operations warrant different methods for evaluating potential emissions impacts. The FEIR successfully accomplishes the distinction between both types of operations.

Biological Resources Committee Question 2a

a. *On page 4.4-2 of the FEIR, Staff states that Applicant performed habitat surveys of the project area. On page 4.4-10, Staff describes surveys for special status plant species. On page 4.4-12, Staff states that while the California Department of Fish & Wildlife recommended a habitat survey for salt marsh harvest mouse, "a habitat survey was not performed." Regarding other biological resource surveys, in the FEIR Response to Comments, page 7-73, Staff acknowledges that surveys completed in 2016 are not considered "recent" survey efforts.*

    i. *Please provide the dates for the biological resource surveys and studies of the project area and associated linear features, including surveys for wildlife such as burrowing owl, golden eagle, and salt-marsh harvest mouse, and surveys for ordinance-sized trees. Please explain whether those surveys are still current and valid given the amount of time that has elapsed between when those surveys were performed, when the project filed an application, and when Staff published a Notice of Preparation for the project.*

Response: Biological resource surveys were performed for the project site and offsite features using best practices. Additional surveys were conducted on the project site by the Applicant, consistent with applicable habitat conservation plans and the proposed San José Data Center Monitoring Mitigation Program (Transaction Number 242492), and by local resource agencies. These surveys are timely and applicable to the biological resources potentially present in the project vicinity, and Commission Staff used these surveys as the basis of the FEIR's biological resources findings.

The following is a summary of the biological resource surveys performed on the project site.

Live Oak Associates Surveys (from technical biological report) - Field surveys of the study area were conducted on June 20, 2016 by LOA ecologists Katrina Krakow and Nathan Hale, on October 18, 2016 by Ms. Krakow, Sarah Piramoon, and Pam Peterson. Mr. Hale conducted a brief site visit to map habitat features associated with Coyote Creek on October 26, 2016, and Ms. Krakow conducted a site visit to assess a new utility alignment on March 36, 2017. A protocol-level burrowing owl survey was conducted by LOA on the dates listed above (June 20 and October 18, 2016).

Applicant Biological Resource Surveys June 11, 2019

Biologists from Jacobs Engineering conducted reconnaissance surveys of all relevant non-developed areas in the biological survey area (BSA) that were publicly accessible, as explained in the following section. No protocol-level surveys, focused surveys, or aquatic resources delineation surveys were conducted. The study area is shown on Figure 3.4-1 of the Small Power Plant Exemption Application and is defined as the on-site areas and associated off-site extensions of utilities and roadways that would be disturbed in order to implement the project, plus a 150-foot buffer of these areas. A 150-foot buffer of the on-site areas and associated off-site extensions of utilities and roadways was included to ensure that biological surveys accounted for biological resources immediately adjacent to the project site. General biological reconnaissance surveys entailed walking and meandering transects in publicly accessible non-developed portions of the biological resources survey area (as defined previously), and surveying areas that appeared to support special-status fauna and flora as identified in desktop-level reviews.

The portion of the utility extensions west of the Pacific Gas and Electric Company's Los Esteros Substation were fenced and not accessible. This area was visually surveyed from the fence boundary.

The following tasks were conducted by the Applicant during the reconnaissance-level surveys:

a. Plant communities and habitat types were identified in the BSA and evaluated for special-status plant suitability.

b. Baseline data were collected for wildlife special-status species. Habitat for various special-status species was observed and recorded. Uplands and aquatic features in the BSA were evaluated to determine habitat suitability and potential jurisdictional status.

Santa Clara Habitat Agency 2021 Burrowing Owl Breeding Season Survey Report, December 2021

Multiple surveys were performed during the 2021 breeding season (March 15 to July 15) by the Santa Clara Valley Habitat Agency consistent with the Santa Clara Valley Habitat Plan (SCVHP). (See Transaction number 243035.) These surveys cover the SJC02 project area (as shown in Figure 2 on page 10 of 36). Burrowing owls were not detected in our project area.

Jacobs Burrowing Owl Habitat Assessment Survey January 14, 2022

This survey was the nonbreeding season "habitat survey" consistent with the SCVHP. A Jacobs biologist surveyed the entire site using a walking transect. On areas with suitable habitat the biologist surveyed so that the centerline of the transects was no more than fifty feet apart. While conducting the walking transects the biologist also frequently stopped and surveyed the site for burrowing owls using binoculars and a spotting scope. The biologist inspected, photo documented, and logged the locations of burrows that were encountered on a GIS application.

This survey only covered the SJC02 site, not the associated off-site extensions of utilities and roadways.

ii. If no habitat or biological resources survey was performed, please explain what information was used to establish a baseline for these biological resources against which to evaluate potential environmental impacts.

Response: Biological resource surveys have been performed and are the basis for the biological resources impacts assessed in the FEIR.

Biological Resources Committee Question 2b

b. *On page 4.4-11, the FEIR states "This Draft EIR includes the Technical Biological Report (Live Oak Consultants, Appendix D), and Tree Inventory (HM Engineers, Appendix E)." Appendix D of the DEIR/FEIR is the Nitrogen*

Deposition Modeling, and Appendix E of the DEIR/FEIR is the Mailing List. Please identify the location of the Technical Biological Report and the Tree Inventory; if the items are not currently in the docket, please either file them with the docket or explain why they should not be filed.

Response: The Technical Biological Report (Live Oak Consultants), and Tree Inventory (HM Engineers) are filed as TN# 242961-2 and 242961-3, respectively . In addition, a tree inventory prepared by the Applicant for use by the City of San José as TN# 242961-1.