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<b>Project Title:</b>	CA3 Backup Generating Facility-Vantage
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**CALIFORNIA ENERGY COMMISSION**

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CEC-70 (Revised 11/2021)

**APPLICATION FOR A SMALL POWER PLANT  
EXEMPTION FOR****CA3 BACKUP GENERATING FACILITY****Docket No. 21-SPPE-01****ORDERS REGARDING ADDITIONAL COMMITTEE QUESTIONS**

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 24, 2022, the Committee held a Prehearing Conference on the Application. At the Prehearing Conference, the Committee requested that the parties bring witnesses to the Evidentiary Hearing, scheduled for May 27, 2022, to respond to the Committee's questions.

All parties are **ORDERED** to provide witnesses at the Evidentiary Hearing to respond to the Committee questions set forth below, as well as to any additional questions on this topic from other parties or the Committee that may arise during the Evidentiary Hearing. In addition to any oral testimony and examination of witnesses at the Evidentiary Hearing, the parties may file supplemental exhibits and/or declarations. The parties are **ORDERED** to file any such supplemental exhibits and/or declarations, **no later than 3:00 p.m. Thursday, May 26, 2022**. Any party filing supplemental exhibits and/or declarations is **ORDERED** to file a revised Exhibit List **no later than 10:00 a.m., Friday, May 27, 2022**.

<sup>1</sup> Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [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.

<sup>2</sup> 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.

## BACKGROUND

On April 20, 2022, in the Notice of Prehearing Conference and Evidentiary Hearing, Revised Scheduling Order, and Further Orders,<sup>3</sup> the Presiding Member ordered the parties to respond to the following issue regarding CEC Staff's (Staff) Final Environmental Impact Report (FEIR):

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).<sup>21</sup> 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.

The Committee reviewed the parties' responses. The Committee is unpersuaded that, as a matter of law, the project's incremental effects are not "cumulatively considerable." To approve an SPPE Application, the CEC must find, among other things, that the project will not have a substantial adverse impact on the environment.<sup>4</sup> At this time, the Committee is ordering the parties to provide additional facts, analysis, and expert opinion to address questions regarding this issue.

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<sup>3</sup> TN 242815.

<sup>4</sup> Pub. Resources Code, § 25541.

## COMMITTEE QUESTIONS

### A. Bay Area Air Quality Management District CEQA Guidelines

The FEIR incorporates the Bay Area Air Quality Management District's (BAAQMD) thresholds of significance, detailed in BAAQMD's May 2017 CEQA Air Quality Guidelines (2017 CEQA Guidelines) for cumulative impacts.<sup>5</sup> BAAQMD's 2017 CEQA Guidelines state, "A project would have a cumulative considerable impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000 foot radius from the fence line of a source plus the contribution from the project, exceed" thresholds of significance, as identified in the FEIR.<sup>6</sup> BAAQMD's 2017 CEQA Guidelines further state, "If a project would exceed the applicable Threshold of Significance, the proposed project would result in a significant air quality impact, and the Lead Agency should implement all feasible mitigation to reduce the impact."<sup>7</sup>

Both the FEIR and Staff's response appear to argue that, although the project exceeds the threshold of significance established in BAAQMD's 2017 CEQA Guidelines for cumulative impacts, the project's incremental contribution is nonetheless not "cumulatively considerable." However, BAAQMD's 2017 CEQA Guidelines combine the cumulative effects and cumulatively considerable contribution into a single threshold. Thus, the question is not whether the project's incremental contributions are cumulatively considerable, but instead whether the project's significant cumulative impacts can be mitigated to less than significant levels. BAAQMD confirms this interpretation of its 2017 CEQA Guidelines in its comments on the draft EIR.<sup>8</sup>

Neither Staff nor Applicant identified any mitigation in the FEIR or in the responses to the Presiding Member's question that would respond to this issue. Therefore, under the BAAQMD thresholds of significance adopted by the FEIR, the project appears to have significant and unmitigated cumulatively considerable impacts related to cancer risk and annual PM<sub>2.5</sub> emissions at identified receptors.

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<sup>5</sup> TN 242452, pp. 4.3-2 and 4.3-3.

<sup>6</sup> [BAAQMD 2017 CEQA Guidelines](https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en&rev=0d2d971e661d41f28a56953f1776bdde), pp. 2-4 to 2-5, [https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en&rev=0d2d971e661d41f28a56953f1776bdde](https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en&rev=0d2d971e661d41f28a56953f1776bdde). See also *id.* at p. 5-16 ("A project would have a cumulative significant impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000 foot radius (or beyond where appropriate) from the fence line of a source, or from the location of a receptor, plus the contribution from the project, exceeds" the numeric thresholds.)

<sup>7</sup> BAAQMD 2017 CEQA Guidelines, p. 5-16.

<sup>8</sup> TN 242229.

## **B. Order on Committee Questions**

The Committee therefore **ORDERS** the parties to respond to the following questions at the Evidentiary Hearing:

- 1) The Committee reads the FEIR as using a numeric threshold to determine whether there are cumulative exceedances for various emissions. The FEIR's analysis shows that those thresholds are exceeded, as more thoroughly described above. Under BAAQMD's 2017 CEQA Guidelines, which establish the thresholds of significance, the exceedances are presumptively cumulatively considerable. Nonetheless, the FEIR claims that there is not a significant impact.

Please explain whether the Committee is correctly understanding the FEIR. If the Committee is not correctly understanding the FEIR, please provide specific citation to information in the record or to law that supports a different conclusion. If the Committee is correctly understanding the FEIR, please describe the process and procedure to make the FEIR CEQA compliant.

- 2) Under CEQA, once a significant impact is identified, then the next question is what mitigation is available to reduce the severity of the impact.<sup>9</sup> Please describe any existing or proposed mitigation measures that would reduce the project's apparent exceedances of the cumulative thresholds for cancer risk and annual PM2.5 emissions.

## **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](mailto:publicadvisor@energy.ca.gov), or by phone at (916) 957-7910. Requests for interpreting services and reasonable accommodations should be made as soon as possible and at least five days in advance of the 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](mailto: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](mailto: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](mailto:erik.veerkamp@energy.ca.gov) or (916) 661-8458.

**Direct media inquiries** to [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

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<sup>9</sup> Cal. Code Regs., tit. 14, § 15091.

## 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: May 25, 2022

***APPROVED BY:***

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

Dated: May 25, 2022

***APPROVED BY:***

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