

DOCKETED

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Project Title:	CA3 Backup Generating Facility-Vantage
TN #:	244156
Document Title:	Order Admitting Additional Exhibits - Order Regarding Justification Report - and Order Shortening Time
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CALIFORNIA ENERGY COMMISSION

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CEC-70 (Revised 11/2021)



IN THE MATTER OF:

Docket No. 21-SPPE-01

CA3 Backup Generating Facility

ORDER ADMITTING ADDITIONAL EXHIBITS; ORDER REGARDING JUSTIFICATION REPORT; AND ORDER SHORTENING TIME

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).

On May 6, 2022, the Committee filed "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" (May 6 Notice and Orders).² The May 6 Notice and Orders informed the parties that the Committee intended to take official notice of "Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans" (Justification Report) published on April 22, 2022, by the Bay Area Air Quality Management District (Bay Area).³ The May 6 Notice and Orders also requested that the parties explain how the new thresholds of significance identified in the Justification Report affect mitigation measure GHG-

¹ Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [web page](http://www.energy.ca.gov/powerplant/reciprocating-engine/ca3-backup-generating-facility) at <https://www.energy.ca.gov/powerplant/reciprocating-engine/ca3-backup-generating-facility>. 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>.

² TN 242971.

³ *Id.* at p. 4.

1 or any other mitigation measure in the FEIR.⁴ The parties were also given the opportunity to object to the Committee's intended action to take official notice.⁵

On May 9, 2022, Applicant objected to the Committee taking official notice of the Justification Report⁶ and CEC staff (Staff) filed a response, in the form of supplemental testimony, to the notice of intent to take official notice. Staff's response described how the Justification Report did not affect any of the existing mitigation measures for greenhouse gas emissions.⁷

During the May 24, 2022, Prehearing Conference, the Committee overruled Applicant's objection. The Committee also stated that it was "accepting" Staff's response and offered Applicant the opportunity to submit supplemental testimony on the Justification Report at the upcoming Evidentiary Hearing.⁸

On May 27, 2022, the Committee held an Evidentiary Hearing on the Application.⁹ At the conclusion of the Evidentiary Hearing, the Committee directed the CEC staff (Staff) to work with Applicant to provide additional information regarding the cumulative health risk assessment (HRA)¹⁰ contained in the Final Environmental Impact Report (Final EIR).¹¹ The hearing record for the proceeding was specifically left open, pending receipt of the additional analysis and any supporting documentation.¹²

Applicant filed the "Caltrain Sustainability Report" on June 6, 2022.¹³ On June 22, 2022, Staff filed Part 1¹⁴ and Part 2¹⁵ of the Final Environmental Impact Report for the Peninsula Corridor Electrification Project that was certified by Caltrain in 2015. On the same day, Staff filed a memorandum that included an update to the prior Air Quality section of the Final EIR that addressed the Committee's order to Staff during the May 27, 2022, Evidentiary Hearing.¹⁶

⁴ *Id.* at pp. 4-5.

⁵ *Id.* at p. 4.

⁶ TN 242980.

⁷ TN 242985.

⁸ TN 243424, Transcript of the May 24, 2022, Prehearing Conference, pp. 14:17 – 16:6.

⁹ TN 243504, Transcript of the May 27, 2022, Evidentiary Hearing.

¹⁰ *Id.* at pp. 102-104.

¹¹ TN 242452, pp. 4.3-49 – 4.3-55.

¹² TN 243504, Transcript of the May 27, 2022, Evidentiary Hearing, pp. 102-104.

¹³ TN 243442.

¹⁴ TN 243635.

¹⁵ TN 243636.

¹⁶ TN 243672.

On June 22, 2022, Staff and Applicant filed "Staff and Vantage Joint Stipulation to Enter Documents into Evidence and Close the Evidentiary Record" (Stipulation).¹⁷ The Stipulation requests that the Committee admit the following additional documents into the hearing record:

TN	Document Title	Proposed Exhibit No.
243672	Update to Air Quality Section of the FEIR	207
243635 and 243636	Peninsula Corridor Electrification Project Final Environmental Impact Report, Volume 1 (Parts 1 and 2)	208
243442	Caltrain Sustainability Report	209

The Stipulation further requests that the hearing record be closed.

DISCUSSION

Order Admitting Additional Exhibits

Having considered the Stipulation, the Committee hereby **GRANTS** the Stipulation's request to admit exhibits, modified as follows because the CEC's on-line docketing system only permits an exhibit number to be used once for a single TN. The Hearing and Advisory Unit of the CEC's Chief Counsel's Office is hereby directed to update the exhibit list for the Application as follows:

TN	Document Title	Proposed Exhibit No.
243672	Update to Air Quality Section of the FEIR	207
243635	Peninsula Corridor Electrification Project Final	208

¹⁷ TN 243676.

	Environmental Impact Report, Volume 1 (Part 1)	
243636	Peninsula Corridor Electrification Project Final Environmental Impact Report, Volume 1 (Part 2)	209
243442	Caltrain Sustainability Report	210

Due to the pendency of other matters, as discussed more fully below, we **DENY** the request to close the hearing record at this time.

Order Regarding Justification Report

In order to have a complete record regarding the potential impacts of the Project on air quality and greenhouse gas emissions, the Committee further **ORDERS** Staff to file an appropriate motion or stipulation for its supplemental testimony regarding the Justification Report to be admitted into the evidentiary record **by 5:00 p.m. on July 25, 2022**. The stipulation or motion to admit the supplemental testimony to the Justification Report may be included in or combined with any stipulation or motion to admit the update to the Final EIR with information about the conclusion of the consultation process with the Tamien Nation, as ordered in the "Notice of Committee Conference (Closed Session); Notice of Public Comment Period on Updated Air Quality Analysis; Order Shortening Time; Order Regarding Updated Information on Tribal Consultation" (July 15 Notice and Orders).¹⁸

Order Shortening Time

Generally, when motions are made to the CEC, any response to the motion must be filed within 14 days.¹⁹ This time may be modified by order of the Presiding Member.²⁰

In the event that Staff makes a motion to admit its response to the Justification Report and/or the update to the tribal consultation information in response to the July 15 Notice and Orders, the Committee hereby **ORDERS** that any response to such a motion be filed **no later than 5:00 p.m. on July 26, 2022**.

¹⁸ TN 244100.

¹⁹ Cal. Code Regs., tit. 20, § 1211.5(a).

²⁰ *Ibid.*

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor provides the public with 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 and reasonable accommodations should be made as soon as possible and at least five days in advance of the deadline. 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 (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:eric.veerkamp@energy.ca.gov), 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](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: July 20, 2022

Dated: July 21, 2022

APPROVED BY:

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

APPROVED BY:

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