

DOCKETED

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CALIFORNIA ENERGY COMMISSION

715 P Street
Sacramento, California 95814

[energy.ca.gov](https://www.energy.ca.gov)

CEC-70 (Revised 11/2021)



IN THE MATTER OF:

CA3 Backup Generating Facility

Docket No. 21-SPPE-01

ORDER ADMITTING ADDITIONAL EXHIBITS, CLOSING THE HEARING RECORD, AND DENYING APPLICANT'S MOTION FOR EXPEDITED REVIEW

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).

1. Order Admitting Additional Exhibits and Closing the Hearing Record.

BACKGROUND

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

¹ Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [web page](https://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>.

The Application and related addenda are TN 237380 through 237383, TN 237423, and TN 237521.

² TN 242971.

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 or any other mitigation measure in the Final Environmental Impact Report (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 July 15, 2022, the Committee issued a 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).⁹ Among other things, the July 15 Notice and Orders directed Staff to update the Cultural and Tribal Cultural Resources section of the Final EIR to include the outcome of consultation with the Tamien Nation.; this updated information was to be filed by July 22, 2022.

On July 21, 2022, the Committee filed the "Order Admitting Evidence; Order Regarding the Justification Report; and Order Shortening Time" (July 21 Orders). Among other things, the July 21 Orders directed Staff to file a motion or stipulation to admit the Supplemental Testimony filed by Staff regarding the Justification Report and any updated information on the consultation with the Tamien Nation, if Staff wished to include those documents in the hearing record.¹⁰

On July 22, 2022, Staff and Applicant filed a Joint Stipulation to Move Additional Documents into the Evidentiary Record (July 22 Stipulation).¹¹ In the July 22 Stipulation, the parties agreed to include: (1) Staff's Supplemental Testimony about the Justification Report,¹² (2) Staff's

³ *Id.* at p. 4.

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 TNs 244100 (as superseded by 244131), 244128 (Spanish), 244129 (Vietnamese), 244130 (Chinese).

¹⁰ TN

¹¹ TN 244181.

¹² TN 242985.

declarations to sponsor the Supplemental Testimony about the Justification Report, (3) an updated Cultural and Tribal Cultural Resources section to update the consultation process with the Tamien Nation, and (4) Staff's declaration to sponsor the updated section as testimony, in the hearing record. Documents (2) through (4) were attached to the July 22 Stipulation. The July 22 Stipulation also requested the Committee close the hearing record.

In response to the July 22 Stipulation, the Hearing Officer filed a memo to the parties directing Staff to refile documents (2) through (4) of the July 22 Stipulation as stand-alone documents for the purpose of being admitted into the hearing record.¹³ Staff did so on July 25.¹⁴

RULING AND ORDER

Having considered the July 22 Stipulation, the Committee hereby **GRANTS** the Joint Stipulation, modified as follows to include the updated TNs for the relevant exhibits. The Hearing and Advisory Unit of the CEC's Chief Counsel's Office is hereby directed to update the evidence list for the Application, consistent with the chart below.

In addition, as the Committee had previously indicated that it would take official notice of the Justification Report, the Committee **ORDERS** that the Justification Report be admitted as Exhibit 500.

TN	Document Title	Proposed Exhibit No.
244192	Declarations of Steven Kerr and Joseph Hughes and Resume of Steven Kerr	211
242985	Supplemental Testimony (Response to Second Committee Question)	212
244193	Cultural and Tribal Cultural Resources Update to the FEIR and Declaration of Gabriel Roark in Support of Update	213

¹³ TN 244190.

¹⁴ TN 244193.

244199	Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans	500
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The Committee further **ORDERS** that the hearing record shall be closed as of July 28, 2022.

2. Order Denying Applicant's Motion for Expedited Review.

BACKGROUND

On July 6, 2022, Applicant filed "Vantage Data Centers' Request for Special Business Meeting" (Motion for Expedited Review).¹⁵ In the Motion for Expedited Review, "Applicant requests that the CEC "schedule a Business Meeting to approve the SPPE as soon as practical and before the next regularly scheduled Business Meeting in August."¹⁶ On July 19, 2022, Staff filed its response to Applicant's Motion for Expedited Review, indicating that it had no objection.¹⁷

RULING

At the time of the motion for expedited review, Applicant requested an additional business meeting in late July for the purposes of the public hearing before the CEC to consider the Application. The Committee is still considering its proposed decision on the SPPE. Therefore, we therefore **DENY** the motion for expedited review.

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. The CEC will work diligently to accommodate all requests.

¹⁵ TN 243922. We note that "special meeting" has a specific meaning under the Bagley Keene Open Meeting Act. (Cal. Gov't Code, § 11125.4.) Applicant's Motion does not, on its face contain information to conclude that a special meeting could be called. We therefore treat the motion as one seeking expedited review and refer to it as such.

¹⁶ *Id.* at p. 1.

¹⁷ TN 244119.

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 at (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 28, 2022

APPROVED BY:

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

Dated: July 28, 2022

APPROVED BY:

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