

DOCKETED

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Project Title:	Business Meeting Agendas, Transcripts, Minutes, and Public Comments
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Document Title:	Orders and Resolutions of the January 25, 2023 Business Meeting
Description:	N/A
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Organization:	California Energy Commission
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**LETTER OF INTENT
BETWEEN
THE CALIFORNIA ENERGY COMMISSION
AND
THE NEW ENERGY AND INDUSTRIAL TECHNOLOGY DEVELOPMENT ORGANIZATION
ON
Demonstration Project for a Flexible Energy Management System (EMS)**

**Paragraph 1
Background**

WHEREAS, the State of California and the country of Japan share a history of strong cooperation on trade and investment, as well as shared goals to accelerate the transition to clean and renewable energy;

WHEREAS, California and Japan are helping to lead a global transition to clean energy and the reduction of harmful greenhouse gases through the development of innovation and technology aimed at achieving greater energy efficiency and accelerating decarbonization from the building sector;

WHEREAS, the New Energy and Industrial Technology Development Organization (NEDO) is a national research and development agency that creates innovation by promoting technological development necessary for realization of a sustainable society and serves as one of the largest public research and development management organizations in Japan;

WHEREAS, NEDO and the California Energy Commission (CEC) (hereafter referred to as “Party” or “Parties”) share common goals related to the promotion of clean energy innovation and technology aimed at the achievement of more secure, reliable, flexible, affordable, equitable, and efficient energy systems;

THEREFORE, in pursuit of these shared goals, NEDO and CEC shall work to further their relationship in the following areas:

**Paragraph 2
Areas of Cooperation**

Flexible Energy Management System

This Letter of Intent (LOI) expresses a commitment by the Parties to work in collaboration on the development of a demonstration project for a flexible energy

management system (EMS) utilizing automatic control of devices in residential and commercial buildings (hereafter referred to as “Project”).

The objective of the Project is to facilitate broad dissemination of energy-related technologies that contribute to load flexibility and building decarbonization in California and Japan.

Paragraph 3 Coordination

Implementing Entities

The Parties respectively designate Panasonic Holdings Corporation (hereafter referred to as “Panasonic”) as a Project implementer. NEDO approved Panasonic’s application as a project implementer and will provide guidance, assistance, and cooperation to Panasonic to facilitate the implementation of the Project.

Further, the CEC recognizes Sacramento Municipal Utility District (SMUD) and the University of California at Davis (UC Davis) as the Project implementers for California.

As part of the Project implementation, the CEC agrees to assign a representative to serve on the Technical Advisory Committee (TAC) to support the Project. Through this representative, who serves on the committee, the CEC will provide guidance and advice to Panasonic, SMUD, and UC Davis to facilitate the successful implementation of the Project.

Cooperation of Parties

The Parties will also endeavor to disseminate the results of the Project after its completion to achieve the objective stipulated herein. To accomplish this, the CEC will participate in a seminar in California in cooperation with NEDO, Panasonic, SMUD, and UC Davis to contribute to dissemination of the Project results.

Project Representatives and Contact Persons

The Parties will each appoint one Project representative and one contact person to facilitate management of the Project. Each Party will notify the other Party as soon as possible in writing or via email of such appointments.

If either Party changes its Project representative, that Party will immediately notify the other Party in writing or via email of such a change.

Management Meetings

The Parties will hold meetings (hereafter referred to as “Management Meetings”) to provide communication and consultation for the Project based on the principles of mutual benefit, equality, cooperation, and trust. The Project representatives set forth in the preceding paragraph will attend Management Meetings. Each Party may have a duly authorized person attend Management Meetings instead of its Project representative. The Parties will examine, discuss, and make suggestions on important matters, including concerns of any kind, during Management Meetings.

Paragraph 4

No Legal Obligations, Rights, or Remedies

This LOI is a voluntary initiative. It does not create any legally binding rights or obligations and creates no legally cognizable or enforceable rights or remedies, legal or equitable, in any forum whatsoever. In addition, the pledges in this LOI are not conditioned upon reciprocal actions by other Parties; each Party retains full discretion over implementation of its pledges in light of the Party’s individual circumstances, laws, and policies; and each Party is free to withdraw from the LOI.

Paragraph 5

Availability of Personnel and Resources

This LOI does not involve the exchange of funds, nor does it represent any obligation of funds by either Party. All costs that may arise from activities covered by, mentioned in, or pursuant to this LOI will be assumed by the Party that incurs them, unless otherwise expressly agreed in a future written arrangement in accordance with applicable laws. All activities undertaken pursuant to this LOI are subject to the availability of funds, personnel, and other resources of each Party.

The personnel designated by a Party for the execution of this LOI will work under the orders and responsibility of that Party and any other organization or institution to which the personnel already belongs, at all times maintaining any preexisting employment relationship only with that Party and organization or institution, and not with any other Party.

Paragraph 6
Interpretation and Application

Any difference that may arise in relation to the interpretation or application of this LOI will be resolved through consultation between the Parties, who will endeavor in good faith to resolve such differences.

Paragraph 7
Final Provisions

This LOI is effective from the date of its signature for three years.

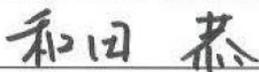
This LOI may be modified at any time by mutual consent of the Parties. Any modification will be made in writing and specify the date on which such modification is effective.

Either party may, at any time, withdraw from this LOI by providing a written notice to the other Party. A Party that intends to withdraw from this LOI shall endeavor to provide notice of such withdrawal to the other Party 30 days in advance.

The termination of this LOI should not affect the conclusion of the cooperation activities that may have been formalized during the time this LOI is in effect unless the Parties mutually decide otherwise.

This Letter of Intent is signed by Executive Director Wada Takashi in __Kawasaki,__
__Japan__ on __Dec 12, 2022__ and by Chair David Hochschild in
__Sacramento, CA__ on __December 14, 2022__.

FOR THE NEW ENERGY AND
INDUSTRIAL TECHNOLOGY
DEVELOPMENT ORGANIZATION



Wada Takashi, Executive Director

FOR THE CALIFORNIA ENERGY
COMMISSION



David Hochschild, Chair

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION FINDING BUILDING ENERGY EFFICIENCY STANDARDS
CONTAINED IN CITY OF PIEDMONT'S ORDINANCE NO. 766 N.S. SATISFY
STATUTORY REQUIREMENTS UNDER PUBLIC RESOURCES CODE SECTION
25402.1(h)(2)

WHEREAS, The City of Piedmont adopted Ordinance No. 766 N.S., which establishes certain locally adopted building energy efficiency standards; and

WHEREAS, Public Resources Code section 25402(a) and (b) establishes that the California Energy Commission (CEC) shall prescribe, by regulation, statewide building energy efficiency standards; and

WHEREAS, Public Resources Code section 25402.1(h)(2) provides that nothing in Public Resources Code section 25402(a) or (b) shall prohibit the enforcement of city or county building energy efficiency standards if: (1) the city or county files the basis of its determination that the standards are cost-effective with the CEC and (2) the CEC finds that the locally adopted standards will require the diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to Public Resources Code section 25402(a) and (b); and

WHEREAS, California Code of Regulations, Title 24, Part 1, section 10-106 establishes a process for local governmental agencies to submit an application to the CEC for a determination that locally adopted building energy efficiency standards meet the requirements set forth in Public Resources Code section 25402.1(h)(2); and

WHEREAS, on October 20, 2022, pursuant to California Code of Regulations, Title 24, section 10-106, the City of Piedmont submitted an application to the CEC that included (1) the basis of its determination that the locally adopted energy efficiency standards contained in Ordinance No. 766 N.S. are cost-effective and (2) documentation that the locally adopted energy efficiency standards contained in Ordinance No. 766 N.S. will require the diminution of energy consumption levels compared to the 2022 Building Energy Efficiency Standards; and

WHEREAS, The CEC has analyzed whether the locally adopted energy efficiency standards contained in Ordinance No. 766 N.S. will require the diminution of energy consumption levels compared to the 2022 Building Energy Efficiency Standards, and determined that it will do so; and

WHEREAS, California Code of Regulations, Title 24, Part 1, section 10-106(b) requires that the local governmental agency's application include any findings, determinations, declarations, or reports, including any negative declaration or environmental impact report, required pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq; and

WHEREAS, The City of Piedmont, in its application to the CEC, submitted the California Environmental Quality Act documentation required by California Code of Regulations, Title 24, Part 1, section 10-106(b)(4).

THEREFORE, BE IT RESOLVED, that the CEC finds the locally adopted energy efficiency and conservations standards application filed by the City of Piedmont satisfy the requirements of Title 24, California Code of Regulations, section 10-106; and

THEREFORE BE IT FURTHER RESOLVED, that, pursuant to Public Resources Code section 25402.1(h)(2), the CEC finds the following: (1) the City of Piedmont has filed the basis of its determination that the locally adopted energy efficiency standards contained in Ordinance No. 766 N.S. are cost-effective, and (2) Ordinance No. 766 N.S. will require the diminution of energy consumption levels compared to the 2022 Building Energy Efficiency Standards; and

THEREFORE, BE IT FURTHER RESOLVED, that the CEC directs the executive director to take all actions necessary to implement this Resolution.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 31, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION FINDING BUILDING ENERGY EFFICIENCY STANDARDS
CONTAINED IN CITY OF ENCINITAS'S ORDINANCE NO. 2022-13 SATISFY
STATUTORY REQUIREMENTS UNDER PUBLIC RESOURCES CODE SECTION
25402.1(h)(2)

WHEREAS, The City of Encinitas adopted Ordinance No. 2022-13, which establishes certain locally adopted building energy efficiency standards; and

WHEREAS, Public Resources Code section 25402(a) and (b) establishes that the California Energy Commission (CEC) shall prescribe, by regulation, statewide building energy efficiency standards; and

WHEREAS, Public Resources Code section 25402.1(h)(2) provides that nothing in Public Resources Code section 25402(a) or (b) shall prohibit the enforcement of city or county building energy efficiency standards if: (1) the city or county files the basis of its determination that the standards are cost-effective with the CEC and (2) the CEC finds that the locally adopted standards will require the diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to Public Resources Code section 25402(a) and (b); and

WHEREAS, California Code of Regulations, Title 24, Part 1, section 10-106 establishes a process for local governmental agencies to submit an application to the CEC for a determination that locally adopted building energy efficiency standards meet the requirements set forth in Public Resources Code section 25402.1(h)(2); and

WHEREAS, On November 3, 2022, pursuant to California Code of Regulations, Title 24, section 10-106, the City of Encinitas submitted an application to the CEC that included (1) the basis of its determination that the locally adopted energy efficiency standards contained in Ordinance No. 2022-13 are cost-effective and (2) documentation that the locally adopted energy efficiency standards contained in Ordinance No. 2022-13 will require the diminution of energy consumption levels compared to the 2022 Building Energy Efficiency Standards; and

WHEREAS, The CEC has analyzed whether the locally adopted energy efficiency standards contained in Ordinance No. 2022-13 will require the diminution of energy consumption levels compared to the 2022 Building Energy Efficiency Standards, and determined that it will do so; and

WHEREAS, California Code of Regulations, Title 24, Part 1, section 10-106(b) requires that the local governmental agency's application include any findings, determinations, declarations, or reports, including any negative declaration or environmental impact report, required pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq; and

WHEREAS, The City of Encinitas, in its application to the CEC, submitted the California Environmental Quality Act documentation required by California Code of Regulations, Title 24, Part 1, section 10-106(b)(4).

THEREFORE, BE IT RESOLVED, that the CEC finds the locally adopted energy efficiency and conservations standards application filed by the City of Encinitas satisfy the requirements of Title 24, California Code of Regulations, section 10-106; and

THEREFORE, BE IT FURTHER RESOLVED, that, pursuant to Public Resources Code section 25402.1(h)(2), the CEC finds the following: (1) the City of Encinitas has filed the basis of its determination that the locally adopted energy efficiency standards contained in Ordinance No. 2022-13 are cost-effective, and (2) Ordinance No. 2022-13 will require the diminution of energy consumption levels compared to the 2022 Building Energy Efficiency Standards; and

THEREFORE, BE IT FURTHER RESOLVED, that the CEC directs the executive director to take all actions necessary to implement this Resolution.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 31, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

**RESOLUTION: The Regents of the University of California, on behalf of the
Energy Institute at Haas School of Business**

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement 800-22-003 for an \$18,000 contract to co-sponsor the 2023 POWER Conference on Energy Research and Policy scheduled in Berkeley on March 24, 2023. The 2023 POWER Conference will focus on electricity markets and policy; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Aspen Environmental Group

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Amendment 1 to Contract 700-22-004 to add \$1,000,000. This contract provides professional engineering and environmental services to support the state's environmental, conservation, engineering, infrastructure, economic, and land use planning activities in terrestrial, coastal, and marine environments. These planning activities are intended to guide responsible energy and infrastructure development to help California meet its energy and greenhouse gas reduction goals; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Baldwin Park Unified School District

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Amendment 2 to Agreement ARV-19-017 to add \$108,816 to the budget, extend the term of the agreement by 28 months, and add special terms and conditions. The additional funding will help purchase two previously awarded electric school buses and is needed because supply chain issues have increased manufacturing costs; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Whittier Union High School District

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Amendment 2 to Agreement ARV-19-026 to add \$137,354 to the budget, extend the term of the agreement by 24 months, and add special terms and conditions. The additional funding will help purchase previously awarded electric school buses and is needed because supply chain issues have increased manufacturing costs; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Gladstein, Neandross and Associates

WHEREAS, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the February 25, 2022, memorandum on this topic, finding the following categorical exemptions apply to this purchase order: (1) 14 CCR 15322, Educational or Training Programs Involving No Physical Changes; and (2) 14 CCR 15323, Normal Operations of Facilities for Public Gatherings; and

WHEREAS, the CEC approves proposed resolution to co-sponsor the Advanced Clean Transportation Expo 2023 scheduled for May 1-4, 2023, in Anaheim with Gladstein, Neandross and Associates for \$4,950. This co-sponsorship will bring the entire transportation sector together in Southern California for a week of peer-to-peer information exchange and valuable business meetings.

FURTHER BE IT RESOLVED, that the CEC directs the executive director or their designee to take all actions necessary to implement this Resolution.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**Rulemaking to Establish Uptime
Recordkeeping and Reporting
Standards for Electric Vehicle
Chargers and Charging Stations**

Docket No.: 22-EVI-04

**ORDER INSTITUTING RULEMAKING
PROCEEDING**

I. PURPOSE AND SCOPE OF THE PROCEEDING

The California Energy Commission (CEC) hereby institutes this rulemaking proceeding to develop and consider adopting additions to Title 20 that would establish uptime recordkeeping and reporting standards for electric vehicle (EV) chargers, charging stations, and charging station infrastructure, and related disclosure requirements. The CEC may also develop and consider adopting requirements to increase EV chargers and charging station uptime. These actions are taken under the authority of sections 25210, 25213, 25218(e), 25229, 25231.5, 25301, 25303, 25304, and 25618 of the California Public Resources Code, and sections 1220 through 1225 of Title 20 of the California Code of Regulations.

In this proceeding, consistent with Assembly Bill 2061 (Ting, Chapter 345, Statutes of 2022), and under direction of the lead commissioner, CEC staff may:

- develop uptime recordkeeping and reporting standards for EV chargers and charging stations;
- initiate a public workshop process to develop a definition of “uptime”;
- create a formula to calculate uptime;
- evaluate additional reliability metrics;
- hold a public workshop in consultation with the California Public Utilities Commission (CPUC) to identify best practices and charger technology capabilities to increase reliability;
- develop standards for disclosing reliability data reporting requirements to participants in future publicly-funded EV charger infrastructure programs; and

- develop requirements in consultation with the CPUC to increase charging station uptime, including, but not limited to, uptime requirements, operation and maintenance requirements, and operation and maintenance incentives.

CEC staff may take actions through this proceeding consistent with sections 25229, 25231.5, 25301, 25303, 25304, and 25618 of the California Public Resources Code to develop reporting requirements regarding the number and location of chargers and charging stations deployed in California, including shared private chargers and stations. Shared private chargers are those that are not open to the general public and are not dedicated to one driver, including for example, chargers shared at an apartment complex or workplace.

Additionally in this proceeding, under direction of the lead commissioner, CEC staff may take other actions reasonably necessary to present to the CEC for consideration, regulations that implement sections 25229, 25231.5, 25301, 25303, 25304, and 25618 of the California Public Resources Code related to recordkeeping and reporting standards for EV chargers, charging stations, and charging station infrastructure, and regulations for requirements to increase EV chargers and charging station uptime.

II. DELEGATION OF AUTHORITY

Commissioner Patricia Monahan is lead commissioner for this proceeding. The CEC delegates the authority to staff, under the direction of the lead commissioner, to take all actions reasonably necessary to present proposed regulations to the CEC for final adoption, including but not limited to, complying with requirements of the Administrative Procedure Act (Government Code sections 11340 et seq.) and the California Environmental Quality Act (Public Resources Code section 21000 et seq.). Adoption of any changes to the CEC's regulations pursuant to this Order Instituting Rulemaking will be by vote of the CEC at a noticed business meeting.

III. PUBLIC PARTICIPATION

The CEC encourages full and free public participation in this proceeding. Any person present at any hearing or workshop shall be afforded a reasonable opportunity to make oral comments on the subject matter of the proceeding. Petitions to intervene are not necessary. At present, no workshop or hearing dates have been specifically identified. The executive director, in conjunction with the public advisor, shall ensure that this order and notices of hearings and workshops are distributed to all interested persons and that drafts of the regulations are made available sufficiently in advance of workshops, interim hearings, and final adoption by the CEC to allow timely participation. The CEC will establish a date for the receipt of written comments on draft regulations.

The CEC will set forth a deadline for the receipt of written comments in a Notice of Proposed Action, which will be published later in this proceeding. Anyone who would like to participate in or receive information regarding this proceeding should register with the CEC [Clean Transportation Program](https://www.energy.ca.gov/programs-and-topics/programs/clean-transportation-) subscription list at <https://www.energy.ca.gov/programs-and-topics/programs/clean-transportation->

program. All who are registered will receive automated email messages with information regarding hearings, workshops, and documents. Manage existing list subscriptions or sign up for others at [CEC Subscriptions](https://www.energy.ca.gov/subscriptions), at <https://www.energy.ca.gov/subscriptions>.

The CEC encourages use of its electronic commenting system. Visit the [e-commenting page](https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=22-EVI-04) at <https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=22-EVI-04>, which links to the comment page for this docket. Enter your contact information and a comment title describing the subject of your comment(s). Comments may be included in the “Comment Text” box or attached as a downloadable, searchable document consistent with California Code of Regulations, Title 20, section 1208.1. The maximum file size allowed is 10 MB.

Written comments may be submitted by email. Include docket number 22-EVI-04 and “Rulemaking to Establish Uptime Recordkeeping and Reporting Standards for Electric Vehicle Chargers and Charging Stations” in the subject line and email to docket@energy.ca.gov. A paper copy may be sent to:

Docket No. 22-EVI-04
Docket Unit, MS-4
California Energy Commission
715 P Street
Sacramento, California 95814-5512

Written and oral comments, attachments, and associated contact information (including address, phone number, and email address) will become part of the public record of this proceeding with access available via any internet search engine.

The CEC’s public advisor assists the public with participating in CEC proceedings. Please call (916) 957-7910 or contact publicadvisor@energy.ca.gov for assistance.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 31, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Bay Area Air Quality Management District (BAAQMD)

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-024 for a \$2,994,574 grant to design, build, and operate EV charging devices. The project will leverage BAAQMD and Marin Clean Energy incentives to minimize costs for property owners to install and operate Level 1, Level 2, and direct current fast charging (DCFC) with solar power that supports affordable multifamily residential buildings in disadvantaged and low-income communities; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: FreeWire Technologies, Inc.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-025 for a \$921,940 grant to install EV charging infrastructure to support rural communities. The proposed project will include the installation of five DCFCs and five Level 2 chargers across five sites within Monterey and Riverside counties; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Ventura Energy LLC

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-026 for a \$775,144 grant to install four DCFC ports, six Level 2 charger ports, and two energy storage systems between two charging sites with the city of Santa Paula; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: ChargePoint, Inc.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ARV-22-006 for a \$1,487,747 grant to install a DCFC “hub” capable of charging four vehicles simultaneously at 150kW each, one dual-port Level 2 charger, and two “spoke” stations with two DCFCs (125kW) and eight dual-port Level 2 chargers. Stations will be constructed along critical rural travel corridors to enable long-distance EV trips and the installation of Level 2 stations at population centers to attract rural drivers; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: BioVind, LLC

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement PIR-22-004 with BioVind, LLC for a \$999,970 grant to develop a test kit and field-testing guide for detecting microbial species associated with microbiologically influenced corrosion (MIC) in gas pipelines and storage facilities. The innovative test kit will help lower the risk of MIC-related leakages and reduce costs associated with MIC detection, mitigation, and control; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: TechFlow, Inc.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-028 with TechFlow, Inc. for a \$413,928 grant to deploy five Level 2 and one DCFC EV charging systems. This agreement will jointly fund EV charger infrastructure installations at Naval Base San Diego under federal contract HQ08452290065, amended by modification P0001. The U.S. Department of the Navy funded \$750,000 of the project cost; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION OF THE CALIFORNIA ENERGY COMMISSION ADOPTING THE
CALIFORNIA ENERGY DEMAND FORECAST UPDATE, 2022-2035

WHEREAS, Public Resources Code section 25301(a) requires the California Energy Commission (CEC) to "conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices" and to "use these assessments and forecasts to develop and evaluate energy policies and programs that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety"; and

WHEREAS, the Integrated Energy Policy Report contains these assessments and associated policy recommendations and is adopted every two years, with an Integrated Energy Policy Report Update being adopted each interim year; and

WHEREAS, the CEC consulted with appropriate state and federal agencies in developing the California Energy Demand Forecast Update (CEDU 2022) including, but not limited to, the Public Utilities Commission, the State Air Resources Board, and the Independent System Operator; and

WHEREAS, the CEC held workshops on December 7, 2022, and December 16, 2022, and Demand Analysis Working Group Meetings were held on September 8, 2022, and November 15, 2022, to discuss the California Energy Demand Forecast Update, 2022-2035 (CEDU 2022); and

WHEREAS, on January 13, 2023, staff docketed the Notice of Availability for the CEDU 2022, which identifies the documents that make up the forecast update, including forecasts for electricity consumption, retail electricity sales, and peak and hourly demand for each of the major planning areas and for the state as a whole; and

WHEREAS, the CEDU 2022 provides forecasts that reflect expected impacts from recent economic and demographic projections, projections of electric vehicle adoption, and projections of behind-the-meter photovoltaic and storage system adoption and which are consistent with the latest historical data available for consumption, peak demand, temperatures, and electricity rates; and

WHEREAS, the CEDU 2022 will serve as a key input into a number of planning and procurement efforts, including transmission and distribution system planning, integrated resource planning, resource adequacy, and other studies and proceedings; and

WHEREAS, consistent with an agreement among leadership at the CEC, the Public Utilities Commission, and the California Independent System Operator, specific variants of the adopted demand forecast to be used in individual applications are described as the “single forecast set agreement” in the text of the 2022 Integrated Energy Policy Report Update; and

WHEREAS, the CEC has considered all comments received on the CEDU 2022;

THEREFORE BE IT RESOLVED, the CEC hereby adopts the CEDU 2022 along with any changes identified at its January 25, 2023 Business Meeting, directs CEC staff to make the forecast available to the public and to incorporate the results of the CEDU 2022 into the 2022 Integrated Energy Policy Report Update.

It is so Ordered.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Lafayette Backup Generating Facility

Docket No.: 20-SPPE-02

**Order Dissolving the
Committee Assigned to the Lafayette
Proceeding and Vacating Committee
Orders and Rulings**

I. BACKGROUND

On May 20, 2020, Digital Realty Inc. (Applicant) submitted an application to the California Energy Commission (CEC) for a small power plant exemption (SPPE) for the Lafayette Backup Generating Facility (Application).¹

Small Power Plant Exemptions

The CEC has the exclusive authority to consider, and ultimately approve or deny, applications for the construction and operation of thermal power plants that have the capacity to generate 50 megawatts (MW) or more of electricity.² The CEC may grant an exemption to its certification jurisdiction, the SPPE, for thermal powerplants with a generating capacity between 50 and 100 MW.

To grant an SPPE, the CEC must make three distinct determinations:

- the proposed powerplant has a generating capacity up to 100 MW;
- no substantial adverse impact on the environment will result from the construction or operation of the powerplant; and
- no substantial adverse impact on energy resources will result from the construction or operation of the powerplant.³

¹ Information about this proceeding, including a link to the electronic docket, may be found on the Lafayette Backup Generating Facility [web page](https://ww2.energy.ca.gov/sitingcases/lafayette/) at <https://ww2.energy.ca.gov/sitingcases/lafayette/>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-SPPE-02) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-SPPE-02>. The Application is TN 233041-1 to TN 233041-6. TN numbers refer to the number listed in the left column of CEC dockets. All references to TNs are in this docket unless otherwise noted.

² Pub. Resources Code, §§ 25120, 25500.

³ Pub. Resources Code, § 25541.

The CEC must also make the latter two findings as the “lead agency”⁴ under the California Environmental Quality Act (CEQA).⁵

The grant of an SPPE does not approve the construction or operation of any project but merely grants an exemption from the CEC’s own certification process. If the CEC ultimately decides to grant an SPPE, the project proponent must then secure the appropriate licenses and permits from relevant local, state, and federal agencies.

Proposed Project⁶

The Applicant proposes to construct and operate the Lafayette Data Center, the Lafayette Backup Generating Facility, and related facilities on approximately 15.45 acres located at 2825, 2845, and a portion of 2805, Lafayette Street, Santa Clara, California. The Lafayette Data Center would consist of a single, mostly three-story, 576,120-square-foot building that would house computer servers in a secure and environmentally controlled structure. The Lafayette Backup Generating Facility would consist of one 0.8-megawatt (MW), and 44 3-MW, diesel-fired backup generators, which would supply up to 99.8 MW, exclusively to the Lafayette Data Center.

CEQA requires the CEC to consider the “whole of an action.”⁷ Therefore, the CEC will include all components of the Lafayette Data Center, the Lafayette Backup Generating Facility, and other related features and activities (collectively the Project), in its environmental analysis.

Status of the Lafayette Proceeding

On July 8, 2020, the CEC appointed a committee to preside over the proceeding arising from the Application (Committee).⁸ On September 4, 2020, the Committee held a committee conference,⁹ and subsequently issued a Scheduling Order on October 26, 2020,¹⁰ and a Revised Scheduling Order on May 10, 2021.¹¹

On August 4, 2021, CEC staff (Staff) filed a notice of preparation of an Environmental Impact Report (EIR).¹² On January 11, 2022, the Committee granted intervenor status to Robert Sarvey (Sarvey).¹³ On December 9, 2022, Staff reported that it would

⁴ Pub. Resources Code, § 25519(c).

⁵ The CEQA statutes, California Public Resources Code section 21000 *et seq.*; and CEQA Guidelines, California Code of Regulations, title 14, section 15000 *et seq.* (Guidelines), detail the protocol by which state and local agencies comply with CEQA requirements. We refer to the statutes and the Guidelines collectively as “CEQA.”

⁶ The information in this section is taken from the Application, TN 233041-1 as revised in TN 238299.

⁷ Cal. Code Regs., tit. 14, § 15378, subd. (a) (under CEQA, “project” means the whole of an action).

⁸ See TN 233902, as amended by TN 242446. The current Committee consists of Kourtney Vaccaro, Commissioner and Presiding Member, and David Hochschild, Chair and Associate Member (TN 242446).

⁹ See TN 234688.

¹⁰ See TN 235419.

¹¹ See TN 237772.

¹² See TN 239177.

¹³ See TN 241143; see Cal. Code Regs., tit. 20, § 1211.7.

evaluate whether it has the information necessary to complete a draft EIR after receiving information anticipated from Applicant.¹⁴ Applicant provided the information on December 21, 2022.¹⁵ Staff has historically published a draft EIR within approximately 60 days following a determination that it has no further data requests.¹⁶

Amendments to the SPPE Regulations

On July 14, 2022, the CEC published notice that it proposed to adopt amendments to its process, procedure, and siting regulations governing SPPE proceedings contained in Title 20, California Code of Regulations, Sections 1900, et seq.¹⁷ On October 12, 2022, the Commission adopted the proposed amendments governing SPPE proceedings,¹⁸ thereby removing the adjudicatory process applying to SPPEs, while maintaining the requirements for environmental review and public participation under CEQA.¹⁹ On December 14, 2022, the Office of Administrative Law approved the regulations and submitted them to the Secretary of State for publication with an effective date of December 14, 2022 (the Amended SPPE Regulations).²⁰

Applicant's Motion to Dissolve the Committee and Staff's Response

On December 12, 2022, Applicant filed a motion seeking to dissolve the Committee on the grounds that the Committee is no longer necessary under the Amended SPPE Regulations which, upon their effective date, eliminated the adjudicatory process for this proceeding (Applicant's Motion).²¹ In support of its motion, Applicant stated that under well settled case law, amendments to laws governing procedural matters apply immediately upon their effective dates to all proceedings unless the law expressly states otherwise.²² Applicant noted that here, the Amended SPPE Regulations govern the administrative procedure by which the CEC considers applications for SPPEs, and do not include any language restricting their applicability to only applications filed after their enactment.²³ Thus, Applicant contends the Amended Regulations immediately apply to the Lafayette proceeding.²⁴

Applicant points out that the Amended Regulations eliminated the entire SPPE process administered by the Committee, including evidentiary filings and hearings, legal briefing,

¹⁴ See TN 248002.

¹⁵ See TN 248195.

¹⁶ See TN 237772, p. 4.

¹⁷ See TN 244070, pp. 1, 4, in [docket 21-OIR-04](#) at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-OIR-04>. TN numbers refer to the number listed in the left column of CEC dockets.

¹⁸ See TN 246550, in [docket 21-OIR-04](#), *supra*.

¹⁹ See TN 244070, at p. 1, in [docket 21-OIR-04](#), *supra*.

²⁰ See Cal. Code Regs., tit. 20, §§ 1934-1947; TN 248156.

²¹ See TN 248014.

²² See TN 248014, pp. 1-2 (citing *Brenton v Metabolite Intl., Inc. (Brenton)* (2004) 116 Cal.App.4th 679, 689; *ARA Living Centers-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1561; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; and *Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371.)

²³ See TN 248014, pp. 1-2.

²⁴ See TN 248014, p. 2.

and the preparation of a proposed decision. Thus, Applicant contends that because the amendments eliminated the requirement and need for a Committee, the Committee should be dissolved.²⁵

Staff filed a response to Applicant's Motion on December 16, 2022, agreeing with Applicant that the Amended SPPE Regulations apply to this proceeding, thereby eliminating the adjudicatory process, and that the Committee is no longer needed and thus should be dissolved.²⁶ Staff elaborates further, noting that applying updated procedural laws, like the Amended SPPE Regulations, to an existing proceeding would not improperly retroactively change the legal consequences of parties' past conduct. Staff notes that the SPPE regulations are procedural in nature, they do not alter past events or conduct of any party but instead change the path that an application must follow to complete the CEC review process and be presented to the Commission for approval or denial.²⁷ Staff contends that applicants and intervenors in SPPE proceedings do not have vested rights or entitlements to the repealed procedure²⁸ or to administrative adjudication otherwise.²⁹ Staff states that upon dissolution of the Committee, Staff would conduct the remaining steps necessary under the Amended SPPE Regulations leading to, and including, providing a recommendation to the Commission for consideration of whether to grant the SPPE.³⁰

No further response to Applicant's Motion was filed within the time allowed to respond.³¹ However, on December 27, 2022, in a separate docket, Mr. Sarvey filed a comment letter regarding the CEC's adoption of the Amended SPPE Regulations at the October 12, 2022, business meeting.³² In his comment letter, Mr. Sarvey asked whether he will remain an intervenor in the Lafayette proceeding under the Amended SPPE Regulations. Mr. Sarvey also expressed concern about elimination of the intervenor role.³³

On January 5, 2023, the Committee referred Applicant's Motion to the full Commission for consideration, and the Committee extended the time for the CEC to rule on Applicant's motion to February 8, 2023, to allow the CEC to consider it at the CEC's next business meeting.³⁴

²⁵ See TN 248014, pp. 1-2.

²⁶ See TN 248134, pp. 2, 6.

²⁷ See TN 248134, pp. 3-5 (citing, among other things, *Brenton, supra*, 116 Cal.App.4th at 689).

²⁸ See TN 248134, pp. 2-4.

²⁹ See TN 248134, pp. 5-6.

³⁰ See TN 248134, p. 2.

³¹ See Cal. Code Regs., tit. 20, § 1211.5(a).

³² See TN 248238, filed in [docket 22-BUSMTG-01](#) at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-BUSMTG-01>. TN numbers refer to the number listed in the left column of CEC dockets.

³³ See TN 248238, filed in [docket 22-BUSMTG-01](#), *supra*.

³⁴ See TN 248327.

II. DISCUSSION

The Amended SPPE Regulations Apply to the Lafayette Proceeding

Staff and Applicant cited various cases representing the law relevant to our determination of Applicant's Motion.³⁵ For example, Staff noted the holding in *Beckman* that, when a statute is amended or repealed before a final judgment is entered in a pending action, a court will apply the law in force at the time of the decision.³⁶ Additionally, Staff cited *Brenton*, which holds that the current law applies even if the underlying dispute arose from conduct occurring before the current law took effect, when doing so would not change the legal consequences of the parties' past conduct.³⁷ Further, Staff notes that in *Brenton*, the court held the new law applied even though the underlying litigation had already commenced.³⁸ We agree that that the parties have cited the relevant authority that controls our determination of Applicant's Motion.

Thus, the law that is applicable to a proceeding is the law that is in effect at the time, even if the proceeding involves an underlying dispute that arose from conduct occurring before the effective date of the law, so long as the law does not "impose new, additional or different liabilities based on past conduct."³⁹

Here, the Amended SPPE Regulations took effect on December 14, 2022, eliminating the adjudicatory process for all SPPE proceedings.⁴⁰ They do not impose any "new, additional or different liabilities based on past conduct,"⁴¹ but rather establish the procedure by which the CEC will prospectively determine whether a developer has met the statutory requirements to grant an SPPE.⁴² It makes no difference that the Lafayette proceeding commenced before the Amended SPPE Regulations took effect.⁴³ Thus, the Amended SPPE Regulations properly apply to the Lafayette proceeding.

The Committee's Role and Its Orders and Rulings

The CEC is authorized to withdraw any matter from a committee, at any time, to allow the full Commission to consider the matter.⁴⁴

Here, the Amended SPPE Regulations eliminated the adjudicatory process for all SPPE proceedings. The Committee is no longer necessary to, among other things, mediate among parties, conduct proceedings and evidentiary hearings, prepare a committee

³⁵ See TN 248014, fn.1 (Applicant's Motion); TN 248134, pp. 2-5 (Staff's response).

³⁶ See TN 248134, p. 3 (citing *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 488–489).

³⁷ See TN 248134, p. 4 (citing *Brenton, supra*, 116 Cal.App.4th at 688).

³⁸ See TN 248134, p. 4 (citing *Brenton, supra*, 116 Cal.App.4th at 688).

³⁹ *Brenton, supra*, 116 Cal.App.4th at 688-689, 691.

⁴⁰ See Cal. Code Regs., tit. 20, §§ 1934-1947; TN 248156.

⁴¹ See *Brenton, supra*, 116 Cal.App.4th at 688.

⁴² See Cal. Code Regs., tit. 20, §§ 1934-1947; TN 248156.

⁴³ See *Brenton, supra*, 116 Cal.App.4th at 691 (applying amended law to litigation that already commenced).

⁴⁴ Cal. Code Regs., tit. 20, § 1204(c).

proposed decisions, or establish and modify deadlines. As Staff notes,⁴⁵ under the Amended SPPE Regulations, Staff can conduct the remaining steps necessary leading to and including providing a recommendation to the full Commission for consideration of whether to grant the SPPE. Because the Committee's role is not necessary, the Committee is dissolved.

The Committee's orders and rulings were issued to govern the conduct and responsibilities of parties in the former adjudicative framework. The Committee's general order,⁴⁶ scheduling orders,⁴⁷ and other orders, are no longer necessary because the Amended SPPE Regulations eliminated the adjudicatory framework, and with it, eliminated the necessity to coordinate among the roles of the Committee and the separate parties. The ruling granting intervenor status to Mr. Sarvey is no longer applicable because under the Amended SPPE Regulations, there is no role for an intervenor beyond that of a general member of the public. Because the Committee's orders and rulings are no longer necessary, all existing and ongoing Committee orders and rulings are vacated.

Dissolving the Committee and vacating its orders will not diminish the CEC's review of the Lafayette SPPE application. The CEC will remain the lead agency for the Project under the Warren-Alquist Act and CEQA; will prepare the appropriate environmental document; and thereafter will consider whether to grant an SPPE for the Project.

Robert Sarvey's Comments

Mr. Sarvey inquired whether he will remain an intervenor in the Lafayette proceeding.⁴⁸ The former order of the Committee that granted his intervenor status in the Lafayette proceeding is vacated, Mr. Sarvey is no longer an intervenor.

Concerning Mr. Sarvey's question regarding loss of the intervenor role,⁴⁹ opportunities for public participation and input will exist pursuant to CEQA. CEQA provides a process for obtaining information from the public and other interested parties and the public may comment on the need for additional information or propose mitigation to address issues through public comment on CEC's environmental review documents. Furthermore, in the case of an SPPE, there exists an additional opportunity for the public to participate in a proceeding because granting of an SPPE does not approve the project, but instead moves the decision whether to approve the project to a local jurisdiction for further consideration. Thus, if an SPPE is granted, interested persons may participate in the local process.⁵⁰

⁴⁵ See TN 248134, p. 2.

⁴⁶ See TN 234298.

⁴⁷ See TN 237772, TN 235419.

⁴⁸ See TN 248238, filed in [docket 22-BUSMTG-01](#), *supra*.

⁴⁹ See TN 248238, filed in [docket 22-BUSMTG-01](#), *supra*.

⁵⁰ See TN 248284, pp. 3, 5-7, italics added, in [docket 21-OIR-04](#), *supra*.

III. CEC FINDINGS

1. As of their effective date of December 14, 2022, all existing SPPE proceedings, including the Lafayette proceeding, were subject to and must abide by the Amended SPPE Regulations.
2. The December 14, 2022, Amended SPPE Regulations eliminated the adjudicatory process for this proceeding.
3. The services of the Committee appointed to preside over the Lafayette proceeding are no longer required or necessary.
4. The Committee's orders and rulings are no longer required or necessary.

IV. CONCLUSION AND ORDER

1. Applicant's Motion is hereby granted.
2. The CEC hereby withdraws the Lafayette proceeding from the Committee, and the Committee is hereby dissolved. The orders establishing the Committee⁵¹ and Amending Committee Assignments⁵² are hereby vacated.
3. All ongoing orders and rulings of the Committee, including the following, are hereby vacated:
 - General Orders Regarding Motions, Electronic Filing, Service of Documents, And Other Matters⁵³
 - Notice of Committee Conference and Related Orders⁵⁴
 - Committee Scheduling Order⁵⁵
 - Order Directing Parties to File Monthly Status Reports⁵⁶
 - Order Granting Staff's Motion for Scheduling Order Modification and Revised Scheduling Order⁵⁷
 - Ruling on Staff's Motion Regarding Intervention⁵⁸

⁵¹ See TN 233902.

⁵² See TN 242446.

⁵³ See TN 234298.

⁵⁴ See TN 234498.

⁵⁵ See TN 237772.

⁵⁶ See TN 236110.

⁵⁷ See TN 237772.

⁵⁸ See TN 240416.

- Ruling on Petition to Intervene Filed by Robert Sarvey⁵⁹
4. Staff is directed to process the Application in accordance with the current SPPE regulations.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 27, 2023

SIGNED BY:

Liza Lopez
Secretariat

⁵⁹ See TN 241143

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

STACK Backup Generating Facility

Docket No.: 21-SPPE-02

**Order Dissolving the Committee
Assigned to the STACK Proceeding
and Vacating Committee Orders and
Rulings**

I. BACKGROUND

On December 10, 2021, STACK Infrastructure (Applicant) submitted an application to the California Energy Commission (CEC) for a small power plant exemption (SPPE) for the SVY Backup Generating Facility (Application).¹

Small Power Plant Exemptions

The CEC has the exclusive authority to consider, and ultimately approve or deny, applications for the construction and operation of thermal power plants that have the capacity to generate 50 megawatts (MW) or more of electricity.² The CEC may grant an exemption to its certification jurisdiction, the SPPE, for thermal powerplants with a generating capacity between 50 and 100 MW.

To grant an SPPE, the CEC must make three distinct determinations:

- the proposed powerplant has a generating capacity up to 100 MW;
- no substantial adverse impact on the environment will result from the construction or operation of the powerplant; and

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/tradezonepark) at <https://www.energy.ca.gov/powerplant/tradezonepark>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-02) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-02>. The Application consists of various documents filed in the online docket beginning with TN 240910. TN numbers refer to the number listed in the left column of CEC dockets. All references to TN numbers are in this docket unless otherwise noted.

² Pub. Resources Code, §§ 25120, 25500.

- no substantial adverse impact on energy resources will result from the construction or operation of the powerplant.³

The CEC must also make the latter two findings as the “lead agency”⁴ under the California Environmental Quality Act (CEQA).⁵

The grant of an SPPE does not approve the construction or operation of any project but merely grants an exemption from the CEC’s own certification process. If the CEC ultimately decides to grant an SPPE, the project proponent must then secure the appropriate licenses and permits from relevant local, state, and federal agencies.

Proposed Project⁶

The Applicant proposes to construct and operate the Trade Zone Boulevard Technology Park on two adjacent parcels encompassing approximately 9.8 acres located at 2400 Ringwood Avenue and 1849 Fortune Drive in San Jose, Santa Clara County, California. With the development of the Trade Zone Boulevard Technology Park, Applicant proposes to construct and operate the SVY Data Center, the SVY Backup Generating Facility, an advanced manufacturing building, a parking garage, and related facilities. The SVY Data Center would consist of two three-story buildings totaling approximately 526,800 square feet, which would provide secure and environmentally controlled structures to house computer servers. The SVY Backup Generating Facility would consist of 36 3-megawatt (MW) and 3 1-MW diesel-fired backup generators, which would supply up to 90 MW, exclusively to the SVY Data Center. The advanced manufacturing building would be a four-story building of approximately 136,573 square feet of light industrial and ancillary support uses. The parking garage would be five levels totaling 174,751 square feet, located onsite, and would provide a total of approximately 339 parking spaces.

CEQA requires the CEC to consider the “whole of an action.”⁷ Therefore, the CEC will include all components of the Trade Zone Boulevard Technology Park, and other related features and activities (collectively the Project), in its environmental analysis.

Status of the STACK Proceeding

On May 11, 2022, the CEC appointed a committee to preside over the proceeding arising from the Application (Committee).⁸ On August 2, 2022, the Committee held a

³ Pub. Resources Code, § 25541.

⁴ Pub. Resources Code, § 25519(c).

⁵ The CEQA statutes, California Public Resources Code section 21000 *et seq.*; and CEQA Guidelines, California Code of Regulations, title 14, section 15000 *et seq.* (Guidelines), detail the protocol by which state and local agencies comply with CEQA requirements. We refer to the statutes and the Guidelines collectively as “CEQA.”

⁶ The information in this section is taken from the Application, TN 240910, as amended by TN 246142.

⁷ Cal. Code Regs., tit. 14, § 15378, subd. (a) (under CEQA, “project” means the whole of an action).

⁸ The Committee consists of Andrew McAllister, Commissioner and Presiding Member, and Kourtney Vaccaro, Commissioner and Associate Member (TN 243043).

committee conference,⁹ and subsequently issued a scheduling order on September 15, 2022.¹⁰ On November 28, 2022, Staff filed a status report indicating Staff anticipates publishing a draft Environmental Impact Report (EIR) by January 27, 2023.¹¹

Amendments to the SPPE Regulations

On July 14, 2022, the CEC published notice that it proposed to adopt amendments to its process, procedure, and siting regulations governing SPPE proceedings contained in Title 20, California Code of Regulations, Sections 1900, et seq.¹² On October 12, 2022, the Commission adopted the proposed amendments governing SPPE proceedings,¹³ thereby removing the adjudicatory process applying to SPPEs, while maintaining the requirements for environmental review and public participation under CEQA.¹⁴ On December 14, 2022, the Office of Administrative Law approved the regulations and submitted them to the Secretary of State for publication with an effective date of December 14, 2022 (the Amended SPPE Regulations).¹⁵

Applicant's Motion to Dissolve the Committee and Staff's Response

On December 12, 2022, Applicant filed a motion seeking to dissolve the Committee on the grounds that the Committee is no longer necessary under the Amended SPPE Regulations which, upon their effective date, eliminated the adjudicatory process for this proceeding (Applicant's Motion).¹⁶ In support of its motion, Applicant stated that under well settled case law, amendments to laws governing procedural matters apply immediately upon their effective dates to all proceedings unless the law expressly states otherwise.¹⁷ Applicant noted that here, the Amended SPPE Regulations govern the administrative procedure by which the CEC considers applications for SPPEs, and do not include any language restricting their applicability to only applications filed after their enactment.¹⁸ Thus, Applicant contends the Amended Regulations immediately apply to the STACK proceeding.¹⁹

Applicant points out that the Amended Regulations eliminated the entire SPPE process administered by the Committee, including evidentiary filings and hearings, legal briefing, and the preparation of a proposed decision. Thus, Applicant contends that because the

⁹ See TN 245069.

¹⁰ See TN 246119.

¹¹ See TN 247725.

¹² TN 244070, pp. 1, 4, in [docket 21-OIR-04](#) at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-OIR-04>. TN numbers refer to the number listed in the left column of CEC dockets.

¹³ TN 246550, in [docket 21-OIR-04](#), *supra*.

¹⁴ See TN 244070, at p. 1, in [docket 21-OIR-04](#), *supra*.

¹⁵ See Cal. Code Regs., tit. 20, §§ 1934-1947; TN 248157.

¹⁶ See TN 248015.

¹⁷ See TN 248015, pp. 1-2 (citing *Brenton v Metabolite Intl., Inc. (Brenton)* (2004) 116 Cal.App.4th 679, 689; *ARA Living Centers-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1561; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; and *Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371.)

¹⁸ See TN 248015, pp. 1-2.

¹⁹ See TN 248015, p. 2.

amendments eliminated the requirement and need for a Committee, the Committee should be dissolved.²⁰

Staff filed a response to Applicant's Motion on December 16, 2022, agreeing with Applicant that the Amended SPPE Regulations apply to this proceeding, thereby eliminating the adjudicatory process, and that the Committee is no longer needed and thus should be dissolved.²¹ Staff elaborates further, noting that applying updated procedural laws, like the Amended SPPE Regulations, to an existing proceeding would not improperly retroactively change the legal consequences of parties' past conduct. Staff notes that the SPPE regulations are procedural in nature, they do not alter past events or conduct of any party but instead change the path that an application must follow to complete the CEC review process and be presented to the Commission for approval or denial.²² Staff contends that applicants and intervenors in SPPE proceedings do not have vested rights or entitlements to the repealed procedure²³ or to administrative adjudication otherwise.²⁴ Staff states that upon dissolution of the Committee, Staff would conduct the remaining steps necessary under the Amended SPPE Regulations leading to, and including, providing a recommendation to the Commission for consideration of whether to grant the SPPE.²⁵ No further response to Applicant's Motion was filed within the time allowed to respond.²⁶

On January 5, 2023, the Committee referred Applicant's Motion to the full Commission for consideration, and the Committee extended the time for the CEC to rule on Applicant's motion to February 8, 2023, to allow the CEC to consider it at the CEC's next business meeting.²⁷

II. DISCUSSION

The Amended SPPE Regulations Apply to the STACK Proceeding

Staff and Applicant cited various cases representing the law relevant to our determination of Applicant's Motion.²⁸ For example, Staff noted the holding in *Beckman* that, when a statute is amended or repealed before a final judgment is entered in a pending action, a court will apply the law in force at the time of the decision.²⁹ Additionally, Staff cited *Brenton*, which holds that the current law applies even if the underlying dispute arose from conduct occurring before the current law took effect, when doing so would not change the legal consequences of the parties' past conduct.³⁰

²⁰ See TN 248015, pp. 1-2.

²¹ See TN 248135, pp. 2, 6.

²² See TN 248135, pp. 3-5 (citing, among other things, *Brenton*, *supra*, 116 Cal.App.4th at 689).

²³ See TN 248135, pp. 2-4.

²⁴ See TN 248135, pp. 5-6.

²⁵ See TN 248135, p. 2.

²⁶ See Cal. Code Regs., tit. 20, § 1211.5(a).

²⁷ See TN 248328.

²⁸ See TN 248015, fn.1 (Applicant's Motion); TN 248135, pp. 2-5 (Staff's response).

²⁹ See TN 248135, p. 3 (citing *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 488-489).

³⁰ See TN 248135, p. 4 (citing *Brenton*, *supra*, 116 Cal.App.4th at 688).

Further, Staff notes that in *Brenton*, the court held the new law applied even though the underlying litigation had already commenced.³¹ We agree that that the parties have cited the relevant authority that controls our determination of Applicant's Motion.

Thus, the law that is applicable to a proceeding is the law that is in effect at the time, even if the proceeding involves an underlying dispute that arose from conduct occurring before the effective date of the law, so long as the law does not "impose new, additional or different liabilities based on past conduct."³²

Here, the Amended SPPE Regulations took effect on December 14, 2022, eliminating the adjudicatory process for all SPPE proceedings.³³ They do not impose any "new, additional or different liabilities based on past conduct,"³⁴ but rather establish the procedure by which the CEC will prospectively determine whether a developer has met the statutory requirements to grant an SPPE.³⁵ It makes no difference that the STACK proceeding commenced before the Amended SPPE Regulations took effect.³⁶ Thus, the Amended SPPE Regulations properly apply to the STACK proceeding.

The Committee's Role and Its Orders and Rulings

The CEC is authorized to withdraw any matter from a committee, at any time, to allow the full Commission to consider the matter.³⁷

Here, the Amended SPPE Regulations eliminated the adjudicatory process for all SPPE proceedings. The Committee is no longer necessary to, among other things, mediate among parties, conduct proceedings and evidentiary hearings, prepare a committee proposed decisions, or establish and modify deadlines. As Staff notes,³⁸ under the Amended SPPE Regulations, Staff can conduct the remaining steps necessary leading to and including providing a recommendation to the full Commission for consideration of whether to grant the SPPE. Because the Committee's role is not necessary, the Committee is dissolved.

The Committee's orders and rulings were issued to govern the conduct and responsibilities of parties in the former adjudicative framework. The Committee's general order,³⁹ scheduling order,⁴⁰ and other orders and rulings, are no longer necessary because the Amended SPPE Regulations eliminated the adjudicatory framework, and with it, eliminated the necessity to coordinate among the roles of the

³¹ See TN 248135, p. 4 (citing *Brenton*, *supra*, 116 Cal.App.4th at 688).

³² *Brenton*, *supra*, 116 Cal.App.4th at 688-689, 691.

³³ See Cal. Code Regs., tit. 20, §§ 1934-1947; TN 248157.

³⁴ See *Brenton*, *supra*, 116 Cal.App.4th at 688.

³⁵ See Cal. Code Regs., tit. 20, §§ 1934-1947; TN 248157.

³⁶ See *Brenton*, *supra*, 116 Cal.App.4th at 691 (applying amended law to litigation that already commenced).

³⁷ Cal. Code Regs., tit. 20, § 1204(c).

³⁸ See TN 248135, p. 2.

³⁹ See TN 244085.

⁴⁰ See TN 246119.

Committee and the separate parties. Because the Committee's orders and rulings are no longer necessary, all existing and ongoing Committee orders and rulings are vacated.

Dissolving the Committee and vacating its orders will not diminish the CEC's review of the STACK SPPE application. The CEC will remain the lead agency for the Project under the Warren-Alquist Act and CEQA; will prepare the appropriate environmental document; and thereafter will consider whether to grant an SPPE for the Project.

III. CEC FINDINGS

1. As of their effective date of December 14, 2022, all existing SPPE proceedings, including the STACK proceeding, were subject to and must abide by the Amended SPPE Regulations.
2. The December 14, 2022, Amended SPPE Regulations eliminated the adjudicatory process for this proceeding.
3. The services of the Committee appointed to preside over the STACK proceeding are no longer required or necessary.
4. The Committee's orders and rulings are no longer required or necessary.

IV. CONCLUSION AND ORDER

1. Applicant's Motion is hereby granted.
2. The CEC hereby withdraws the STACK proceeding from the Committee, and the Committee is hereby dissolved. The order establishing the Committee⁴¹ is hereby vacated.
3. All ongoing orders and rulings of the Committee, including the following, are hereby vacated:
 - General Orders Regarding Motions, Electronic Filing, Service of Documents, And Other Matters⁴²
 - Notice of Committee Conference and Related Orders⁴³
 - Committee Scheduling Order and Order Requesting Supplemental Information⁴⁴

⁴¹ See TN 243043.

⁴² See TN 244085.

⁴³ See TN 244081.

⁴⁴ See TN 246119.

- Order Vacating Request for Supplemental Info Regarding Water Supply Assessment⁴⁵
4. Staff is directed to process the Application in accordance with the current SPPE regulations.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 27, 2023

SIGNED BY:

Liza Lopez
Secretariat

⁴⁵ TN 246200.

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: ADOPTION MODIFICATIONS TO THE AIR FILTERS REGULATION

WHEREAS, on March 24, 2022, the State Energy Resources Conservation and Development Commission (“California Energy Commission” or CEC) mailed and posted on the CEC’s website a Notice of Proposed Action (NOPA) formally notifying the public of the CEC’s intent to adopt proposed regulations for Air Filters, the Express Terms of the proposed regulations, an Initial Statement of Reasons (ISOR) describing the rationale for the proposal, and the Economic Impact Statement (Form 399); and

WHEREAS, on March 25, 2022, the NOPA was published in the California Regulatory Notice Register, delivered to the Secretary of the California Natural Resources Agency, and distributed to the CEC’s Rulemaking and Appliances email subscription lists. The NOPA stated that a Public Hearing (Public Hearing) to hear comments on the proposed amendments would be held on May 10, 2022, and that the CEC would consider and possibly adopt the proposed amendments at a July 13, 2022, Business Meeting of the CEC; and

WHEREAS, on May 9, 2022, the 45-day written comment period established by the NOPA closed; and

WHEREAS, on May 10, 2022, the CEC staff for the rulemaking held a Public Hearing, as noticed in the NOPA, to receive oral comments on the proposed amendments to the Air Filters regulations; and

WHEREAS, on July 8, 2022, the CEC staff posted a Notice of Postponement of Adoption Hearing, informing interested parties and the public that the proposed amendments to the Air Filters regulations would be considered for adoption at a time later than the originally posted date of July 13, 2022; and

WHEREAS, On August 22, 2022, the CEC published a Notice of 15-day comment period proposing changes to the Express Terms based on comments received during the 45-day comment period and the May 10, 2022, Public Hearing; and

WHEREAS, On August 29, 2022, the CEC published a Notice of 15-day comment period replacing the Notice issued on August 22, 2022, restarting the 15-day comment period due to technical problems with distribution of the original 15-day Notice; and

WHEREAS, On September 13, 2022, the 15-day comment period closed; and

WHEREAS, On October 28, 2022, the CEC published a second Notice of 15-day comment period proposing further changes to the Express Terms based on comments received during the prior 15-day comment period; and

WHEREAS, On November 14, 2022, this second 15-day comment period closed; and

WHEREAS, On December 05, 2022, the CEC published a third Notice of 15-day comment period proposing further changes to the Express Terms based on a comment received during the second 15-day comment period; and

WHEREAS, On December 20, 2022, this third 15-day comment period closed; and

WHEREAS, each of the above-referenced documents and notices was provided to every person on the CEC's Appliances email subscription list and to every person who had requested notice of such matters, and was posted to the CEC's website; and;

WHEREAS, on January 25, 2023, the CEC considered adoption of the proposed amendments at its Business Meeting.

THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:

With regard to the California Environmental Quality Act:

- The CEC has considered the application of the California Environmental Quality Act (CEQA) to the proposed regulations and concluded that the proposed regulations are exempt from CEQA requirements under the categorical exemptions under sections 15306, 15307, and 15308 of title 14 of the California Code of Regulations and under the common sense exemption pursuant to section 15061 of title 14 of the California Code of Regulations; and

With regard to the Warren-Alquist Act:

- The proposed regulations will, by ensuring the standards for testing and marking these appliances are clear and up-to-date, guarantee that the appliance efficiency regulations continue to reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of energy for appliances that utilize air filters that require a significant amount of energy on a statewide basis; and
- The proposed regulations are feasible and attainable; and
- The proposed regulations do not result in any added total costs to the consumer over the designed life of the air filter; and

With regard to the Administrative Procedure Act:

- The proposed regulations will not result in the creation of new businesses or elimination of existing businesses, will not result in the expansion of businesses currently doing business in California, and will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; and
- The proposed regulation will impose no direct cost or savings, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, when savings accruing over the lifetime of the appliance is considered; and
- The proposed regulations will not result in the creation or elimination of jobs within California; and
- The proposed regulations will result in no costs or savings in federal funding to the State of California; and
- The proposed regulations will result in no nondiscretionary costs or savings to local agencies or school districts; and
- The proposed regulations will have no impact on housing costs; and
- The proposed regulations will result in no cost impacts to representative private persons or businesses in reasonable compliance with the regulations; and
- The proposed regulations will not adversely impact the health and welfare of California residents, or worker safety, or the state's environment; and
- The proposed regulations have no alternatives that would be more effective in carrying out the purpose of the statutes for which it is proposed, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and
- The proposed regulations will not have a significant adverse economic impact on small business and no alternatives were proposed that would lessen any adverse economic impact on small business; and
- The proposed regulations will not require completion on any new report, but minimal additional information will be required. It is necessary for the health, safety, and welfare of the people of the state that these regulations apply to business; and

- None of the comments received during the three separate comment periods, public hearing, or at the public adoption hearing, and nothing else in the record, justified any changes to the proposed regulations as published on December 2, 2022.

THEREFORE, BE IT RESOLVED, that, on the basis of the entire record before it, the CEC finds that the proposed regulations are exempt from CEQA under the categorical exemption under sections 15306, 15307, and 15308, and the commonsense exemption because it can be seen with certainty that there is no possibility that the proposed regulations will have a significant effect on the environment; and

FURTHER BE IT RESOLVED, after considering all comments received and the staff's responses, and based on the entire record of this proceeding, the CEC hereby adopts the amendments to its Air Filters regulations, as set forth in the express terms that were published on December 2, 2022.

The CEC takes this action under the authority of sections 25213, 25216.5(d), 25218(e), and 25402(c)(1)(A) of the Public Resources Code, which authorize the CEC to collect data and information and adopt rules and regulations to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including the energy associated with the use of water, including cost-effective measures other than efficiency standards, such as energy labeling, that promote the use of energy- and water-efficient appliances; and

FURTHER BE IT RESOLVED, that documents and other materials that constitute the rulemaking record can be found at the CEC, 715 P Street, Sacramento, California, 95814. Many of these documents are available online in [Docket Number 20-AAER-02](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-AAER-02), <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-AAER-02>; and

FURTHER BE IT RESOLVED, the CEC delegates the authority and directs staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents, such as the Final Statement of Reasons; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the rulemaking file required by OAL; and preparing and filing the Notice of Exemption with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

**STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

**RESOLUTION ADOPTING QUALIFYING CAPACITY OF SUPPLY-SIDE DEMAND
RESPONSE WORKING GROUP FINAL REPORT**

WHEREAS, the CPUC issued Decision 21-06-029, in Rulemaking 19-11-009 concerning resource adequacy on June 25, 2021, which requested the CEC to launch a stakeholder working group process and make recommendations for a new capacity counting method for supply-side demand response; and

WHEREAS, the CEC launched a stakeholder working group process in July 2021 and engaged with stakeholders throughout 2021 and early 2022 to develop interim recommendations; and

WHEREAS, the CEC adopted the Qualifying Capacity of Supply-Side Demand Response Working Group Interim Report on February 16, 2022, and CEC staff served the report on the CPUC's Rulemaking 21-10-002 service list; and

WHEREAS, after considering the CEC interim recommendations and taking comments from stakeholders, the CPUC issued Decision 22-06-050 in Rulemaking 21-10-002 on June 24, 2022, which requested the CEC to submit its final recommendations to the CPUC by February 1, 2023; and

WHEREAS, the CEC continued the stakeholder working group process throughout 2022 to develop final recommendations; and

WHEREAS, the CEC made a draft of the Qualifying Capacity of Supply-Side Demand Response Working Group Final Report, including proposed final recommendations to the CPUC, available to the public on December 6, 2022, and requested written stakeholder comments by December 20, 2022; and

WHEREAS, the CEC considered the written stakeholder comments received, made appropriate revisions, and published the revised version of the Qualifying Capacity of Supply-Side Demand Response Working Group Final Report on January 23, 2023, for consideration by the CEC at its January 25, 2023, Business Meeting.

THEREFORE BE IT RESOLVED, the CEC hereby adopts the Qualifying Capacity of Supply-Side Demand Response Working Group Final Report along with any changes identified in the January 25, 2023 Business Meeting, and directs CEC staff to serve the report on the CPUC's R21-10-002 service list and take any other action necessary to submit these recommendations into that proceeding.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION ADOPTING RENEWABLES PORTFOLIO STANDARD 2017-2020
RETAIL SELLERS PROCUREMENT VERIFICATION REPORT FOR COMPLIANCE
PERIOD 3

WHEREAS, Public Utilities Code Section 399.25 (b) requires the California Energy Commission (CEC) to design and implement an accounting system to verify compliance with California's Renewables Portfolio Standard (RPS) by retail sellers and local publicly owned electric utilities, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state; and

WHEREAS, the CEC, in collaboration with the California Public Utilities Commission (CPUC), has adopted guidelines, as set forth in the *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)*, addressing its verification responsibilities under Public Utilities Code Section 399.25 (b) as well as other provisions of California's RPS law, and has further clarified the process used to conduct its RPS verification in the *Renewables Portfolio Standard Verification Methodology Report, Third Edition*; and

WHEREAS, in furtherance of Public Utilities Code Section 399.25 (b), the CEC prepares a *Renewables Portfolio Standard Procurement Verification Report* (Verification Report) to report its findings on the amount of eligible renewable energy procured each year by retail sellers subject to California's RPS pursuant Public Utilities Code Section 399.11, et seq.; and

WHEREAS, the Verification Report applies the statutory requirements in the Public Utilities Code, the requirements specified in the *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)*, and the CPUC's adopted RPS program rules in determining the amount of renewable energy procurement that qualifies toward each retail seller's RPS procurement requirements; and

WHEREAS, the CEC transmits the Verification Report to the CPUC, so the CPUC may determine a retail seller's compliance with California's RPS; and

WHEREAS, CEC staff has prepared a draft Verification Report for calendar years 2017-2020 entitled the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report*; and

WHEREAS, CEC staff published the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* along with a Notice of Availability and Request for Comments to the RPS Compliance Period 3 (2017 - 2020) Verification and Compliance docket (21-RPS-01) on November 23, 2022 for a 15-day comment period for consideration at the December 14, 2022 Business Meeting; and

WHEREAS, CEC staff issued a Notice of Postponement of Adoption of Renewables Portfolio Standard 2017-2020 Retail Sellers Procurement Verification Report to the RPS Compliance Period 3 (2017-2020) Verification and Compliance docket (21-RPS-01) on December 12, 2022, which postponed the CEC’s consideration of adopting the draft Verification Report; and

WHEREAS, in response to information provided to CEC staff by a retail seller, CEC staff made several changes to the draft Verification Report and republished the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* with a Notice of Availability and Request for Comments to the RPS Compliance Period 3 (2017-2020) Verification and Compliance docket (21-RPS-01) on January 4, 2023, for a 15-day comment period for consideration at the January 25, 2023 Business Meeting; and

WHEREAS, the scope of the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* includes RPS procurement verification findings for 44 retail sellers, including three investor-owned utilities, three small and multi-jurisdictional utilities, 15 electric service providers and 23 community choice aggregators; and

WHEREAS, the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* addresses the following items with respect to each of the 44 retail sellers:

- Verifies RPS-eligibility of the renewable energy resources (i.e. electrical generation facilities) from which each reporting retail seller has claimed renewable energy procurement;
- Verifies, to the extent possible, that the amount of renewable energy procurement claimed by each retail seller was sufficiently generated by each RPS-eligible electrical generation facility;
- Verifies, to the extent possible, that the claimed RPS procurement exclusively serves California’s RPS and does not support another renewable energy regulatory or voluntary market claim;
- Identifies the eligible, ineligible, and/or withdrawn RPS procurement claims per retail seller and provides the total amount of eligible RPS procurement;
- Provides analysis of RPS-eligible procurement by resource type; and

WHEREAS, CEC staff has considered the application of the California Environmental Quality Act (CEQA) to this item and determined that the adoption of the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* is not a project under California Code of Regulations, title 14, section 15378 (b)(5).

THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:

With regard to CEQA:

- The CEC has considered the application of CEQA to the adoption of the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* and concluded it not to be a project under California Code of Regulations, title 14, section 15378 (b)(5).

THEREFORE, BE IT RESOLVED, the CEC has considered and hereby adopts the *Renewables Portfolio Standard 2017–2020 Retail Sellers Procurement Verification Staff Draft Report* and directs the Executive Director, or their designee, to finalize the report, including making any necessary typographical or non-substantive changes, and transmit it to the CPUC.

FURTHER BE IT RESOLVED, that documents and other materials that constitute the entire record of this approval can be found at the CEC, 715 P Street, Sacramento, California, 95814 in the custody of the Docket Unit and online in Docket Number [21-RPS-01](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-RPS-01), <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-RPS-01>.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 31, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: TRC Engineers, Inc.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement EHP-22-001 to help design and implement a residential all-electric and energy storage construction incentive program in California and provide technical assistance. Funding for this agreement is up to \$68,124,971, including up to \$58,125,000 to be distributed as incentives and up to \$9,999,971 for administrative costs; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

CALIFORNIA CLEAN ENERGY FUND DBA CALCEF VENTURES

WHEREAS, pursuant to Public Resources Code section 25710 et seq. the State Energy Resources Conservation and Development Commission (“CEC”) is authorized to establish and administer the Electric Program Investment Charge (“EPIC”) Program; and

WHEREAS, the CEC has recognized that California’s electricity ratepayers benefit from energy research, development and demonstration (“RD&D”) activities conducted by individuals, small businesses, academics and small non-profit institutions; and

WHEREAS, the CEC has created the California Sustainable Energy Entrepreneur Development (“CalSEED”) Initiative within the EPIC Program to provide funding for the aforementioned public interest RD&D activities; and

WHEREAS, New Energy Nexus dba California Clean Energy Fund or CalCEF Ventures (“CalCEF”) is the administrator of the CalSEED Initiative under CEC Agreement Number 300-15-007 and is responsible for soliciting grant applications, recommending grant awards to the CEC, and managing approved grant projects; and

WHEREAS, CalCEF, in compliance with its duties under Agreement Number 300-15-007, in November 2022 held a Business Plan Competition, a competitive solicitation, and received four applications, and as a result has proposed to CEC small grant projects for funding; and

WHEREAS, CEC staff has reviewed the projects CalCEF has proposed, and recommends the following two small grant projects for funding:

1. \$450,000 is being requested for the “Concentrating Solar Thermal Collector with Built-In Storage” project with Planet A Energy, Inc., a project to advance an innovative, long-duration storage technology that concentrates solar energy and uses patented optical ‘light pipes’ to transfer the heat to a bed of low-cost black sand; and
2. \$450,000 is being requested for the “Acoustic Wave Induced Electrolyte Motion to Overcome Diffusion-Limited Charge Performances and Safety in Lithium Batteries” project with Sonocharge LLC, a project to continue the development of a novel, mechanical wave-driven acoustic device that would

significantly improve the charging performance, capacity, longevity, and safety of lithium metal batteries; and

WHEREAS, CEC staff has reviewed the two projects and determined that each project is exempt from the California Environmental Quality Act, as described in CEC staff's "Project Summaries and California Environmental Quality Act (CEQA) Analysis For Proposed Prototype Small Grant Awards Under the California Sustainable Energy Entrepreneur Development (CalSEED) Initiative, Agreement No. 300-15-007" Memorandum ("Memorandum") dated December 19, 2022, a document that is included in the backup materials to this Business Meeting item.

THEREFORE, BE IT RESOLVED, that the CEC adopts CEC staff's CEQA findings contained in the Memorandum for the two projects; and

FURTHER BE IT RESOLVED, that the CEC approves the two projects for a total of \$900,000; and

FURTHER BE IT RESOLVED, that the CEC directs CalCEF to execute grant agreements with the approved awardees pursuant to the requirements of Agreement Number 300-15-007.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: DOE-Lawrence Berkeley National Laboratory

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement 600-22-004 with DOE-Lawrence Berkeley National Laboratory for a \$1,500,000 contract to develop six EV charger infrastructure blueprints at California military bases to accelerate the transition to EVs; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION TITLE: STRATOSFUEL, INC.

WHEREAS, on October 13, 2021, the State Energy Resources Conservation and Development Commission (CEC) approved Amendment #1 to Agreement ARV-17-050, Zero Impact Renewable Hydrogen Production Facility (hereinafter “ARV-17-050”), a grant to build a 5,000 kilogram per day electrolysis plant in Victorville that will produce and supply 100 percent renewable hydrogen fuel to public hydrogen refueling stations; and

WHEREAS, the City of Victorville through its Planning Commission (“City”) is the Lead Agency for purposes of the California Environmental Quality Act (“CEQA”) for the Zero Impact Production Facility and the expansion thereto (hereinafter “Project”); and

WHEREAS, the City prepared an Initial Study and Mitigated Negative Declaration (“CEQA Documents”) to evaluate the potential impacts of ARV-17-050 and Amendment #1 thereto, copies of which are on file with the CEC; and

WHEREAS, the City, on March 10, 2021, passed, approved, and adopted the Mitigated Negative Declaration, copies of which are on file with the CEC, thereby imposing mitigation measures on the project described in ARV-17-050 and Amendment #1 thereto; and

WHEREAS, on October 13, 2021, the CEC resolved that the City of Victorville’s CEQA Documents were adequate for its use as the decision-making body for its consideration of Amendment #1 to ARV-17-050, and that approval of Amendment #1 to ARV-17-050 was within the scope of the City’s CEQA Documents; and

WHEREAS, the CEC is now considering the proposed Agreement ARV-22-004 with StratosFuel, Inc., the Recipient of Agreement ARV-17-050 and Amendment #1 thereto, for a \$3,000,000 grant to expand their renewable hydrogen production facility to add an additional 5,000 kg/day of renewable hydrogen production capacity at their facility located at the Southern California Logistical Airport; and

WHEREAS, the Energy Commission has used its own independent judgment to consider the potential environmental impacts of grant Agreement ARV-22-004 and the proposed Project; and

Prior to acting on ARV-22-004, the Energy Commission desires to make certain findings pursuant to CEQA Guidelines, title 14, sections 15091 and 15096.

THEREFORE, BE IT RESOLVED, to the extent relevant to Agreement ARV-22-004, the Energy Commission has reviewed and considered the information and CEQA findings contained in the City's CEQA Documents, identified in the resolution of October 13, 2021, approving Amendment #1 to ARV-17-050.

FURTHER BE IT RESOLVED, that, the Energy Commission finds the City's CEQA Documents are adequate for its use as the decision-making body for its consideration of ARV-22-004, and that approval of Agreement ARV-22-004 is within the scope of the City's CEQA documents. The Energy Commission further finds that the City has adopted the mitigation measures recommended in the City's CEQA Documents, and has authority to implement the mitigation measures or to seek any required approvals for those measures, and the Energy Commission has no direct authority to implement those measures.

FURTHER BE IT RESOLVED, that approval of ARV-22-004 is within the scope of the activities evaluated in the City's CEQA Documents, as addended, to wit, the Initial Study and Mitigated Negative Declaration.

FURTHER BE IT RESOLVED, that, since the City's CEQA Documents were finalized, there have been no substantial project changes and no substantial changes in the project circumstances that would require major revisions to these documents due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial important that would change the conclusions set forth therein.

FURTHER BE IT RESOLVED, that the Energy Commission has not identified any feasible alternative or additional feasible mitigation measures within its power that would substantially lessen or avoid any significant effect which Agreement ARV-22-004 would have on the environment.

THEREFORE BE IT RESOLVED, that the Energy Commission finds, on the basis of the entire record before it, that the mitigation measures and conditions of approval, as previously determined, incorporated into the City's CEQA Documents, will prevent Agreement ARV-22-004 from having any significant effects on the environment, and that the Project proposed by Agreement ARV-22-004 presents no new significant or substantially more severe environmental impacts beyond those already considered in Agreement ARV-17-050 and Amendment #1 thereto.

FURTHER BE IT RESOLVED, that this document authorizes the Executive Director or his or her designee to prepare and file a Notice of Determination on behalf of the Energy Commission.

FURTHER BE IT RESOLVED, that the Energy Commission approves Agreement ARV-22-004 with Stratosfuel, Inc. for a \$3,000,000 grant to expand their renewable hydrogen production facility to add an additional 5,000 kg/day of renewable hydrogen production capacity at their facility located at the Southern California Logistical Airport; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Zimeno Inc. dba Monarch Tractor

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-019 with Zimeno, Inc. dba Monarch Tractor for a \$13,060,660 grant to establish a flexible manufacturing line at Monarch's Livermore headquarters that can produce a range of equipment models for Zero Emission Monarch Tractor MK-V variants to supply off-road markets. This project will abate 13,100 metric tons (MTs) of CO₂e and 105 MTs of NO_x through product deployments per year at full capacity and will create more than 50 jobs; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: American Lithium Energy Corp.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-020 with American Lithium Energy Corp. (ALE) for a \$10,220,285 grant. This project will expand battery manufacturing capacity at ALE's facility by setting up a fully automated battery cell assembly line capable of producing 1,500,000 high-performance EV battery cells per year; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: Wiggins Lift Co., Inc.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-023 with Wiggins Lift Co., Inc. for a \$8,114,664 grant. This project will modernize and expand Wiggins' current facility to increase the manufacturing output of zero-emission forklifts and other product lines; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION: ChargePoint, Inc.

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Agreement ZVI-22-027 for a \$14,638,915 grant to build and scale manufacturing operations for Level 2 charging stations and DCFC equipment in Milpitas and Campbell. The project will create a new manufacturing line for Level 2 EV chargers that will achieve an annual production capacity of 10,000 chargers and expand the manufacturing capacity for DCFC to an annual production of 10,000 dispensers; and

FURTHER BE IT RESOLVED, that the Executive Director or their designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 30, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Western States Petroleum Association
Petition for Rulemaking

**ORDER DENYING PETITION FOR
RULEMAKING**

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 16, 2022, the Governor signed Senate Bill (SB) 1322 (Allen, ch. 374, stats. 2022), which added Section 25355 to Chapter 4.5, Division 15 of the Public Resources Code, also known as the California Oil Refinery Cost Disclosure Act.

On January 1, 2023, SB 1322 took effect and requires operators of refineries in the state, within 30 days of the end of each calendar month, to submit a report to the California Energy Commission (CEC) containing, among other things, volume, costs, prices, and sales data related to the production of gasoline in that month. SB 1322 requires the CEC to publish the gross gasoline refining margin data reported for that month in the aggregate as specified.

On January 6, 2023, Western States Petroleum Association (WSPA) filed with the Executive Director of the CEC a petition to initiate a formal rulemaking (Petition) pursuant to California Code of Regulations (CCR), title 20, section 1221, seeking to clarify terms in Public Resources Code section 25355, to ensure consistency and accuracy in its interpretation and implementation. WSPA asserts that terms contained in SB 1322, including the term “gross gasoline refining margin,” require clarification, and believes the components of SB 1322 used to calculate a “gross gasoline refining margin” do not accurately represent refining costs. WSPA also states that a formal rulemaking is necessary to avoid misunderstanding or misuse of publicly available data.

On January 13, 2023, the CEC’s Executive Director determined that the Petition is complete and contains the information requirements of CCR, title 20, section 1221.

On January 23, 2023, the CEC staff filed a recommendation on the Petition. In its filing, CEC staff recommends that the CEC deny the Petition because the terms that WSPA seeks to clarify are currently the subject of legislation being considered in a Special Session called by Governor Newsom in December 2022. Specifically, the Legislature is

considering Senate Bill (SB) 2 (2023-2024 1st Ext Sess.) introduced by Senator Skinner that would adopt Public Resources Code section 25355.5, which includes and further defines the term “gross gasoline refiner margin.” The first sentence of the Legislative Counsel’s Digest states: “SB 2, as introduced, Skinner. Energy: transportation fuels: supply and pricing: maximum gross gasoline refining margin.” SB 2 contains a proposal to adopt an additional section in the Public Resources Code that revises the term “gross gasoline refining margin.” This term is specifically identified in the Petition as requiring interpretation through a formal rulemaking.

The bill could also potentially address other terms that WSPA asserts require clarification such as a determination of how to quantify Low Carbon Fuel Standard and Cap-and-Trade costs, as these terms are used in the pending legislation. Since the terms in SB 1322 are being considered and revised through the legislative process, CEC staff recommends denying the Petition and waiting to determine whether to initiate a rulemaking until the pending legislation has been resolved. A rulemaking at this time may conflict with changes to pending legislation on gasoline supply and pricing that may address the issues raised in the Petition.

On January 25, 2023, the CEC held a hearing to consider the Petition.

II. CEC FINDINGS

Based on the entirety of the record, the CEC finds that:

- 1) Public Resources Code sections 25213 and 25218(e) mandate and authorize the CEC to adopt rules and regulations, as necessary, to carry out its statutory duty. The CEC is required by Chapter 4.5, Division 15 of the Public Resources Code to obtain and analyze information and data concerning all aspects of the petroleum industry, including, but not limited to, production and supplies of gasoline, and costs, prices, and investment choices for the state to develop and administer energy policies that are in the interest of the state’s economy and the public’s well-being. Thus, the CEC has the authority to initiate a rulemaking to adopt regulations, as requested in the Petition.
- 2) On September 16, 2022, the Governor signed SB 1322, which added Section 25355 to the Public Resources Code (the California Oil Refinery Cost Disclosure Act), to require operators of refineries in the state, within 30 days of the end of each calendar month, to submit a report to the CEC containing, among other things, volume, costs, prices, and sales data related to the production of gasoline in that month. SB 1322 requires the CEC to publish the gross gasoline refining margin data reported for that month in the aggregate as specified.
- 3) The Petition meets the requirements of CCR, title 20, section 1221.
- 4) Because the issues raised in the Petition are pending before the California State Legislature, CEC staff recommends allowing the legislative process to conclude before initiating a rulemaking for the purpose of considering whether to clarify

terms in SB 1322 and ensure consistency and accuracy in its interpretation and implementation.

- 5) SB 1322 requires operators of refineries to provide information contained in Public Resources Code section 25355(b)(1)-(5) within 30 days of the conclusion of the month for which data is being reported. Operators of refineries are required to provide the listed data by March 2, 2023, which is 30 days after the conclusion of January, the first month in which this rule is effective.
- 6) CCR, title 20, section 1221(c), requires that the CEC, within 30 days of the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing staff to prepare an order instituting a rulemaking.

III. CONCLUSION AND ORDER

- 1) For the reasons stated above, the CEC hereby DENIES WSPA's Petition for Rulemaking.
- 2) CEC staff is directed to file this Order and supporting documentation with the Office of Administrative Law in accordance with Government Code section 11340.7(d)

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: January 27, 2023

SIGNED BY:

Liza Lopez
Secretariat