

DOCKETED

Docket Number:	21-SPPE-02
Project Title:	STACK Trade Zone Park
TN #:	249693
Document Title:	Order Certifying the Final Environmental Impact Report and Granting the Small Powerplant Exemption
Description:	Order No: 23-0412-09
Filer:	Liza Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	4/14/2023 3:00:12 PM
Docketed Date:	4/14/2023

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

STACK Trade Zone Park

Docket No.: 21-SPPE-02

**ORDER CERTIFYING THE FINAL
ENVIRONMENTAL IMPACT REPORT
AND GRANTING THE SMALL
POWERPLANT EXEMPTION**

I. BACKGROUND

Under the Public Resources Code, the California Energy Commission (CEC) has the exclusive jurisdiction to approve or deny applications for the construction and operation of thermal powerplants that have the capacity to generate 50 megawatts (MW) or more of electricity. Public Resources Code section 25541 creates an exemption to this exclusive jurisdiction whereby local permitting entities would obtain jurisdiction over the approval of the site and related facility if, among other criteria, the site and related facility would not generate more than 100 MW of electricity. This exemption is referred to as a Small Power Plant Exemption (SPPE).

The CEC may grant an SPPE for a thermal powerplant with a generating capacity from 50 MW to 100 MW if the commission finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility. Moreover, Public Resources Code section 25519(c) designates the CEC as the "lead agency" under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) for SPPE applications.

STACK Infrastructure is seeking an SPPE for the STACK Trade Zone Park project (21-SPPE-02). STACK Trade Zone Park would include an advanced manufacturing building (AMB), two data center buildings, a backup generating facility, a parking garage, and related utility infrastructure, which together constitute the "project" under CEQA. The generating facility would consist of 36 3-MW and 3 1-MW diesel-fired emergency backup generators to provide up to 91 MW to the data center buildings and the AMB in case of a loss of electrical power from Pacific Gas and Electric Company (PG&E).

II. EXECUTIVE DIRECTOR'S RECOMMENDATION

California Code of Regulations, title 20, section 1942 requires the Executive Director to recommend findings to the CEC on whether the application meets the requirements of Public Resources Code section 25541. Based on the SPPE application, CEC staff's Final Environmental Impact Report (FEIR) and other information filed in the proceeding, the Executive Director recommends the CEC find that the requirements of Public Resources Code section 25541 are met, that the FEIR be certified, and that the SPPE application be granted.

III. ENERGY COMMISSION FINDINGS

Based on the exercise of our independent judgment and review, and considering the record as a whole, we hereby adopt the following findings pursuant to Public Resources Code sections 21000 et seq. and 25541, and applicable implementing regulations:

1. The generating capacity of the project will not exceed 100 megawatts.
2. The construction and operation activities of the project will not create a substantial adverse impact on the environment.
3. The construction and operation activities of the project will not create a substantial adverse impact on energy resources.
4. The FEIR has been prepared in compliance with the California Environmental Quality Act and thoroughly and adequately analyzes potential environmental and energy resources impacts.
5. The imposition and implementation of the mitigation measures will ensure that the STACK Trade Zone Park will not have any significant environmental impacts.
6. The Mitigation Monitoring and Reporting Program (MMRP) set forth in Section 7 Mitigation Monitoring and Reporting Program of the FEIR, and the agreement by the City of San José to serve as the enforcement agency for the MMRP will ensure that the project complies with all requirements in the MMRP.

IV. CONCLUSION AND ORDER

Therefore, we order the following:

1. We hereby CERTIFY the Final Environmental Impact Report and that the requirements of California Code of Regulations, title 14, section 15090(a) have been met.
2. We hereby ADOPT, and incorporate by reference, the MMRP for the Project that is set forth in Section 7 Mitigation Monitoring and Reporting Program of the FEIR, to be overseen by the City of San José.

3. The SPPE application is GRANTED exempting the STACK Trade Zone Park from the Application for Certification provisions of the CEC's power plant licensing process. This Order is adopted, issued, effective, and final on April 12, 2023.

4. The CEC staff shall file a Notice of Determination with the State Clearinghouse within five business days of April 12, 2023, subject to Applicant paying all applicable filing fees.

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 April 12, 2023.

AYE: Hochschild, Gallardo, Monahan

NAY: NONE

ABSENT: Gunda, McAllister

ABSTAIN: NONE

Dated: April 14, 2023

SIGNED BY:

Liza Lopez
Secretariat