

DOCKETED	
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Project Title:	Mission College Data Center SPPE
TN #:	233212
Document Title:	Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders
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**State of California
State Energy Resources Conservation and
Development Commission
1516 Ninth Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov**

**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

***MISSION COLLEGE BACKUP
GENERATING FACILITY***

Docket No. 19-SPPE-05

**NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY
HEARING, SCHEDULING ORDER, AND FURTHER ORDERS**

On November 25, 2019, Oppidan Investment Company (Applicant) submitted an application (Application) to the California Energy Commission (CEC)¹ for a small power plant exemption (SPPE) for the Mission College Backup Generating Facility in Santa Clara, California.²

PLEASE TAKE NOTICE that the CEC Committee³ (Committee) has scheduled a **PREHEARING CONFERENCE** and an **EVIDENTIARY HEARING**:

The **PREHEARING CONFERENCE** will be held on:

**MONDAY, JUNE 15, 2020
1:30 p.m.**

The **EVIDENTIARY HEARING** will be held on:

**THURSDAY, JUNE 18, 2020
10:00 a.m.**

¹ The CEC is formally known as the “State Energy Resources Conservation and Development Commission.” (Pub. Resources Code, § 25200.) All subsequent citations are to the Public Resources Code unless otherwise specified.

² All of the documents related to this proceeding may be found in the [CEC’s online docket for the Mission College proceeding](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05) at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05>. The Application is TN 230848.

³ The CEC designated a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea Scott, Vice Chair and Associate Member, to preside over the Application on January 22, 2020. (TN 231784).

The Prehearing Conference and Evidentiary Hearing will be held remotely, consistent with Executive Orders N-25-20 and N-29-20 and the recommendations from the California Department of Public Health to encourage physical distancing in order to slow the spread of COVID-19. The public and parties will be able to participate and/or observe the proceedings consistent with the direction in these Executive Orders. The Committee strongly encourages anyone who wishes to provide public comment to do so in writing in advance.

To participate in the Prehearing Conference and/or Evidentiary Hearing remotely, please see the instructions below under the section “**REMOTE ATTENDANCE.**”

To submit comments in advance of the Prehearing Conference and/or Evidentiary Hearing, please see the instructions below under the section “**AGENCY AND PUBLIC PARTICIPATION.**”

BACKGROUND

The Application⁴

The Applicant applied on November 25, 2019, for an SPPE for the proposed Mission College Backup Generating Facility (Backup Generating Facility) to be located at 2305 Mission College Boulevard in Santa Clara, California. The Applicant proposes to use the Backup Generating Facility to ensure an uninterruptible power supply for the proposed Mission College Data Center (Data Center). The Applicant proposes to construct and operate the Backup Generating Facility and the Data Center.

The Application reported the site was developed with a two-story 358,000 square foot building used for offices and research and development, and an associated employee parking lot.

The Backup Generating Facility would consist of 43 2.5-megawatt (MW) diesel-fired emergency backup generators—four of which are redundant—and two 600-kilowatt (kW) diesel-fired life safety emergency generators, located in two on-site generator yards. The Backup Generating Facility would help provide an uninterruptible power supply to the Data Center of up to 78.1 MW, which is the maximum load of the Data Center.

The Data Center would consist of two three-story buildings totaling about 490,000 square feet that would house computer servers in secure and environmentally controlled structures. Office space and employee amenities would be located on the southern side of each floor.

Finally, the Applicant also intends to construct an on-site, 99 megavolt amps electrical substation, electrical switchgear, and 12 kilovolt underground distribution lines between the substation and buildings and between the backup generator yards and each respective building. The substation would allow delivery of power from Silicon Valley

⁴ The information in this section is taken from the Application (TN 230848), except where noted.

Power (SVP) but would not allow any electricity generated from the Backup Generating Facility to be distributed off-site.

We refer to the Data Center, the Backup Generating Facility, the substation, and other related features collectively as the “Project.”

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 will generate 50 MW or more of electricity.⁵ If a proposed project will generate between 50 MW and 100 MW of electricity, the CEC may grant an exemption to this exclusive certification jurisdiction through an SPPE proceeding if it makes three distinct findings:

- the proposed power plant has a generating capacity up to 100 MW;
- no substantial adverse impact on the environment will result from the construction or operation of the power plant; and
- no substantial adverse impact on energy resources will result from the construction or operation of the power plant.⁶

For purposes of reviewing an SPPE, the CEC is the “lead agency”⁷ under the California Environmental Quality Act (CEQA).⁸ In reviewing an SPPE application, the CEC considers the “whole of the action.”⁹ For the Application, the “whole of the action” means the Backup Generating Facility, the Data Center, and the other Project features, such as the substation.

If an SPPE is granted, responsible local land use authorities and other agencies, most notably any local air management or air pollution control district, conduct further review of the project, including any necessary additional environmental review as “responsible agencies” under CEQA.

⁵ §§ 25120, 25500.

⁶ § 25541; Cal. Code Regs., tit. 20, §§ 1934 et seq.

⁷ § 25519, subd. (c).

⁸ 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 statute and the Guidelines collectively as “CEQA.”

⁹ Cal. Code Regs., tit. 14, § 15378.

Parties to the Proceeding

The parties to the proceeding are:

1. Applicant; and
2. CEC Staff (Staff).¹⁰

One or more intervenors may still be added as parties. The deadline to petition to intervene is May 29, 2020.

Parties have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing party witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence, subject to the presiding member's authority to regulate this proceeding and other rights identified.¹¹

SCHEDULING ORDER

On April 9, 2020, the Committee issued a "Committee Scheduling Order."¹² Staff published an Initial Study and Proposed Mitigated Negative Declaration on April 21, 2020.¹³ The public review period for these documents ended May 22, 2020.¹⁴ The Committee hereby adopts the schedule attached to this Notice, which **supersedes** all other schedules issued by the Committee.

PURPOSE OF THE PREHEARING CONFERENCE

The Prehearing Conference is a public forum where the Committee will assess the parties' readiness for an Evidentiary Hearing, identify matters in dispute, and discuss the remaining schedule and procedures necessary to conclude the SPPE process.

PURPOSE OF THE EVIDENTIARY HEARING

The Committee's review is primarily conducted through an administrative adjudicatory process. The Evidentiary Hearing is a major component of the administrative adjudicatory proceeding where evidence is received into the hearing record from the parties to the proceeding. As part of the review process, the Committee will conduct evidentiary hearings and receive public comment.¹⁵ Only the parties (Applicant, Staff and any intervenors) may present evidence for introduction into the hearing record.

Members of the public may present comments at the Evidentiary Hearing that become part of the hearing record.¹⁶

¹⁰ Cal. Code Regs., tit. 20, § 1937.

¹¹ Cal. Code Regs., tit. 20, § 1212, subd. (a).

¹² TN 232706.

¹³ TN 232798.

¹⁴ TN 232797.

¹⁵ Cal. Code Regs., tit. 20, § 1212, subd. (b).

¹⁶ Cal. Code Regs., tit. 20, § 1212, subdivs. (b)(1)(B), (c)(4).

Formal Hearing Procedures

Although Committees have typically opted to utilize informal hearing processes in similar proceedings, this proceeding will follow formal hearing procedures.

The formal hearing procedure will proceed in the following order:

1. All parties' experts on the contested subject area are sworn in as a group.
2. Opening Testimony: The designated expert witness(es) for each party provides a brief opening statement summarizing the key points and conclusions of the expert's testimony. The order of opening testimony and examination of witnesses shall be as follows: Applicant, Staff, intervenors, if any.
3. Cross Examination: At the conclusion of the opening statements from each party's designated expert witness(es), parties may cross-examine the other parties' expert(s). Each witness will testify and respond to questions individually (not as a group). The order of examination of witnesses shall be as follows: Applicant, Staff, intervenors, if any.
4. At the conclusion of the parties' examination of the experts, the Committee may ask witnesses additional questions.

Prefiling Evidence

All written testimony (whether opening or rebuttal) and documentary evidence must be filed in this proceeding's docket (19-SPPE-05) and have a transaction number (TN) assigned by the CEC Docket Unit in accordance with the "General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters," filed February 13, 2020.¹⁷

All parties intending to submit evidence for consideration at the Evidentiary Hearing are **ORDERED** to docket evidence, written testimony, exhibit lists, and prehearing conference statements no later than 5:00 p.m. on the dates specified in the attached Schedule, unless otherwise directed by the Committee.

Because the Prehearing Conference and Evidentiary Hearing will be held with remote access only (no physical location for participants to gather), failure by a party to comply with the filing requirements stated in this Order shall preclude that party from participating in the Evidentiary Hearing. However, any party precluded may still offer public comment.

¹⁷ TN 232025.

Use of Documents

Because the Evidentiary Hearing will be held with remote access only (no physical place for participants to gather), no party may use a document that is not included on the Exhibit List.

If a party wishes to use a document during opening, rebuttal, or cross-examination, including for the purpose of impeachment, the document shall be identified at least one (1) business day prior to the start of the Evidentiary Hearing by reference to its number on the Exhibit List. This identification will allow for the documents to be available at the start of the Evidentiary Hearing, to be shared with the participants to the hearing, and to avoid delays in locating documents for use. When documents are used during the questioning of witnesses, the questioner shall provide cites to the page(s) of the relevant document.

Prehearing Conference Statements

The Prehearing Conference Statement must specify under separate headings:

1. The subject areas that are complete and ready to proceed to Evidentiary Hearing.
2. The subject areas upon which any party proposes to introduce testimony in writing rather than through oral testimony.
3. The subject areas that are not complete and not yet ready to proceed to Evidentiary Hearing and the reasons therefor.
4. The subject areas that remain disputed and require adjudication, the issues in dispute, and the precise nature of the dispute for each issue.
5. The identity of each witness the party intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witness(es) will offer testimony, whether the testimony will be oral or in writing, a brief summary of the testimony to be offered by the witness(es), qualifications of each witness, and the time required to present testimony by each witness.
6. Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions (including questions regarding witness qualifications), the issue(s) to which the questions pertain, and the time desired to question each witness. (Note: a party who fails to provide, with specificity, the scope, relevance, and time for questioning other parties' witness(es) risks preclusion from questioning witnesses on that subject area.)
7. A list identifying exhibits with TN that the party intends to offer into evidence during the Evidentiary Hearing and the technical subject areas to which they apply (see below for further details on Exhibit Lists).
8. Proposals for briefing deadlines or other scheduling matters.

Exhibit Lists

The parties shall exchange documentary evidence, including written testimony, by filing an **Exhibit List**. Each document shall be numbered and identified on the Exhibit List as follows:

- Applicant's exhibits shall be numbered consecutively as **Exhibits 1 through 199**;
- Staff's exhibits shall be numbered consecutively as **Exhibits 200 through 299**.

If the Committee grants a petition to intervene, any order on that petition will include information for marking the intervenor's exhibits.

The Exhibit Lists shall be formatted with four columns. The first column shall list the proposed exhibit number. The second column shall identify the TN of the corresponding document. The third column shall state the title of the document as shown in the docket. The fourth column shall state the subject area(s) to which the exhibit applies. The Hearing and Policy Unit of the CEC's Chief Counsel's Office will ensure the addition of the exhibit number information into the e-filing system and the issuance of a Master Exhibit List.

All exhibits must have a TN and be filed in this proceeding's docket. Exhibits will not be received into evidence unless they have been previously identified in both the Prehearing Conference Statement and under the "Use of Documents" procedure set forth above.

TRANSCRIPTS

Parties are responsible for identifying errors in the transcripts of the proceedings. Corrections to the transcripts must be filed within 30 days of the filing of a transcript.

AGENCY AND PUBLIC PARTICIPATION

Local, state, federal, and tribal governmental agencies and members of the public are welcome to attend and offer oral or written comments at the Prehearing Conference and Evidentiary Hearing. It is not necessary to be an intervenor or attorney to participate in the public process. Comments may be submitted electronically at [the CEC's online docket for the Mission College proceeding](https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=19-SPPE-05) at:
<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=19-SPPE-05>.

Otherwise, written comments may also be submitted for posting on the proceeding docket by emailing as follows: [email public comments to the Public Advisor](mailto:public.advisor@energy.ca.gov) at public.advisor@energy.ca.gov; or [email public comments to the Docket Unit](mailto:docket@energy.ca.gov) at docket@energy.ca.gov.

For all comments, please include the docket number and proceeding name "**Docket No. 19-SPPE-05, Mission College Generating Facility**" in the subject line and on the cover page.

Please note: Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email address, etc.) become part of the viewable public record. Additionally, this information may become available via search engines such as Google and Yahoo.

NOTICE OF CLOSED SESSION DELIBERATIONS

At any time during the Prehearing Conference or Evidentiary Hearing, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor's Office provides the public assistance in participating in CEC proceedings. For information on how to participate in this proceeding, or to request language services or other reasonable accommodations, please [contact the Public Advisor, Noemí O. Gallardo, by email](mailto:publicadvisor@energy.ca.gov) at publicadvisor@energy.ca.gov, by phone at (916) 654-4489, or toll free at (800) 822-6228. Requests for language services and reasonable accommodations should be made at least five days in advance. The CEC will work diligently to accommodate late requests.

Questions of a procedural nature should be directed to [Ralph Lee, Hearing Officer, by email](mailto:ralph.lee@energy.ca.gov) at ralph.lee@energy.ca.gov or by phone at (916) 654-3953.

Technical questions concerning the application should be addressed to [Leonidas \(Lon\) Payne, Project Manager, by email](mailto:leonidas.payne@energy.ca.gov) at leonidas.payne@energy.ca.gov or by phone at 916-651-0966.

Media inquiries should be sent to the [Media and Public Communications Office, by email](mailto:mediaoffice@energy.ca.gov) at mediaoffice@energy.ca.gov or by phone at (916) 654-4989.

REMOTE ATTENDANCE

You may participate in this meeting through the on-line meeting service, Zoom. Any presentations will appear on your computer screen and you may listen to audio via your computer or telephone. Please be aware that the meeting may be recorded.

[Learn about joining a Zoom meeting](https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting) at <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>. [Download Zoom software](https://zoom.us/download) at <https://zoom.us/download>.

Zoom technical support is available at (888) 799-9666, ext. 2. Or you may [email the CEC's Public Advisor's Office](mailto:publicadvisor@energy.ca.gov) at publicadvisor@energy.ca.gov, or by phone at (800) 822-6228. You may also visit [Zoom's help center](https://support.zoom.us/hc/) at <https://support.zoom.us/hc/>.

Via Computer: Participants may join the noticed events by clicking on the links below. You may also [access Zoom](https://join.zoom.us) at <https://join.zoom.us>, and enter the unique Webinar ID and password for either event (listed below). To comment, use Zoom’s “raise hand” feature.

Click to join [June 15, 2020, 1:30 p.m. Prehearing Conference](https://energy.zoom.us/j/93620353832?pwd=bFVQVExvMHBZWWhnT2pKZDVyMzkzZz09).

<https://energy.zoom.us/j/93620353832?pwd=bFVQVExvMHBZWWhnT2pKZDVyMzkzZz09>. Webinar ID 936 2035 3832. The meeting password is MCSPPE@061.

Click to join [June 18, 2020, 10:00 a.m. Evidentiary Hearing](https://energy.zoom.us/j/97409025704?pwd=M3hnTWc3RzFPemdTT0swRTJJN0h5dz09).

<https://energy.zoom.us/j/97409025704?pwd=M3hnTWc3RzFPemdTT0swRTJJN0h5dz09>. Webinar ID 974 0902 5704. The meeting password is MCSPPE@061.

Event	Date	Webinar ID	Computer Password
Prehearing Conference	June 15, 2020, 1:30 p.m.	936 2035 3832	MCSPPE@061
Evidentiary Hearing	June 18, 2020, 10 a.m.	974 0902 5704	MCSPPE@061

Via Telephone Only (No Visual Presentation): call Zoom at 1-877-853-5257 (toll free) or 1-888-475-4499 (toll free). When prompted, input the unique Webinar ID for the session of your choice (listed above). To comment over the telephone, dial *9 to “raise your hand” and *6 to mute/unmute your phone line.

Event	Date	Webinar ID	Telephone Password
Prehearing Conference	June 15, 2020, 1:30 p.m.	936 2035 3832	130627
Evidentiary Hearing	June 18, 2020, 10 a.m.	974 0902 5704	442703

Via Mobile Access: Access to Zoom meetings is now available from your mobile device. To download the app, [visit the Zoom Download Center](https://zoom.us/download) at <https://zoom.us/download>.

Muting

We greatly appreciate your cooperation in reducing noise on the audio connection by muting your line when you are not speaking. Mute your line rather than placing your phone on hold. Using Zoom, you may mute yourself by right clicking on the mute icon. If you are only using a telephone connection, press “*6” once to mute and again to unmute.

AVAILABILITY OF DOCUMENTS

Information about the Application, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the [CEC's web page for the Mission College proceeding at](http://ww2.energy.ca.gov/sitingcases/missioncollege/) <http://ww2.energy.ca.gov/sitingcases/missioncollege/>.

IT IS SO ORDERED.

Dated: May 26, 2020

Approved by:

Karen Douglas
Commissioner and Presiding Member
Mission College Backup Generating
Facility SPPE Committee

Dated: May 28, 2020

Approved by:

Janea A. Scott
Vice Chair and Associate Member
Mission College Backup Generating
Facility SPPE Committee

Mailed to list number: 7533

AGENDA

Mission College Backup Generating Facility SPPE (19-SPPE-05) Prehearing Conference

June 15, 2020
1:30 p.m.

Remote Access Only

To participate in the Prehearing Conference remotely, please see the instructions above under the section "REMOTE ATTENDANCE"

1. Call to Order
2. Prehearing Conference

Report from the Applicant, Staff, and any intervenors regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses, Committee discussions with the parties about the order of subject areas, use of formal procedures, and other matters in preparation for the Evidentiary Hearing.

3. Public Comment

Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

4. Committee closed session deliberations on the application for a small power plant exemption for the Mission College Backup Generating Facility.¹⁸
5. Adjourn

¹⁸ The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

AGENDA

Mission College Backup Generating Facility SPPE (19-SPPE-05) Evidentiary Hearing

June 18, 2020
10:00 a.m.

Remote Access Only

To participate in the Prehearing Conference remotely, please see the instructions above under the section “REMOTE ATTENDANCE”

1. Call to Order
2. Evidentiary Hearing
Receipt of evidence from the Applicant, Staff, and any intervenors on the application for a small power plant exemption for the Mission College Backup Generating Facility.
3. Public Comment
Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.
4. Committee closed session deliberations on the application for a small power plant exemption for the Mission College Backup Generating Facility.¹⁹
5. Adjourn

¹⁹ The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

**MISSION COLLEGE BACKUP GENERATING FACILITY SPPE (19-SPPE-05)
REVISED SCHEDULE
MAY 2020**

EVENT	DATE
Staff Published the Initial Study and Proposed Mitigated Negative Declaration (IS/PMND)	April 21, 2020
Public Comment Period on the IS/PMND Closed	May 22, 2020
Opening Testimony Filed	May 22, 2020
Staff responds to Comments on the IS/PMND	June 1, 2020
All Parties File Rebuttal/Reply testimony ²⁰	June 1, 2020
Last Day to File Petition to Intervene ²¹	June 8, 2020
All Parties File Prehearing Conference Statements	June 9, 2020
Prehearing Conference	June 15, 2020
All Parties File Exhibit List of Documents to Be Used during Evidentiary Hearing	June 16, 2020
Evidentiary Hearing	June 18, 2020 ²²
Committee Files Committee Proposed Decision ²³	Third quarter 2020
Final Decision Adoption Hearing at CEC Business Meeting	Third quarter 2020

The Committee may modify the schedule at any time. The Committee will issue final dates in a later Order.

²⁰ Seven days prior to the evidentiary hearing or at such other times as ordered by the presiding member. (Cal. Code Regs., tit. 20, § 1943.)

²¹ The deadline to file a petition for intervention shall be established by the presiding member, or if no deadline is established, at least 30 days prior to the first day of the evidentiary hearing. If notice of the first evidentiary hearing sets it less than 30 days from the notice, then the deadline shall be at least 10 days from the notice. (Cal. Code Regs., tit. 20, § 1211.7, subd. (b).)

²² Evidentiary hearings shall commence no later than 100 days after filing the application for an SPPE unless otherwise ordered by the presiding member. In the "Notice of Committee Conference and Orders on Hearings," (TN 232158), the Committee extended the deadline for the hearing pursuant to California Code of Regulations, Title 20, sections 1203, subdivision (f) and 1944, subdivision (b).

²³ Cal. Code Regs., tit. 20, § 1945, subd. (a).