

DOCKETED

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M e m o r a n d u m

To: Commissioner Karen Douglas, Presiding Member
Chair David Hochschild, Associate Member

Date: July 7, 2020

From: California Energy Commission
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Subject: ISSUES IDENTIFICATION, STATUS REPORT, AND PROPOSED SCHEDULE FOR THE GREAT OAKS SOUTH BACKUP GENERATING FACILITY SMALL POWER PLANT EXEMPTION (20-SPPE-01)

In its July 2, 2020 order ("Notice of Committee Conference and Related Orders"), the Great Oaks South Backup Generating Facility SPPE Committee noted that California Energy Commission staff "shall file an Issues Identification Report, Status Report, and Proposed Schedule, summarizing the major issues identified to date, status on activities conducted to date and issues that require resolution before hearings can be conducted, and proposing a schedule for the conduct of this proceeding. This report will also indicate what additional information is necessary to resolve issues of concern."

Status

Staff issued data requests on April 7, 2020 (Set 1, TN 232682), April 16, 2020 (Set 2, TN 232755), and May 18, 2020 (Set 3, TN 233009). The applicant submitted responses to Set 2 on May 18, 2020 (TNs 233005-1 to 233005-4), Set 3 on June 24, 2020 (TN 233638), and supplemental responses to Data Requests Set 2 on June 30, 2020 (TN 233681).

Staff has not received responses to Data Requests Set 1 addressing the lifetime of this proposed data center. The applicant docketed responses to Data Requests Set 1 specific to another SPPE proceeding, the Walsh Data Center (19-SPPE-02), but staff still requires responses specific to the Great Oaks South Backup Generating Facility.

The applicant's response to staff's Data Requests Set 2 is incomplete. In the applicant's responses in part I to Data Requests Set 2 for #49 (TN 233005-1), the applicant noted that a copy of the Cultural Resources Assessment completed by Albion Environmental, Inc. and supporting information would be provided under confidential cover; however, staff has not received all of the supporting information (copies of the records search reports and resources). Also, in part I to Data Requests Set 2 for #58, the applicant stated that a one-line diagram would be provided under a separate cover on or before May 22, 2020. This has not been received. In addition, while the applicant is still preparing the ground-level impacts analysis for criteria pollutants as requested in Data Requests Set 2, for #4,

staff sent a follow-up email to the applicant on June 9, 2020, asking for air quality and public health impacts analysis for potential overlapping periods between operation (maintenance and testing) of one or more data center building(s) and construction of the remaining data center building(s).

The applicant's response to staff's Data Requests Set 3 is incomplete. For #65 through #69, the applicant estimated filing a revised Health Risk Assessment (HRA) on or before June 26, 2020, but this remains outstanding.

Issues Identification

Transmission Line. In the applicant's responses in part I to Data Requests Set 2, for #62, the applicant stated that in the future, reconductoring or a line re-rate of the two 115 kilovolt lines supplying the Santa Teresa Substation may be required for each line to meet the full demand of the data center independently. Staff is coordinating with Pacific Gas and Electric Company (PG&E) transmission planning staff to answer the question of whether reconductoring or a re-rate is necessary. Determining which path is needed is necessary for a complete project description to assess potential environmental impacts, particularly if reconductoring is required.

Air Quality/Public Health. The applicant needs to demonstrate how the project would be consistent with Bay Area Air Quality Management District (BAAQMD) Regulation 2 Rule 5, which requires the applicant to apply the Best Available Control Technology for Toxics to any new or modified source of toxic air contaminants where the source would result in a cancer risk greater than 1.0 in one million, and/or a chronic hazard index greater than 0.20.

Staff believes the applicant's current HRA underestimates the health risks of the project during both construction and readiness testing and maintenance. If the HRA were done correctly, the cancer risks of the project during readiness testing and maintenance of the proposed Tier 2 engines without diesel particulate filters (DPFs) would exceed the BAAQMD significance threshold of 10 in a million. Therefore, the project would cause significant health risk impacts without mitigation. Staff believes the significant health risk impacts could be mitigated by either using DPFs or reducing the currently proposed 20 hours of readiness testing and maintenance per year per engine.

Staff's original data requests about the above HRA issues were included in Data Requests Set 2 (#11 through #13). The applicant did not address staff's concerns in its responses to Data Requests Set 2 (TN 233005-1). Therefore, staff sent a follow-up request to the applicant informally on June 9, 2020, asking the applicant to confirm staff's preliminary findings described above. Staff is awaiting this information.

In addition, applicant's proposed design (PD) measure PD AQ-2 applies to the original project, which limits testing and maintenance of the originally proposed 21 generators to 356 hours per year. It does not apply to the currently proposed project with 39 generators.

PD AQ-2 needs to be revised according to applicant's decision on the limit of annual hours of readiness testing and maintenance because of the HRA issues described above.

Staff would also like to add exhaust control measures (requiring Tier 3 or better construction equipment) during construction of the project in PD AQ-1. These would be consistent with the assumptions the applicant used in estimating the construction emissions. Once staff receives the outstanding data responses, staff will file any proposed additional changes to PD AQ-1 and AQ-2 that are necessary to address changes to impacts. Staff needs to confirm whether the applicant intends to update PD AQ-2 to reflect the current proposed number of backup generators.

Biological Resources. The applicant's payment of the nitrogen deposition fee only covers the mobile-source emissions (from the project's new vehicle trips) and not point-source emissions. Point-source emissions (from the generators) have been calculated by staff and a mitigation measure is in development and will mirror previous mitigation measures proposed by staff for nitrogen deposition impacts on similar projects. Staff will work with U.S. Fish and Wildlife Service and the applicant to ensure appropriate mitigation is incorporated to mitigate potential cumulatively considerable impacts to federally-listed species and other special-status species affected by nitrogen deposition.

Staff's Proposed Schedule

Because staff is still awaiting responses to data requests issued during the discovery period and has identified several issues that need to be resolved, it is not possible for staff to produce a definitive schedule for publication of the Initial Study. Our experience on this project is consistent with prior SPPE evaluation efforts. Publication delays most often result from project description changes made by the applicant after filing. In some cases, these changes are in response to changing market conditions. In other cases, such changes are in response to data requests made by staff or information that becomes available during concurrent planning reviews being conducted by the local permitting authority, which for this project is the City of San Jose. The proposed schedule provided below reflects this inherent uncertainty in the evaluation process.

EVENT	DATE
Application materials filed	3/19/2020
Committee appointed at Business Meeting	5/13/2020
Staff Data Requests Set 1 filed	4/7/2020
Application for Confidential Materials filed	4/13/2020
Tribal consultation letters mailed	4/15/2020
Staff Data Requests Set 2 filed	4/16/2020
Applicant Responses to Data Requests Set 2 filed	5/18/2020

Data Requests Set 3 filed	5/18/2020
60-day discovery period closed	5/18/2020
Agency coordination letters mailed	6/15/2020
Applicant Responses to Data Requests Set 3 filed (incomplete responses)	6/24/2020
Applicant Supplemental Responses to Data Requests Set 2 (#18 & 56) filed	6/30/2020
Notice of Receipt filed (mailed 7/1/2020)	6/30/2020
Memo re: Issues Identification, Status, and Schedule filed	7/7/2020
Committee Conference	7/13/2020
Applicant Responses to Data Requests Set 1 filed	TBD
Complete Responses to Data Requests Set 2 (#49 and #58) filed	TBD
Complete Responses to Data Requests Set 3 (#65-69) filed	TBD
Mitigation measures workshop (if needed)	TBD
Staff Publishes the Initial Study (Final responses to all Data Requests plus estimated 30 days)	TBD
Last Day to File Petition to Intervene (prior to opening testimony deadline)	TBD
Public Comment Period on the Initial Study closes (30 days per CEQA) Deadline to file Opening Testimony (same date)	TBD
Deadline to file Staff's responses to comments on the IS (minimum 10 business days following close of public comment period)	TBD
Deadline to File Rebuttal/Reply testimony (7 days prior to evidentiary hearing, minimum 10 business days after opening testimony is due)	TBD
All Parties File Prehearing Conference Statements	TBD
Prehearing Conference	TBD
Evidentiary Hearing	TBD
Committee Proposed Decision	TBD
Commission Decision at Business Meeting	TBD