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Document Title:	RULING ON CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO DATA REQUEST SET ONE
Description:	RULING ON CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO DATA REQUEST SET ONE, #24
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**State of California
State Energy Resources Conservation and
Development Commission**
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**APPLICATION FOR SMALL POWER PLANT
EXEMPTION FOR THE:**

***SAN JOSE CITY BACKUP GENERATING
FACILITY***

Docket No. 19-SPPE-04

**RULING ON CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION
TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO
DATA REQUEST SET ONE, #24**

On November 15, 2019, Microsoft Corporation (Applicant) submitted an application to the California Energy Commission (CEC)¹ for a small power plant exemption (SPPE)² for the San Jose City Backup Generating Facility (Facility).³

On May 28, 2020, Intervenor California Unions for Reliable Energy (CURE) filed a Motion for Leave to File Data Requests (Motion).⁴ The Motion requested leave to file 26 Data Requests. On June 29, 2020, the Committee granted CURE's Motion.⁵

On July 20, 2020, Applicant filed objections to six of CURE's Data Requests, including Data Request #24.⁶ On August 17, 2020, CURE filed a Petition to Compel Production of Information in Response to CURE's Data Request, Set One, #24 (Petition).⁷ On August 28, 2020, the Committee issued an Order inviting all parties to file any additional

¹ The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Pub. Resources Code, § 25200.)

² On December 11, 2019, the CEC appointed a committee (Committee) to conduct proceedings on this SPPE application. The Committee consists of Karen Douglas, Commissioner and Presiding Member, and Patty Monahan, Commissioner and Associate Member (TN 231265).

³ Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [web page](https://www2.energy.ca.gov/sitingcases/sj2/) at <https://www2.energy.ca.gov/sitingcases/sj2/>. Documents related to this proceeding may be found in the [online docket at](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04) <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04>. The application is TNs 230741, 230762, 230763, 230765, 230770.

⁴ TN 233196.

⁵ TN 233667.

⁶ TN 233960.

⁷ TN 234332.

information relevant to Data Request #24 or to the Committee’s consideration of the Petition no later than September 4, 2020.⁸

On September 4, 2020, Applicant filed a Response to CURE’s Petition (Response).⁹ CEC staff (Staff) did not file a response to the Petition.

Data Request #24 sought “All estimates of emissions associated with electricity consumption.”¹⁰ Applicant objected to the request on the grounds that the request was burdensome and onerous because Applicant had already provided greenhouse gas (GHG) emission estimates in the SPPE application, and GHG emission factors are readily available. Applicant further objected on the grounds that criterial pollutant emission factors would be difficult to identify.¹¹ In its Petition, CURE argues that Applicant failed to provide “all the information necessary to evaluate the accuracy of the Facility’s air quality impacts.”¹² The Petition requests that Applicant be required to provide GHG emission factors and criteria air pollutant factors.¹³

The Committee hereby **GRANTS in part and DENIES in part** the Petition.

Greenhouse Gas Emission Factors

In its objection to CURE’s Data Request #24, Applicant states that the Data Request is burdensome and onerous as it has already provided GHG emission estimates associated with energy use, and that emission factors are readily available.¹⁴ In its Petition, CURE responds that without the factors used to estimate the GHG emissions, CURE and members of the public cannot assess the accuracy of the emissions presented in the GHG emission model.¹⁵

In its Response to CURE’s Petition, Applicant claims that estimates of Pacific Gas and Electric Company’s (PG&E) system-wide GHG emissions are possible because these data sets are readily available in numerous online reports.¹⁶ Although CURE did not respond to Applicant’s claim that PG&E’s GHG emission factors are readily available, we note that it is possible that there are multiple emission estimates and that it is not clear which factors Applicant used to estimate GHG emissions associated with the Facility’s electricity use. We presume that Applicant has the emission factors it used to

⁸ TN 234530.

⁹ TN 234592.

¹⁰ TN 233196.

¹¹ TN 233960.

¹² TN 234332, p. 3.

¹³ *Id.* at pp. 4 – 6.

¹⁴ TN 233960, p. 4.

¹⁵ TN 234332, p. 5.

¹⁶ TN 234592, p. 3.

estimate the GHG emissions and it will not be burdensome for Applicant to provide the factors and source of the factors in response to CURE's Petition.

The Committee therefore **GRANTS in part** CURE's Petition and **ORDERS** Applicant to file the GHG emission factors and the source of such factors it used in its GHG emissions analysis no later than September 25, 2020.

Criteria Air Pollutant Emission Factors

In its objection to CURE's Data Request #24, Applicant states that the Data Request is burdensome and onerous because identifying criteria pollutant emission factors for use in a long-term analysis would be difficult due to the pace at which renewable energy sources are incorporated into the California electrical grid.¹⁷ In its Petition, CURE responds that Applicant's assertion is false. CURE states that because Applicant already has estimated the sources of power for the Facility, it should not be difficult to estimate criteria pollutants for those power sources. Alternatively, CURE suggests that Applicant could select the year 2050 as the time at which the grid will be 100 percent renewable, and conduct a linear rate of decline to that year.¹⁸ In its Response to CURE's Petition, Applicant states that presenting criteria air pollutant emission factors for the Facility's electricity use would require a significant level of speculation regarding PG&E's available generating assets 30 years into the future. Applicant also points out that PG&E's existing generating assets operate under air permits which require mitigation of air quality impacts associated with their maximum possible operating profile.¹⁹

We are persuaded that providing criteria air pollutant emission factors for the various generation sources that may be used to provide energy to the Facility will require Applicant to undertake burdensome new analysis that would result in information of questionable value.

¹⁷ TN 233960, p. 4.

¹⁸ TN 234332, p. 5.

¹⁹ *Id.* at pp. 3 – 5.

The Committee hereby **DENIES in part** CURE's Petition and finds that Applicant is not required to provide the additional information sought in CURE's Data Request #24 for criteria air pollutant emission factors.

IT IS SO ORDERED.

Dated: September 16, 2020

Approved By

Karen Douglas
Commissioner and Presiding Member
San Jose Backup Generating Facility SPPE Committee

Dated: September 16, 2020

Approved By

Patty Monahan
Commissioner and Associate Member
San Jose City Backup Generating Facility SPPE Committee