

<b>DOCKETED</b>	
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<b>Project Title:</b>	Great Oaks South Backup Generating Facility Small Power Plant Exemption
<b>TN #:</b>	235279
<b>Document Title:</b>	COMMITTEE SCHEDULING ORDER AND RELATED ORDERS
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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:**

***GREAT OAKS SOUTH BACKUP  
GENERATING FACILITY***

**Docket No. 20-SPPE-01**

**COMMITTEE SCHEDULING ORDER AND RELATED ORDERS**

**BACKGROUND**

On March 19, 2020, SV1, LLC, a wholly owned subsidiary of Equinix, LLC, (Applicant) submitted an application for a small power plant exemption (SPPE) for the Great Oaks South Backup Generating Facility (Application)<sup>1</sup> to the California Energy Commission (CEC).<sup>2</sup>

On July 2, 2020, the CEC Committee<sup>3</sup> designated to conduct proceedings on the Application issued a “Notice of Committee Conference and Related Orders,” (July 2, 2020 Notice) which set a Committee Conference on July 13, 2020.<sup>4</sup> The July 2, 2020 Notice directed CEC staff (Staff) to file an issues identification and status report and a proposed schedule by July 7, 2020, and directed Applicant to file a response to Staff’s proposal by July 10, 2020.<sup>5</sup> Staff and Applicant met these deadlines.<sup>6</sup>

In its July 7, 2020 status report, Staff recommended a schedule assuming, among other things, that it would likely produce an initial study and proposed mitigated negative

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<sup>1</sup> Information about this proceeding may be found on the CEC’s [web page](https://www2.energy.ca.gov/sitingcases/greatoakssouth/) at <https://www2.energy.ca.gov/sitingcases/greatoakssouth/>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-SPPE-01) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=20-SPPE-01>. The Application is TNs 232466 and 232467-1 through -3.

<sup>2</sup> The CEC is formally known as the “State Energy Resources Conservation and Development Commission.” (Pub. Resources Code, § 25200.)

<sup>3</sup> On May 13, 2020, the CEC appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and David Hochschild, Chair and Associate Member, to preside over this SPPE Application. (TN 233123.)

<sup>4</sup> TN 233721.

<sup>5</sup> *Id.*, p. 3.

<sup>6</sup> On July 7, 2020, Staff filed a memorandum addressing issues identification, status, and proposed schedule (status report) (TN 233795), and on July 10, 2020, Applicant filed its response to Staff’s status report (TN 233832).

declaration (IS/MND) similar to what has been prepared in prior SPPE proceedings.<sup>7</sup> Staff and Applicant discussed their proposals during the Committee Conference conducted on July 13, 2020.<sup>8</sup>

On August 7, 2020, Staff filed an updated status report and proposed schedule. In its August 7 update, Staff stated that it intends to prepare an environmental impact report (EIR) as the environmental document for the Application rather than an IS/MND.<sup>9</sup>

On August 31, 2020, the Committee issued a “Notice of Committee Conference and Related Orders” (August 31, 2020 Notice), which set a Committee Conference for September 23, 2020, to discuss, among other things, Staff’s proposal to prepare an EIR and opportunities for expanded public outreach and engagement.<sup>10</sup>

The August 31, 2020 Notice also ordered Staff and Applicant to file status reports on September 10, 2020, that “identify the specific facts or law underlying the recommendation to prepare an EIR and identify the additional analyses that will be included in the EIR to assist the Commission in rendering a decision on the Application.”<sup>11</sup> Staff and Applicant discussed Staff’s proposal to prepare an EIR in their status reports<sup>12</sup> and during the Committee Conference conducted on September 23, 2020.<sup>13</sup>

## **DISCUSSION AND ORDERS**

### ***Staff’s Proposal to Prepare an EIR***

Staff and Applicant disagree on whether an EIR is warranted. According to Staff, an EIR is appropriate for several reasons, both pragmatic and substantive. In particular, Staff discussed the need for more thorough analyses, including a discussion of alternatives that is not typically found in other environmental review documents. Staff is also concerned about recent statements by the California Air Resources Board (CARB) and the Bay Area Air Quality Management District (BAAQMD) expressing concerns with diesel-fired backup generators and disagreement with Staff’s air quality and public health analysis, particularly the feasibility of modeling emergency situations.<sup>14</sup> Staff indicated that it is foreseeable that these disagreements will continue to the evidentiary

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<sup>7</sup> TN 233795, p. 1.

<sup>8</sup> The Reporter’s Transcript of the July 13, 2020 Committee Conference is TN 233988 and is cited herein as “date of hearing, RT page line – page:line.” For example: 7/13/20 RT 1:1 – 2:2.

<sup>9</sup> TN 234271, p. 4.

<sup>10</sup> TN 234539, p. 3.

<sup>11</sup> *Id.*, p. 4.

<sup>12</sup> Staff’s status report is TN 234657. Applicant’s status report is TN 234660 (filed on September 11).

<sup>13</sup> The Reporter’s Transcript of the September 23, 2020 Committee Conference is TN 234905. The transcript was published without page numbers, so this order refers to the page of the pdf.

<sup>14</sup> 9/23/20 RT 28:18 – 29:5; 31:13 – 31:25.

hearing and thus require an EIR.<sup>15</sup> Staff also explained that residents and the public have expressed significant concerns about the Application.<sup>16</sup>

Applicant agreed that Staff's proposal to prepare an EIR is legally permissible.<sup>17</sup> However, Applicant maintained that an EIR is unwarranted and will cause unnecessary delay.<sup>18</sup> Applicant asserted that Staff concedes that it does not anticipate significant unmitigated environmental impacts<sup>19</sup> and stated that an alternatives analysis can be performed in the proceeding even if Staff prepares an IS/MND.<sup>20</sup> The Applicant also stated that the issues raised by the public are already addressed in the Application.<sup>21</sup>

We are persuaded that an EIR is appropriate in this case based on the record currently before us. Our decision is informed by the fundamental purpose of CEQA to inform the public and government decision makers of the environmental consequences of their decisions.<sup>22</sup> To that end, an EIR is the preferred environmental review document under CEQA in this case because it will better inform the public and assist the decision makers to reach a conclusion about the potential significant effects of the proposed project.

Here, Staff's intent to conduct the more thorough analyses required under an EIR are appropriate given that CARB and BAAQMD—two agencies with expertise in air quality and public health modeling, analysis, and impacts—have expressed concerns that Staff's analyses and modeling might not fully identify potential significant air quality and public health impacts. In addition, an EIR would help better inform the public, including residents who have expressed significant interest in the project, and allow the CEC to consider alternatives to the proposed diesel-fired backup generators. Thus, given the totality of the circumstances in this case, we agree that an EIR would best meet the purposes of CEQA, and decline Applicant's request to direct Staff to prepare an IS/MND.

### ***Opportunities for Expanded Public Outreach and Engagement***

The Committee appreciates the public discussion among the parties and the CEC's Public Advisor's Office about outreach and community engagement. When feasible, and as allowed by state and local public health authorities, the Committee would be pleased to hold a Committee Conference in the community. Until then, the Committee will continue to conduct its proceedings remotely taking advice of the Public Advisor into consideration. Further, the Committee invites and welcomes public participation in this

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<sup>15</sup> *Id.*, at 32:1 – 32:10.

<sup>16</sup> *Id.*, at 32:11 – 32:17.

<sup>17</sup> TN 234660, p. 1.

<sup>18</sup> 9/23/20 RT 40:10 – 40:11; TN 234660, pp. 2, 6.

<sup>19</sup> TN 234660, p. 5; *see also* 9/23/20 RT 39:8 – 40:13.

<sup>20</sup> TN 234660, p. 6; *see also* 9/23/20 RT 40:13 – 40:18.

<sup>21</sup> TN 234660, p. 2.

<sup>22</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

Application proceeding and looks to Staff and the Public Advisor to take advantage of opportunities to facilitate the public knowledge of and participation in this proceeding.

The Committee encourages the Applicant to collaborate as appropriate with Staff and the Public Advisor to determine how they might collectively take action to facilitate public knowledge of the Application. To that effect, the Committee encourages the Applicant and Staff to follow through on their agreement to work with the Public Advisor to consider whether site- and language-specific signage is feasible at the proposed Great Oaks South Generating Facility site and if so, to make it happen.<sup>23</sup> In light of that agreement, at this time we decline to direct the Applicant to place signage at the site, but nothing in this ruling prevents the Applicant from placing such signage if it determines that placement of such signage is feasible at the proposed project site. The Committee hereby **ORDERS** Staff to include in its **November 10, 2020** status report, a summary of the plan, if any, for onsite signage.

### ***Scheduling Order***

The Committee hereby adopts the schedule for the proceeding that is attached below, which recognizes Staff's intent to prepare an EIR. The Committee encourages the parties to make their best efforts to complete the milestones ahead of these dates.

### **PUBLIC ADVISOR AND OTHER CEC CONTACTS**

The CEC's Public Advisor's Office provides the public with 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](mailto:PublicAdvisor@energy.ca.gov), at [PublicAdvisor@energy.ca.gov](mailto:PublicAdvisor@energy.ca.gov), or by phone at (916) 654-4489, or toll free at (800) 822-6228.

Parties and members of the public may contact Hearing Officers, [Ralph Lee](mailto:Ralph.Lee@energy.ca.gov) at [Ralph.Lee@energy.ca.gov](mailto:Ralph.Lee@energy.ca.gov) or at (916) 654-3953, and [Linda Barrera](mailto:Linda.Barrera@energy.ca.gov) at [Linda.Barrera@energy.ca.gov](mailto:Linda.Barrera@energy.ca.gov) or at (916) 628-2221, for clarifications about this order or general procedural questions.

Technical questions concerning the Application should be addressed to [Lisa Worrall, Project Manager](mailto:Lisa.Worrall@energy.ca.gov), at [Lisa.Worrall@energy.ca.gov](mailto:Lisa.Worrall@energy.ca.gov) or at 916-654-4545.

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

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<sup>23</sup> See *id.* at 46:20 – 46:22; 47:18 – 48-15; 49:17 – 49:25.

**AVAILABILITY OF DOCUMENTS**

Information regarding the status of the Application, as well as notices and other relevant documents, are available on the [CEC's web page](https://www.energy.ca.gov/sitingcases/greatoakssouth/) for the Great Oaks South Backup Generating Facility proceeding found at:  
<https://ww2.energy.ca.gov/sitingcases/greatoakssouth/>.

**IT IS SO ORDERED.**

Dated: October 15, 2020

Dated: October 16, 2020

***APPROVED BY:***

***APPROVED BY:***

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Karen Douglas  
Commissioner and Presiding Member  
Great Oaks South Backup Generating  
Facility SPPE Committee

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David Hochschild  
Chair and Associate Member  
Great Oaks South Backup Generating  
Facility SPPE Committee

**GREAT OAKS SOUTH  
BACKUP GENERATING FACILITY SPPE (20-SPPE-01)  
SCHEDULING ORDER  
OCTOBER 2020**

<b>EVENT</b>	<b>DATE</b>
All Parties File Status Reports	No later than the 10th of every month
Staff Files Notice of Preparation of an Environmental Impact Report (EIR)	4 <sup>th</sup> Quarter
Staff Holds EIR Scoping Meeting	No later than 30 days before Staff publishes the draft EIR
Staff Publishes its Draft EIR and Sends the Appropriate Notice to the State Clearinghouse <sup>24</sup>	Within 60 days from Staff's receipt of final data request response from Applicant.
Close of Public Comment Period on Staff's Draft EIR <sup>25</sup>	45 days after Staff publishes the draft EIR
Last Day to File Petition to Intervene <sup>26</sup>	45 days after Staff publishes the draft EIR
Staff Files Responses to Public Comment and Final EIR	20 days after close of public comment
All Parties File Opening Testimony	14 days after Staff files response to public comment
All Parties File Reply Testimony <sup>27</sup> and any Errata or Addendum to the Final EIR	14 days after Opening Testimony
All Parties File Prehearing Conference (PHC) Statement	5 days after Reply Testimony
PHC	7 days after PHC Statement

<sup>24</sup>Staff may not publish Draft EIR less than 30 days after issuance of the Notice of Preparation. (Pub. Resources Code, § 21080.4, subd. (a); Cal. Code Regs., tit. 14, § 15082, subd. (b).)

<sup>25</sup> Please note that the State Clearinghouse has 3 days to distribute the environmental review document after receipt. (Pub. Resources Code, § 21091, subd. (c)(3).)

<sup>26</sup> 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. (Cal. Code Regs., tit. 20, § 1211.7, subd. (b).)

<sup>27</sup> Seven days prior to the evidentiary hearing or at such other times as ordered by the presiding member. (Cal. Code Regs., tit. 20, § 1943.)

EVENT	DATE
Evidentiary Hearing <sup>28</sup>	7 days after PHC
Committee Files Proposed Decision	To be determined
Final Adoption Hearing by the Commission	To be determined
Notice of Determination published	Within 5 working days of Commission Decision

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

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<sup>28</sup> Evidentiary hearings shall commence no later than 100 days after filing the application for an SPPE unless otherwise ordered by the presiding member. (Cal. Code Regs., tit. 20, § 1944 subd. (b).) In the July 13, 2020 “Notice of Committee Conference and Related Orders,” the Committee extended the deadline for the hearing pursuant to California Code of Regulations, Title 20, sections 1203, subdivision (f) and 1944, subdivision (b). (TN 233721, p. 4.)