

**DOCKETED**

<b>Docket Number:</b>	20-SPPE-01
<b>Project Title:</b>	Great Oaks South Backup Generating Facility Small Power Plant Exemption
<b>TN #:</b>	239482
<b>Document Title:</b>	Order Requesting Supplemental Information In Response to Committee Questions
<b>Description:</b>	N/A
<b>Filer:</b>	Ngoc Tran
<b>Organization:</b>	Energy Commission Hearing Office
<b>Submitter Role:</b>	Committee
<b>Submission Date:</b>	8/26/2021 8:20:31 AM
<b>Docketed Date:</b>	8/26/2021



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**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**

## **ORDER REQUESTING SUPPLEMENTAL INFORMATION IN RESPONSE TO COMMITTEE QUESTIONS**

The Committee<sup>1</sup> appointed by the California Energy Commission (CEC)<sup>2</sup> to conduct proceedings on the application for a small power plant exemption (SPPE) for the Great Oaks South Backup Generating Facility (Application)<sup>3</sup> has reviewed the Final Environmental Impact Report (FEIR) submitted by CEC staff (Staff) on July 28, 2021,<sup>4</sup> and the addendum to the FEIR submitted by staff on August 18, 2021 (Addendum).<sup>5</sup> The Committee seeks supplemental information and to that end directs the parties to respond to the questions listed below. Responses by all parties to the Committee's questions must be filed in the docket for this proceeding **no later than 5:00 p.m. on September 2, 2021.**

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<sup>1</sup> On May 13, 2020, the CEC designated 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>2</sup> 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.

<sup>3</sup> All of the documents related to the Application can 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>.

<sup>4</sup> TN 239063.

<sup>5</sup> TN 239361.

## COMMITTEE QUESTIONS

1. The project description in the FEIR states that the project will receive electricity from a new substation, known as the Santa Teresa Substation, via five new 21 kilovolt (kV) distribution feeders that would extend underground along three proposed trench routes.<sup>6</sup> The California Public Utilities Commission has granted PG&E approval to construct the Santa Teresa Substation.<sup>7</sup> Are the individual effects of the construction and operation of the Santa Teresa Substation and five new 21-kV distribution feeder lines evaluated in the FEIR?

If so, then how are these facilities addressed in sections that do not mention them? Would the Santa Teresa Substation have growth-inducing impacts?

If not, what is the basis for not evaluating them in the FEIR? What are the environmental impacts of the project relative to the Santa Teresa Substation and distribution feeders, i.e., cumulative impacts?

2. How is the 10 dBA threshold that the FEIR applies to the project's construction-related noise effects<sup>8</sup> consistent with the City of San Jose's General Plan Policy EC-1.7?<sup>9</sup> What is the source of the 10 dBA threshold?
3. What is the magnitude of change in noise from construction and operation of the project compared with the ambient noise level the FEIR identifies as the environmental setting? What threshold of significance applies to the magnitude of change in noise caused by the project: the threshold identified in the FEIR<sup>10</sup> or a different threshold of significance? If it is not necessary to evaluate the magnitude of change in noise levels, please explain why not, excluding the project's compliance with the absolute noise thresholds.<sup>11</sup>

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<sup>6</sup> TN 239063, pp. 3-6 — 3-7.

<sup>7</sup> *Id.* at p. 3-1.

<sup>8</sup> *Id.* at p. 4.13-6.

<sup>9</sup> *Id.* at pp. 4.13-3 - 4.13-4.

<sup>10</sup> *Id.* at p. 4.13-2.

<sup>11</sup> *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal. App. 5th 814, 830, 892-894 (the magnitude of the noise increase must be addressed to determine the significance of change in noise levels).

4. The FEIR states that it:

evaluates cumulative impacts using the *Addendum to the Envision San Jose 2040 General Plan Final Program Environmental Impact Report and Supplemental Environmental Impact Report* for the Envision San Jose 2040 General Plan 4-Year Review (General Plan FPEIR) (San Jose 2016). The General Plan FPEIR identified that build out of the *Envision San Jose 2040 General Plan* (General Plan) would contribute to five, significant and unavoidable cumulative impacts in the areas of biological resources, land use, noise, population and housing, and transportation.<sup>12</sup>

Please identify whether the cumulative impacts analysis in the FEIR relies on a list of projects or summary of projections within the meaning of Title 14, California Code of Regulations, section 15130, or relies on prior environmental analyses as provided by a different section of Title 14. If the former, please identify the list of projects and projections one which the FEIR relies. If the latter, on which section of Title 14 does the FEIR rely? On what prior analysis does the FEIR rely? Was the prior analysis updated to reflect changes that have occurred since it was prepared? Why or why not?

5. The FEIR states that the exact amount and the source of the NOx offsets would be confirmed through the permitting process with the BAAQMD.<sup>13</sup> What are the specific levels of NOx emissions from the project on which BAAQMD would base its determination of the offset required, and what offsets are needed? How would the analysis of emissions predicted from Tier 4 equipment compare to the results of the emissions modeling performed for Tier 2 equipment?
6. The FEIR's response to comment A-13 describes how a person can redress a complaint about project noise,<sup>14</sup> as anticipated by MM NOI-1.<sup>15</sup> The FEIR states:

Typically, when a noise complaint is received the trained project coordinator investigates the nature of the complaint and the project takes action accordingly. If the complainant is not satisfied with the project's proposed resolution of the complaint, they can contact the permitting agency (in this case the City of San Jose) for further investigation and resolution.<sup>16</sup>

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<sup>12</sup> *Id.* at p. 4.20-3.

<sup>13</sup> *Id.* at p. 4.3-19.

<sup>14</sup> *Id.* at pp. 7-9 - 7-10.

<sup>15</sup> *Id.* at 4.13-9.

<sup>16</sup> *Id.* at pp. 7-9 - 7-10.

How does MM NOI-1<sup>17</sup> mitigate the project's noise identified in the FEIR?<sup>18</sup> Would it be feasible to add to MM NOI-1<sup>19</sup> a contact with the City of San Jose to elevate unresolved noise complaints? What response would the City of San Jose have to an elevated complaint? Would it be feasible to add a performance standard to MM NOI-1 to provide for a physical change or other response to any report substantiated by the disturbance coordinator?

7. How does payment of the nitrogen deposition mitigation fee required in MM BIO-1<sup>20</sup> mitigate the project's potentially significant impacts of nitrogen deposition to less than significant levels?
8. When and how will the actions required pursuant to PD-TRA-1<sup>21</sup> take place? How does PD-TRA-1 mitigate the identified vehicle miles traveled impacts to less than significant levels as referenced in the FEIR?<sup>22</sup>
9. Staff's noise impacts analysis in the FEIR<sup>23</sup> relies on noise survey data collected between January 26, 2016 and December 3, 2019, including six short-term measurements, a 2016 long-term measurement from Santa Teresa Boulevard adjacent to the project site, and a 2018 long-term measurement from approximately 700 feet northeast of the project site at 6230 San Ignacio Avenue.<sup>24</sup> Please explain how the data sets discussed in the FEIR are appropriate for use as the environmental setting (baseline) for noise, particularly in light of the time between the date of the 2016 noise measurements and the date the CEC began preparation of the EIR?
10. In comments on the DEIR, Applicant proposed a three-factor mitigation measure to provide alternatives to meet the City of San Jose's (City) climate action plan (CAP); the Applicant invited response from the City to its proposal.<sup>25</sup> The City responded to the Applicant's proposal in its comments on the DEIR.<sup>26</sup> The City concluded that the proposal did not meet the requirements of its CAP. For example, the City pointed out that the use of an alternative to the San Jose Clean Energy Total Green energy

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<sup>17</sup> *Id.* at p. 4.13-9.

<sup>18</sup> *Id.* at pp. 4.13-6 - 4.13-9, 4.20-6.

<sup>19</sup> *Id.* at p. 4.13-9.

<sup>20</sup> *Id.* at p. 4.4-19.

<sup>21</sup> *Id.* at pp. 4.17-5 - 4.17-6.

<sup>22</sup> *Id.* at p.4.17-9.

<sup>23</sup> TN 239063, 4.13-1.

<sup>24</sup> TN 232467-3, Appx. H, pp. 9-11.

<sup>25</sup> TN 238707, p. 2.

<sup>26</sup> TN 238822, pp. 3-4.

program would need to be vetted by a consultant previously approved by the City. The City also stated that the appropriateness of the alternative would require a qualitative description of what measure will be implemented, why it is proposed, and how it will reduce greenhouse gas emissions. Finally, the City stated that any proposed mitigation measure would require a description of how the alternative project measure would achieve the same or greater level of greenhouse gas emission reductions as the City's 2030 Greenhouse Gas Reduction Strategy it replaces, including documentation or calculations to support the Alternative Measure.<sup>27</sup>

Staff then filed the Addendum,<sup>28</sup> which proposes changes to MM GHG-1; these changes provide an alternative to participating in the San Jose Clean Energy Total Green energy program based on Applicant's proposed three-factor mitigation measure.<sup>29</sup>

Based on the foregoing, how does the revised MM GHG-1 mitigate the potentially significant environmental impact of greenhouse gas emissions to less than significant levels? Please describe how the changes to MM GHG-1 address the comments filed by the City of San Jose relating to compliance with the City's previously adopted greenhouse gas emission reduction strategies and the law, including California Code of Regulations, title 14, sections 15064.5 and 15183.5.<sup>30</sup> What are the performance standards that ensure the mitigation goal will be achieved consistent with the requirement that a lead agency must not defer determinations of offset adequacy?<sup>31</sup>

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<sup>27</sup> *Id.* at p. 3.

<sup>28</sup> TN 239361.

<sup>29</sup> *Id.* at p. 1, 20-21.

<sup>30</sup> *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 525 (greenhouse gas mitigation measures must be real, permanent, quantifiable, verifiable, enforceable, and additional to other, more traditional mitigation measures).

<sup>31</sup> *Id.* at 520 (lead agency must not defer determinations of offset adequacy).

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

The CEC's Public Advisor's Office provides assistance to the public to participate in CEC proceedings. For information on participation or to request interpreting services or reasonable accommodations, please contact the Public Advisor's Office at [publicadvisor@energy.ca.gov](mailto:publicadvisor@energy.ca.gov), or by phone at (916) 654-4489, or toll free at (800) 822-6228.

**Direct questions of a procedural nature** related to the Application to Susan Cochran, Hearing Officer, at [susan.cochran@energy.ca.gov](mailto:susan.cochran@energy.ca.gov) or (916) 891-8078, or Ralph Lee, Hearing Officer, at [ralph.lee@energy.ca.gov](mailto:ralph.lee@energy.ca.gov) or (916) 776-3408.

**Direct technical subject inquiries** concerning the Application to Lisa Worrall, Project Manager, at [lisa.worrall@energy.ca.gov](mailto:lisa.worrall@energy.ca.gov) or (916) 661-8367.

**Direct media inquiries** to [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

## **AVAILABILITY OF DOCUMENTS**

Information regarding the status of the Application, as well as notices and other relevant documents, are available on the [Great Oaks South SPPE web page](#) for the Great Oaks South Backup Generating Facility proceeding found at: <https://www.energy.ca.gov/powerplant/reciprocating-engine/great-oaks-south-generating-facility>.

## **IT IS SO ORDERED.**

Dated: August 25, 2021

***APPROVED BY:***

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

Dated: August 26, 2021

***APPROVED BY:***

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