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State of California
State Energy Resources Conservation and
Development Commission
715 P Street, Sacramento, CA 95814
(800) 822-6228 – www.energy.ca.gov

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

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

Docket No. 19-SPPE-04

RULING ON STAFF REQUEST FOR REVISED SCHEDULING ORDER AND REVISED SCHEDULING ORDER

BACKGROUND

On November 15, 2019, Microsoft Corporation (Applicant) submitted an application for a small power plant exemption for the San Jose City Backup Generating Facility (Application)¹ to the California Energy Commission (CEC).² On December 17, 2019, the CEC appointed a committee consisting of Karen Douglas, Commissioner and Presiding Member, and Patricia Monahan, Commissioner and Associate Member, (Committee), to preside over this Application.³

On February 4, 2020, the Presiding Member issued “General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters,” which, among other things, specify the requirements for motions.⁴ Those Orders say that “(w)ritten motions submitted by a party shall state the motion clearly in the document’s title and

¹ Information about this proceeding, including a link to the electronic docket, may be found on the San Jose Data Center SPPE [web page](https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center) at <https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center>. 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, and 230770, and a supplemental application is TNs 239409, 239410, 239411, 239412, 239413, 239419, 239420, 239421, 239422, and 239597.

² The CEC is formally known as the “State Energy Resources Conservation and Development Commission.” (Pub. Resources Code, § 25200.) All further references are to the Public Resources Code unless otherwise specified.

³ TN 231265.

⁴ TN 231937.

include a statement of the relief or action requested, the grounds for the requested relief or action, and citation to a rule, law, or other authority authorizing the Committee or CEC to grant the request.” The Committee issued a Scheduling Order on May 13, 2020,⁵ which set milestones for the completion of the proceedings on the Application. One such milestone required the CEC staff (Staff) to file its environmental document “[n]o later than 30 days after receipt of the last data request response from Applicant.”

REQUEST FOR SCHEDULING ORDER MODIFICATION

Staff’s Request for Modifications

On September 15, 2021, Staff filed “Status Report #18 and Request for Scheduling Order Modification” (Request).⁶ In the Request, Staff observed that the current schedule is not reflective of recent filings and requested that the Committee make three modifications to the proceeding.

Staff’s first modification request is that the evidentiary hearing be limited to entering documents into the hearing record, responding to the Committee’s written or oral questions, if any, and taking public comment. Staff’s second modification request is that intervention not be permitted in the proceeding. Staff states that the public has multiple opportunities to comment on the proceedings: after Staff issues the draft environmental impact report (DEIR); at the evidentiary hearing; and at the Business Meeting. As such, Staff claims that intervention is a redundant means to comment on the proceedings.

Staff argues that these two changes would improve the efficiency of the proceeding while still “preserving robust public engagement beyond the requirements of the California Environmental Quality Act,” especially since the CEC is not approving the project and the City of San Jose will hold additional public proceedings before any actual project approval.

Staff’s third modification request is that the deadline to file the environmental document for the Application be changed from “[n]o later than 30 days after receipt of the last data request response from Applicant” to “[n]o later than 60 days following staff acknowledgement in a status report that is has no further data requests.” Staff’s basis for this request is that the recent changes to the project description and technical sections, combined with the need to evaluate Applicant’s responses to outstanding data requests, raised concerns that Staff will be unable to publish the environmental document within the 30 days required by the current Scheduling Order.

No responses to the Request were submitted.

⁵ TN 232976.

⁶ TN 239720.

Presiding Member Ruling

As a preliminary matter, the Presiding Member determines that, although Staff's Request is not styled as a "motion" within the requirements of the General Orders, the legal and procedural requirements of a motion will be applied here.⁷ Staff's first two requests were not properly noticed, as the requests were not identified in the title of the document as required under the General Orders for this proceeding.⁸ Staff's first two requests affect the rights of parties, including potential intervenors, to participate and present testimony in the proceeding. Without proper notice, these parties may not have had adequate opportunity to respond to the Request.

In addition, as to Staff's first request, to limit the evidentiary proceedings, the Presiding Member finds that there is insufficient information regarding the issues related to the proceeding to determine whether the request is reasonable at this time. For this reason, the Presiding Member **DENIES** Staff's first request without prejudice.

As to Staff's second request, to prohibit intervention in the proceeding, the Presiding Member finds that Staff has not identified any rule, law, or other authority authorizing the Committee to grant the request, or which would make limiting intervention in this proceeding reasonable. Subject to regulation and the provisions of this proceeding, any person may file a petition to intervene,⁹ to which Staff may then respond.¹⁰ As such, the Presiding Member **DENIES** Staff's second request.

As to Staff's third request, to extend the deadline by which to file the environmental review document, the Presiding Member finds that Staff's request is reasonable given the circumstances of this proceeding. Therefore, the Presiding Member **GRANTS** Staff's third request.

REVISED SCHEDULING ORDER

The Presiding Member hereby adopts the revised schedule for the proceeding that is attached below. Parties are encouraged 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 meeting or to request interpreting services or other reasonable modification or accommodations, reach out via

⁷ See Cal. Code Regs., tit. 20, § 1211.5.

⁸ TN 231937, at p. 1.

⁹ Cal. Code Regs., tit. 20, § 1211.7, subd. (a).

¹⁰ Cal. Code Regs., tit. 20, § 1211.5, subd. (a).

email at PublicAdvisor@energy.ca.gov, by phone at (916) 654-4489, or toll free at (800) 822-6228. Requests should be made for interpreting services, reasonable modifications and accommodations as soon as possible but at least five days in advance. However, the CEC will work diligently to meet all requests based on the availability of the service or resource requested.

Questions of a procedural nature should be directed to the Hearing Officers, [Caryn Holmes](mailto:Caryn.Holmes@energy.ca.gov) at Caryn.Holmes@energy.ca.gov, and [Deborah Dyer](mailto:Deborah.Dyer@energy.ca.gov) at Deborah.Dyer@energy.ca.gov.

Technical questions concerning the Application should be addressed to [Lisa Worrall](mailto:Lisa.Worrall@energy.ca.gov), at Lisa.Worrall@energy.ca.gov or (916) 661-8367.

Media inquiries should be sent to the [Media and Public Communications Office](mailto:MediaOffice@energy.ca.gov) at 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 [San Jose Data Center SPPE web page](https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center) at <https://www.energy.ca.gov/powerplant/reciprocating-engine/san-jose-data-center>.

IT IS SO ORDERED.

Dated: October 14, 2021

APPROVED BY:

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

Mailed to list number(s): 7532

**SAN JOSE CITY BACKUP GENERATING FACILITY SPPE (19-SPPE-04)
SCHEDULING ORDER
OCTOBER 2021**

EVENT	DATE
All Parties File Status Reports	No later than the 15 th of every month
Staff Filed Notice of Preparation of an Environmental Impact Report (EIR)	February 1, 2021
Staff Held EIR Scoping Meeting	February 19, 2021
Staff Publishes its Draft EIR and Sends the Appropriate Notice to the State Clearinghouse	No later than 60 days following Staff acknowledgement in a status report that it has no further data requests
Close of Public Comment Period on Staff's Draft EIR ¹¹	45 days after Staff publishes the Draft EIR
Last Day to File Petition to Intervene ¹²	45 days after Staff publishes the Draft EIR
Staff Files Responses to Public Comment and Final EIR	20 days after close of public comment period
All Parties File Opening Testimony	15 working days after Staff files its responses to public comment
All Parties File Reply Testimony and any Errata or Addendum to the Final EIR ¹³	14 days after Opening Testimony

¹¹ Please note that the State Clearinghouse has 3 working days to distribute. (Pub. Resources Code, § 21091, subd. (c)(3).)

¹² 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).)

¹³ Seven days prior to the evidentiary hearing or at such other times as ordered by the presiding member. (Cal. Code Regs., tit. 20, § 1943.)

All Parties File Prehearing Conference (PHC) Statements	5 days after Reply Testimony
PHC	7 days after PHC statement
Evidentiary Hearing (EH) ¹⁴	To be determined
Committee files Proposed Decision	To be determined
Final Adoption Hearing by the CEC	To be determined

¹⁴ 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 "Notice of Committee Conference and Orders on Hearings," 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 232773.)