

| <b>DOCKETED</b>         |   |
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| <b>Docket Number:</b>   | 19-SPPE-04  |
| <b>Project Title:</b>   | SJ2   |
| <b>TN #:</b>            | 243828  |
| <b>Document Title:</b>  | Notice of Availability of the Committee Proposed Decision, Notice of Public Comment Period, and Notice of CEC hearing |
| <b>Description:</b>     | N/A   |
| <b>Filer:</b>           | Ngoc Tran   |
| <b>Organization:</b>    | California Energy Commission  |
| <b>Submitter Role:</b>  | Committee   |
| <b>Submission Date:</b> | 7/1/2022 1:45:35 PM   |
| <b>Docketed Date:</b>   | 7/1/2022  |

**CALIFORNIA ENERGY COMMISSION**

715 P Street  
Sacramento, California 95814

[energy.ca.gov](http://energy.ca.gov)

CEC-70 (Revised 11/2021)



*IN THE MATTER OF:*

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

Docket No. 19-SPPE-04

**NOTICE OF AVAILABILITY OF THE COMMITTEE PROPOSED DECISION,  
NOTICE OF PUBLIC COMMENT PERIOD, AND NOTICE OF CALIFORNIA  
ENERGY COMMISSION HEARING**

**I. NOTICE OF AVAILABILITY**

**AVAILABILITY OF PROPOSED DECISION**

On December 17, 2019, the Committee<sup>1</sup> appointed by the California Energy Commission (CEC) to conduct proceedings on the application for a small power plant exemption (SPPE) for the San Jose City Backup Generating Facility (Application)<sup>2</sup> issued its Committee Proposed Decision (Proposed Decision), as required by California Code of Regulations, title 20, section 1945(a). The Proposed Decision was filed with the CEC's Docket Unit and a link to the internet-posted document was e-mailed to the Proof of Service list and the San Jose City Backup Generating Facility SPPE list subscription.

<sup>1</sup> TN 231265. On March 24, 2022, the CEC amended the committee appointments for this Application, appointing Patricia Monahan, Commissioner and Presiding Member, and Kourtney Vaccaro, Commissioner and Associate Member. TN 242445.

<sup>2</sup> 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](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04) at <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.

The Proposed Decision may be viewed or downloaded from the CEC's website at:

<https://efiling.energy.ca.gov/EFiling/GetFile.aspx?tn=243824-1&DocumentContentId=77756>

<https://efiling.energy.ca.gov/EFiling/GetFile.aspx?tn=243824-2&DocumentContentId=77757>

A printed copy of the Proposed Decision is available for a fee. To request a printed copy, please email the CEC's Publications Unit at [BSORequests@energy.ca.gov](mailto:BSORequests@energy.ca.gov) or call (916) 654-5200.

## **EXECUTIVE SUMMARY OF PROPOSED DECISION**

The Application was submitted on November 15, 2019, to the CEC under Public Resources Code section 25541. The Warren-Alquist Act<sup>3</sup> grants the CEC the exclusive jurisdiction to approve or deny applications for the construction and operation of thermal powerplants that have the capacity to generate 50 megawatts (MW) or more of electricity.<sup>4</sup> Section 25541 creates an exemption to this exclusive jurisdiction that is referred to as a "Small Power Plant Exemption."

To grant an exemption, the CEC must make three distinct findings:

- the proposed powerplant has a generating capacity up to 100 MW;
- no substantial adverse impact on the environment will result from the construction or operation of the powerplant; and
- no substantial adverse impact on energy resources will result from the construction or operation of the powerplant.<sup>5</sup>

In addition, the CEC is required by law to serve as the "lead agency" under the California Environmental Quality Act (CEQA)<sup>6</sup> for SPPE applications.<sup>7</sup> Under CEQA, "project" means the "whole of an action."<sup>8</sup> Accordingly, the CEC evaluates the entire proposed project—the San Jose City Data Center, the backup generators that serve the Data Center, and other project features—under CEQA. This is collectively referred to as the "Project."

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<sup>3</sup> Formally known as the Warren-Alquist State Energy Resources Conservation and Development Act. See Pub. Resources Code, § 25000 *et seq.*

<sup>4</sup> Pub. Resources Code, §§ 25120, 25500.

<sup>5</sup> Pub. Resources Code, § 25541.

<sup>6</sup> The CEQA statutes (Pub. Resources Code, § 21000 *et seq.*), and the Guidelines for the Implementation of CEQA (Cal. Code Regs., tit. 14, § 15000 *et seq.*), detail the protocol by which state and local agencies comply with CEQA requirements. We refer to the statute and the guidelines collectively as "CEQA." We will cite to the guidelines as "Guidelines, § \_\_\_\_."

<sup>7</sup> Pub. Resources Code, § 25519(c).

<sup>8</sup> Guidelines, § 15378.

To help the Committee review the Project's potential environmental impacts, CEC staff prepared a draft Environmental Impact Report (EIR) that was circulated to the public and to responsible and trustee agencies for a 45-day public review and comment period beginning on December 23, 2021. After the public review and comment period, CEC staff reviewed and responded to the substantive environmental comments received. CEC staff then prepared a final EIR that included the comments received during the comment period, the responses to those comments, and changes to the text of the draft EIR following from the responses. CEC staff later prepared an addendum to the final EIR containing revised mitigation measures. Staff also prepared a proposed Mitigation Monitoring and Reporting Program.

The Committee conducted a public evidentiary hearing on May 26, 2022, to admit evidence, including the final EIR, the addendum, and the mitigation monitoring or reporting program, into the hearing record, to allow for testimony and cross-examination, and to receive public comment. Based on the hearing record, the Committee prepared a Proposed Decision.

In its Proposed Decision, the Committee recommends that the CEC find: (1) the backup generators will have a generating capacity of more than 50 MW but less than 100 MW; (2) the construction and operation of the Project will not have any substantial adverse impact on the environment; and (3) the construction and operation of the Project will not have any substantial adverse impact on energy resources. The Committee further recommends that the CEC certify the final EIR and addendum, adopt the Mitigation Monitoring and Reporting Program, and grant the SPPE.

## **II. NOTICE OF PUBLIC COMMENT PERIOD**

The CEC and the Committee invite interested persons, public agencies, and other entities to submit written comments on the Proposed Decision prior to the CEC hearing where it will be considered for adoption. Any written comments on the Proposed Decision must be received by **5:00 p.m. on July 11, 2022.**

To ensure that your comments are considered, they must be electronically uploaded to the e-filing system, or received by the Docket Unit via email, or physically delivered via mail on or before the above date and time.

Comments may be submitted electronically to the [19-SPPE-04 comment page](#), at <https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=19-SPPE-04>.

Otherwise, written comments may be submitted for posting on the proceeding docket by emailing the Public Advisor at [publicadvisor@energy.ca.gov](mailto:publicadvisor@energy.ca.gov) or e-mailing the Docket Unit at [docket@energy.ca.gov](mailto:docket@energy.ca.gov), or sending by U.S. Mail to:

California Energy Commission  
Docket Unit  
Docket number: 19-SPPE-04  
715 P Street, MS-14  
Sacramento, CA 95814

For all comments, please include the docket number and proceeding name "**Docket No. 19-SPPE-04, San Jose City Backup Generating Facility**" in the subject line and on the cover page.

**Please note:** Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via internet search engines.

Following the end of the comment period, the Committee, if appropriate, may prepare errata describing any changes to the Proposed Decision it recommends after its consideration of comments from the parties and the public.

### **III. NOTICE OF CEC HEARING AT THE BUSINESS MEETING**

**PLEASE TAKE NOTICE** that the CEC will conduct a public hearing as an item at the July 13, 2022, Business Meeting to consider the Proposed Decision, any errata, and comments. The Business Meeting will be held on:

**Wednesday, July 13, 2022  
10:00 a.m. to 4:00 p.m. (Pacific Time)**

Instructions for participating in person or remotely at the Business Meeting will be provided in the Business Meeting notice, available on the CEC's [Business Meeting webpage](https://www.energy.ca.gov/proceedings/business-meetings) at <https://www.energy.ca.gov/proceedings/business-meetings>.

#### **PURPOSE OF THE CEC HEARING**

The purpose of this hearing is to consider whether the CEC should adopt, modify, or reject the Proposed Decision and any errata. Parties and members of the public may participate and offer oral comments on the CEC's consideration of the Proposed Decision and any errata when the matter is heard at the Business Meeting. The agenda is available at least 10 business days before the date of the meeting. Please visit the [CEC's Business Meeting Web Page](https://www.energy.ca.gov/proceedings/business-meetings) at: <https://www.energy.ca.gov/proceedings/business-meetings>.

If the Proposed Decision is adopted, the CEC will prepare a Final Commission Decision that incorporates the CEC Adoption Order, Committee Proposed Decision, any errata, and any

modifications made by the CEC during the July 13, 2022, Business Meeting into a single document for the convenience of the parties and the public.

Information regarding the Business Meeting is available on the [CEC's Business Meeting Web Page](https://www.energy.ca.gov/proceedings/business-meetings) at <https://www.energy.ca.gov/proceedings/business-meetings>. To subscribe to the Business Meeting Email List, enter your contact information under "Subscribe."

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

The CEC's Public Advisor provides the public with assistance in participating in CEC proceedings. For information about how to participate or to request interpreting services or other reasonable modification and accommodations, please contact the Public Advisor at [publicadvisor@energy.ca.gov](mailto:publicadvisor@energy.ca.gov), or by phone at (916) 957-7910. Requests for interpreting services, modifications, and reasonable accommodations should be made as soon possible or at least five days in advance of the Committee Conference. The CEC will work diligently to meet all requests based on the availability of the service or resource needed.

**Direct questions of a procedural nature** related to the Application to the Hearing Officers, Deborah Dyer at [deborah.dyer@energy.ca.gov](mailto:deborah.dyer@energy.ca.gov), or Caryn Holmes at [caryn.holmes@energy.ca.gov](mailto:caryn.holmes@energy.ca.gov).

**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 [SJ02 Online Docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04>.

Dated: July 1, 2022

### ***APPROVED BY:***

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Patricia Monahan  
Commissioner and Presiding Member  
San Jose City Backup Generating Facility  
SPPE Committee

Dated: July 1, 2022

### ***APPROVED BY:***

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Kourtney Vaccaro  
Commissioner and Associate Member  
San Jose City Backup Generating Facility  
SPPE Committee

*Mailed to list number: 7532*