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STATE OF CALIFORNIA — NATURAL RESOURCES AGENCY

Gavin Newsom, *Governor*

CALIFORNIA ENERGY COMMISSION

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CEC-70 (Revised 11/2021)



IN THE MATTER OF:

CA3 Backup Generating Facility

Docket No. 21-SPPE-01

NOTICE OF COMMITTEE CONFERENCE (CLOSED SESSION); NOTICE OF PUBLIC COMMENT PERIOD ON UPDATED AIR QUALITY ANALYSIS; ORDER SHORTENING TIME; ORDER REGARDING UPDATED INFORMATION ON TRIBAL CONSULTATION

In April 2021, Vantage Data Centers (Applicant) submitted an application for a small power plant exemption (SPPE) for the CA3 Backup Generating Facility (Application)¹ to the California Energy Commission (CEC). Applicant proposes to construct and operate the CA3 Backup Generating Facility (Backup Generators) to provide an uninterrupted power supply for the CA3 Data Center (Data Center). Applicant will also construct an electrical substation for use by Silicon Valley Power, the local power provider. The Backup Generators, Data Center, substation, and other features are referred to as the "Project."

¹ Information about this proceeding, including a link to the electronic docket, may be found on the [CA3 web page](https://www.energy.ca.gov/powerplant/reciprocating-engine/ca3-backup-generating-facility) at <https://www.energy.ca.gov/powerplant/reciprocating-engine/ca3-backup-generating-facility>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01>. The Application and related addenda are TN 237380 through 237383, TN 237423, and TN 237521.

I. NOTICE OF COMMITTEE CONFERENCE (CLOSED SESSION)

PLEASE TAKE NOTICE that the Committee² has scheduled a **COMMITTEE CONFERENCE (CLOSED SESSION)**:

Wednesday, July 27, 2022

9:00 a.m. – 11:00 a.m.

The Committee Conference (Closed Session) will be held primarily for the purpose of conducting closed session deliberations, according to California Government Code section 11126.3, subdivision (c)(3). The Committee Conference (Closed Session) will be by remote access only consistent with Senate Bill 189 (Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2022). Please note that the CEC aims to begin promptly at the start time and the end time is an estimate based on the agenda proposed. The event may end sooner or later than the time indicated depending on various factors.

Remote Attendance: You may participate in this meeting through the on-line meeting service, Zoom. Please be aware that the meeting may be recorded.

[Learn about joining a Zoom meeting](https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting) at <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>. You may [download Zoom software](https://zoom.us/download) at <https://zoom.us/download>.

Zoom technical support is available at (888) 799-9666, ext. 2 and you may visit [Zoom's help center](https://support.zoom.us/hc/) at <https://support.zoom.us/hc/>. Or you may email the CEC's Public Advisor to seek help at publicadvisor@energy.ca.gov, and by phone at (916) 957-7910.

Via Computer: Participants may join noticed events by clicking on the links below. You may also [access Zoom](https://join.zoom.us) at <https://join.zoom.us> and entering the Webinar ID and password for the event (listed below). To comment, use Zoom's "raise hand" feature and unmute. If interpreting services are provided, to use the service, click Zoom's interpretation icon and select the language. Interpreting services are not available by phone.

[Click to join](#) July 27, 2022, at 9:00 a.m. or

<https://energy.zoom.us/j/99599070718?pwd=L0RvTWZmQ25HSDV5T0dKeWxkWmRTdz09>

Webinar ID: 995 9907 0718

² On March 24, 2022, the CEC amended the committee appointments for this Application, appointing Siva Gunda, Vice Chair and Presiding Member, and Kourtney Vaccaro, Commissioner and Associate Member (TN 242447).

Password: CSPPE@0727

Via Telephone: Dial (877) 853-5257 (Toll Free), (888) 475-4499 (Toll Free), or (669) 219-2599. When prompted, input the unique Webinar ID listed above. To comment or ask a question over the telephone, dial *9 to "raise your hand" and *6 to mute/unmute your phone line.

Via Mobile Device: Access to Zoom meetings is available from your mobile device. To download the app, [visit the Zoom Download Center](https://zoom.us/download) at <https://zoom.us/download>.

PURPOSE OF THE COMMITTEE CONFERENCE

The Committee Conference (Closed Session) will be held for the primary purpose of conducting Committee deliberations in closed session. The open meeting will be convened, public comment will be taken, and then the closed session will begin. The open meeting will reopen at the conclusion of the closed session for the purpose of disclosing any reportable action taken in closed session.

NOTICE OF CLOSED SESSION DELIBERATIONS

The Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

II. NOTICE OF PUBLIC COMMENT PERIOD ON UPDATED AIR QUALITY ANALYSIS

BACKGROUND

CEC staff (Staff) published a Final Environmental Impact Report (Final EIR) for the Project on March 24, 2022.³

On May 27, 2022, the Committee held an Evidentiary Hearing.⁴ At the conclusion of the Evidentiary Hearing, the Committee requested that Staff, in consultation with Applicant, prepare a supplement to the Final EIR that incorporated an updated analysis of the cumulative health risk assessment in the Air Quality section of the Final EIR, based on the testimony and other evidence admitted during the Evidentiary Hearing.⁵

On June 22, 2022, Staff filed a Memorandum and Update to Air Quality Section of FEIR (June 22 Update). The June 22 Update contained revisions to the Air Quality section based on the

³ TNs 242451, 242452, 242453, 242454.

⁴ TN 243504.

⁵ *Id.* at 102:18 – 103:20

Committee’s direction at the Evidentiary Hearing. The June 22 Update included three refinements: a reduction of the radius used to analyze the health impacts of the Project from 2,000 feet to 1,000 feet; reduction of the background emissions from the nearby Caltrain rail line based on an electrification project; and a reduction of the amount of time a worker would be exposed to emissions from the Project.⁶

DISCUSSION

Under the California Environmental Quality Act (CEQA),⁷ if the lead agency adds “significant new information” to an EIR after the close of the public comment period but before certification of the final EIR, the lead agency must provide a new public comment period.⁸

Significant new information requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it; or
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.⁹

In contrast, new information that “merely clarifies or amplifies or makes insignificant modifications in an adequate EIR” does not require recirculation.¹⁰

⁶ TN 243672.

⁷ 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.*) (Guidelines), 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, § _____.”

⁸ Pub. Resources Code, § 21092.1.

⁹ Guidelines, § 15088.5.

¹⁰ *Ibid.*

In this case, the information in the June 22 Update is not the kind of “significant new information” requiring recirculation under CEQA. However, because of the reduction in the radius used in evaluating the Project’s potential health risks, the Committee believes it prudent to specifically seek public and agency comment on these and other changes to the analysis contained in the June 22 Update.

PUBLIC AND AGENCY COMMENT

We hereby **NOTICE** that any interested agencies or members of the public who wish to file comment on the revised analysis in the June 22 Update provide those comments **by 5:00 p.m. on July 22, 2022**. We specifically invite the Bay Area Air Quality Management District to provide any information or comments on this topic by July 22, 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 [21-SPPE-01 comment page](#), at <https://efiling.energy.ca.gov/EComment/EComment.aspx?docketnumber=21-SPPE-01>.

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

California Energy Commission
Docket Unit
Docket number: 21-SPPE-01
715 P Street, MS-14
Sacramento, CA 95814

For all comments, please include the docket number and proceeding name **“Docket No. 21-SPPE-01 CA3 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.

III. ORDER SHORTENING TIME

On July 6, 2022, Applicant filed “Vantage Data Centers’ Request for Special Business Meeting” (Motion for Expedited Review).¹¹ In the Motion for Expedited Review, “Applicant requests that the CEC “schedule a Business Meeting to approve the SPPE as soon as practical and before the next regularly scheduled Business Meeting in August.”¹²

When motions are made to the CEC, any response to the motion must be filed within 14 days.¹³ This time may be modified by order of the Presiding Member.¹⁴

Here, responses to the Motion for Expedited Review would be due July 20, 2022. In order to provide sufficient time for the Committee to consider the motion, the Committee hereby **GRANTS** *sua sponte* an order shortening time. Any response to the Motion for Expedited Review shall be filed **no later than 5:00 p.m. on July 19, 2022.**

IV. ORDER REGARDING UPDATED INFORMATION ON TRIBAL CONSULTATION

In the Draft EIR filed by Staff, the process of consultation with Native American tribes and nations is described.¹⁵ After noting a request for consultation from the Tamien Nation, the Draft EIR concludes by saying, “Consultation between the CEC and Tamien Nation is ongoing as of the time of this writing; CEC staff will update this results discussion in the final environmental impact report after the consultation concludes.”¹⁶ However, in the Final EIR, the text remains the same without an update to the outcome of the consultation process.¹⁷

The Committee hereby **ORDERS** Staff to update the Final EIR with information about the conclusion of the consultation process with the Tamien Nation. Staff’s update on this issue shall be filed **by 5:00 p.m. on July 22, 2022.** The Committee further **ORDERS** Staff to file any appropriate motion or stipulation for the updated information to be admitted into the evidentiary record **by 5:00 p.m. on July 25, 2022.**

¹¹ TN 243922. We note that “special meeting” has a specific meaning under the Bagley Keene Open Meeting Act. (Gov. Code, § 11125.4.) Applicant’s Motion does not, on its face, contain information to conclude that a special meeting could be called. We therefore treat the motion as one seeking expedited review and refer to it as such.

¹² TN 243922, at p. 1.

¹³ Cal. Code Regs., tit. 20, § 1211.5(a).

¹⁴ *Ibid.*

¹⁵ TN 241264, pp. 4.5-11 – 4.5-14.

¹⁶ *Id.* at 4.5-14.

¹⁷ TN 242453, p. 4.5-14.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor provides the public with assistance in participating in CEC proceedings. For information on how to participate in this proceeding, please contact the [Public Advisor](#) at publicadvisor@energy.ca.gov, or (916) 957-7910. Requests for interpreting services, reasonable accommodations, and other modifications should be made at least five days in advance. The CEC will work diligently to accommodate 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, [Kristen Driskell](#) at Kristen.Driskell@energy.ca.gov, or [Susan Cochran](#) at susan.cochran@energy.ca.gov or (916) 891-8078.

Direct technical subject inquiries concerning the Application to [Eric Veerkamp](#), Project Manager, at Eric.Veerkamp@energy.ca.gov or (916) 661-8458.

Direct media inquiries to 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 [CA3 Online Docket](#) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01>.

Dated: July 14, 2022

APPROVED BY:

Siva Gunda
Vice Chair and Presiding Member
CA3 Backup Generating Facility SPPE
Committee

Dated: July 13, 2022

APPROVED BY:

Kourtney Vaccaro
Commissioner and Associate Member
CA3 Backup Generating Facility SPPE
Committee

AGENDA

CA3 Backup Generating Facility SPPE (21-SPPE-01) Committee Conference (Closed Session)

July 27, 2022

9:00 a.m. – 11:00 a.m.

1. Call to Order.

2. Public Comment.

Parties, members of the public, and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

3. Committee closed session deliberations on the application for a small power plant exemption for the CA3 Backup Generating Facility.¹⁸

4. Adjourn.

¹⁸ The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body is required by law to conduct.