

**DOCKETED**

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# Memorandum

**To:** Chair David Hochschild  
Commission Vice Chair Siva Gunda  
Commissioner Noemi Gallardo  
Commissioner J. Andrew McAllister, Ph.D  
Commissioner Patty Monahan

**Date:** March 30, 2023

**From:** Drew Bohan, Executive Director  
California Energy Commission  
715 P Street  
Sacramento, California 95814

**Subject: Executive Director’s Recommendation on STACK Infrastructure Small Power Plant Exemption Application**

## I. Introduction

In a series of filings between December 10, 2021, and April 11, 2022, STACK Infrastructure filed an application for Small Power Plant Exemption (SPPE) in accordance with California Public Resources Code section 25541, seeking to exempt the STACK Trade Zone Park project from the Application for Certification provisions of the California Energy Commission’s (CEC) power plant licensing process. California Code of Regulations, title 20, sections 1936 through 1942, set forth the procedures for the CEC’s review of an SPPE application. Section 1942 requires the Executive Director recommend findings to the CEC on whether the application meets the requirements of Public Resources Code section 25541.

## II. Background

Under the Public Resources Code, the CEC has the exclusive jurisdiction to approve or deny applications for the construction and operation of thermal power plants that have the capacity to generate 50 megawatts (MW) or more of electricity. Under Public Resources Code section 25541, the CEC may exempt from its exclusive jurisdiction thermal power plants with a generating capacity of up to 100 MW if the CEC finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility. Public Resources Code section 25519(c) designates the CEC as the “lead agency” under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) for SPPE applications.

Under my direction, staff analyzed all three requirements of Public Resources Code section 25541: 1) generating threshold, 2) no substantial adverse impacts on the environment, and 3) no substantial adverse impacts on energy resources. Following the procedures required in CEQA, staff received and reviewed the application, obtained additional information necessary to evaluate the project impacts, and published a comprehensive Environmental Impact Report

(EIR) on March 30, 2023. The EIR underwent all required public review and comment periods, including a public scoping meeting. Staff reviewed and considered each comment received during the preparation of the Final EIR and included appropriate responses.

Appendix A of the EIR contains staff's engineering analysis of the project's generating capacity which considers the capacity and configuration of the generators and the project's demand. The analysis provides substantial evidence supporting staff's conclusions that the project would be 91 MW, thus satisfying the generating capacity threshold requirements of Public Resources Code section 25541.

The CEQA analysis and findings in the EIR submitted for CEC approval adequately support the conclusion that the construction and operation of the STACK Trade Zone Park project will not have substantial adverse impacts on the environment. The EIR dedicates considerable analysis on topics such as air quality, public health, biological resources, transportation, and greenhouse gas emissions, and contains substantial evidence that supports staff's conclusions that with implementation of the required mitigation measures, the project will not have any significant adverse environmental impacts. The adoption of the Mitigation Monitoring and Reporting Program will ensure that the project features and mitigation measures will be implemented.

In Section 4.6 Energy and Energy Resources of the EIR, staff analyzes the project's impacts on energy resources. The analysis finds the project's consumption of energy resources during operation would not be wasteful, inefficient, or unnecessary. The project's use of diesel fuel would constitute a small fraction of available resources. The annual average Power Usage Effectiveness for the project would be at a level considered very efficient. Finally, the project would be constructed in accordance with the 2022 California Green Building Standards Code and would include green building measures to reduce energy consumption. As such, the EIR contains substantial evidence supporting the conclusion that the project will not result in any substantial adverse impacts on energy resources, and therefore comports with the requirements of Public Resources Code section 25541.

### **III. Recommendation**

Based on the entire record of this proceeding, including the SPPE application, Final Environmental Impact Report, and proposed Mitigation Monitoring and Reporting Program, I recommend the CEC make the following findings consistent with Public Resources Code section 25541:

1. The generating capacity of the project will not exceed 100 megawatts.
2. The construction and operation activities of the project will not create a substantial adverse impact on the environment.
3. The construction and operation activities of the project will not create a substantial adverse impact on energy resources.

Therefore, I recommend the CEC:

1. Certify the Final Environmental Impact Report,
2. Adopt the Mitigation Monitoring and Reporting Program, and

3. Grant the STACK Trade Zone Park a small powerplant exemption from the Application for Certification provisions of the CEC's powerplant licensing process in accordance with California Public Resources Code section 25541.