

DOCKETED

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**State of California
State Energy Resources Conservation and
Development Commission**
1516 Ninth Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov

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

LAURELWOOD DATA CENTER

Docket No. 19-SPPE-01

**ORDERS AFTER JULY 23, 2019 STATUS CONFERENCE
AND REVISED SCHEDULING ORDER**

Background

On March 5, 2019, MECP1 Santa Clara 1, LLC (Applicant) submitted an application for a small power plant exemption (hereafter, the application is referred to as the “SPPE”)¹ for the Laurelwood Data Center to the California Energy Commission (Energy Commission).

The Energy Commission has the exclusive authority to consider, and ultimately approve or deny, applications for the construction and operation of thermal power plants that will generate 50 megawatts (MW) or more of electricity.² An SPPE is subject to an expedited process designed to potentially exempt thermal power plants that will generate between 50 MW and 100 MW from the Energy Commission’s certification jurisdiction.³ As required by the California Environmental Quality Act (CEQA),⁴ the Energy Commission evaluates the whole of the proposed project to determine generating capacity and to analyze whether the construction or operation of the project would result in substantial adverse impacts on the environment or energy resources.⁵ In considering an SPPE, the Energy Commission is the CEQA “lead agency.”⁶

If the Energy Commission grants an SPPE, the responsible local land use authorities and other agencies such as the local air management district will assume jurisdiction over the

¹ All of the documents comprising the SPPE application can be found at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-01>.

² Pub. Resources Code, §§ 25120, 25500.

³ See Cal. Pub. Resources Code, §25541; Cal. Code Regs., tit. 20, §§ 1934 et seq.

⁴ The CEQA statute, California Public Resources Code § 21000 et seq., codifies a statewide policy of environmental protection. The California Resources Agency promulgates the CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. (Guidelines), that detail the protocol by which state and local agencies comply with CEQA requirements. We refer to the statute and the Guidelines collectively as “CEQA.”

⁵ Pub. Resources Code, §§ 25500, 25541.

⁶ Pub. Resources Code, § 25519, subd. (c).

project under their respective permitting processes and conduct any other necessary environmental review.

Summary of Proceedings

The Energy Commission appointed a committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea A. Scott, Vice Chair and Associate Member (the Committee), on April 10, 2019.⁷ The Committee held a Committee Conference on May 8, 2019.⁸ Following that Committee Conference, the Committee issued a Committee Scheduling Order.⁹ The Committee Scheduling Order included a number of deadlines, including a discovery cut-off of May 6, 2019 and the filing of an initial study by July 11, 2019.

On June 13 and 21, 2019, the Applicant filed “Updated Project Descriptions”¹⁰ to incorporate changes based on discussions at the Committee Conference and with the City of Santa Clara.¹¹

In response to the Updated Project Descriptions, Energy Commission staff (Staff) filed a motion on July 8, 2019, seeking leave to present further data requests on the topics of Hazards and Hazardous Materials and Hydrology/Water Quality (July 8 Discovery Motion).¹² On July 16, 2019, the Applicant filed responses to the data requests contained in the July 8 Discovery Motion.¹³

On July 16, 2019, Staff filed its “Second Motion for Leave to File Additional Data Requests” (July 16 Discovery Motion). The July 16 Discovery Motion sought information on Transportation and Hazards and Hazardous Materials related to the Updated Project Descriptions.¹⁴

On July 23, 2019, the Committee conducted a Status Conference (July 23 Conference).¹⁵ The Committee and the parties discussed the July 8 Discovery Motion during the Status Conference, but did not discuss the July 16 Discovery Motion as it was not on the agenda.¹⁶

Staff filed a “Supplemental Status Report #2 Update” on August 8, 2019.¹⁷

⁷ TN 227638.

⁸ TN 228897.

⁹ TN 228431.

¹⁰ TNs 228748, 228823.

¹¹ TN 229036.

¹² TN 228917.

¹³ TN 229001.

¹⁴ TN 228999.

¹⁵ The transcript of the July 23 Conference (TN 229345) is cited as “July 23 Transcript page:line - page:line.

¹⁶ July 23 Transcript 15:9-15:20, 22:19-23:7, 28:3-6.

¹⁷ TN 229285.

Order on July 8 Discovery Motion

During the July 23 Conference, Staff agreed that the July 8 Discovery Motion was moot because of the responses filed by the Applicant on July 16, 2019.¹⁸

Accordingly, the Committee **DENIES** the July 8 Discovery Motion without prejudice. In the event that Staff determines that the responses received were incomplete or insufficient and is unable to obtain additional information and complete responses from the Applicant, Staff may request relief from the Committee.

ORDER ON JULY 16 DISCOVERY MOTION

Responses on motions are due 14 days after the motion is filed.¹⁹ The deadline to file responses to the July 16 Discovery Motion was July 30, 2019. No responses to the motion were filed.

However, Applicant did file responses to the requests contained in the July 16 Discovery Motion on July 31, 2019.²⁰

We, thus, find that similar to the July 8 Discovery Motion, Applicant's providing data responsive to the requests has made the July 16 Discovery Motion moot. Accordingly, the Committee **DENIES** the July 16 Discovery Motion without prejudice. In the event that Staff determines that the responses received were incomplete or insufficient and is unable to obtain additional information and complete responses from the Applicant, Staff may request relief from the Committee.

SCHEDULING ORDER

Pursuant to the Energy Commission's regulations, the Committee hereby adopts the attached Revised Committee Schedule.

Order on Status Reports

Each party shall serve and file Status Reports as indicated in the attached Revised Committee Schedule below. Status Reports shall state whether case development is progressing satisfactorily and bring potential schedule delays or other relevant matters to the Committee's attention.

Order on Initial Study

The Committee Scheduling Order directed Staff to file an Initial Study by July 11, 2019. Staff did not meet this deadline. Instead, Staff has proposed a new process for analyzing the SPPE that starts with releasing a draft staff initial study on August 16, 2019, to highlight areas of agreement and areas on which disagreement about impacts and mitigation measures still existed. Staff would then hold a public workshop on August 27, 2019, to "solicit comments, resolve or narrow issues of disagreement between the parties,

¹⁸ July 23 Transcript 23:8 – 23:24.

¹⁹ Cal. Code Regs., tit. 20, § 1211.5, subd. (a).

²⁰ TN 229160.

and agree on mitigation for potentially significant effects....”²¹ Staff would then file a final staff initial study that would serve as its testimony for the evidentiary hearing. Staff then states the Committee Proposed Decision²² would function as the Initial Study and be circulated through the State Clearinghouse.²³

Both intervenors expressed support for Staff’s proposal.²⁴ Applicant did not. Among other things, Applicant questioned whether Staff’s proposed approach would be consistent with CEQA.²⁵

In prior SPPE proceedings, Staff has issued a complete initial study and draft negative or mitigated negative declaration. That document was then submitted to the State Clearinghouse for a 30-day public review and comment period. At the conclusion of the 30-day review period, the Committee then proceeded to evidentiary hearings on the environmental document and the SPPE itself.

The Committee is not persuaded that we should deviate from past practice and process. We therefore **ORDER** Staff to prepare and file a single, integrated document containing its environmental analysis on the SPPE, as set forth in the attached Revised Scheduling Order schedule, and submit the appropriate notice to the State Clearinghouse to commence the public review and comment process.²⁶ During the public review and comment period, Staff may hold the workshop/scoping meeting it described. We further **ORDER** that Staff’s Opening Testimony shall include responses to any comments received during the public review and comment period.

Public Adviser and Other Commission Contacts

The Energy Commission’s Public Adviser’s Office provides the public with assistance in participating in Energy Commission proceedings. If you would like information on how to participate in this proceeding, please contact Jennifer Martin-Gallardo, Acting Public Adviser, at PublicAdviser@energy.ca.gov or (916) 654-4489, or toll free at (800) 822-6228.

If you have a disability and need assistance to participate in any upcoming Committee events, contact Yolanda Rushin at least five days prior to the event at Yolanda.Rushin@energy.ca.gov or (916) 654-4310.

Questions of a procedural nature should be directed to Susan Cochran, Hearing Officer, at susan.cochran@energy.ca.gov or (916) 654-3965.

²¹ TN 229285.

²² During the July 23 Conference, Staff referred to the document as a PMPD (Presiding Member’s Proposed Decision). However, in an SPPE, the document is a “Committee Proposed Decision.” (Cal. Code Regs., tit. 20, §§ 1745.5 [Presiding Member’s Proposed Decision as part of application for certification proceedings]; 1945, subd. (a) [Committee files and publishes a “proposed decision” on SPPE applications].) We use “Committee Proposed Decision” to reflect the description of the document to be produced.

²³ TN 229285; July 23 Transcript 37:9 – 41:8.

²⁴ July 23 Transcript 43:9 – 43:23, 44:2-3.

²⁵ July 23 Transcript 41:13 – 42:21.

²⁶ If Staff’s analysis indicates that a negative or mitigated negative declaration is the appropriate environmental document, Staff shall provide a notice of intent pursuant to California Code of Regulations, title 14, section 15072.

Technical questions concerning the Petition should be addressed to Lisa Worrall, Project Manager, at lisa.worrall@energy.ca.gov or at (916) 654-4545.

Media inquiries should be sent to the Media and Public Communications Office at Mediaoffice@energy.ca.gov or at (916) 654-4989.

Information regarding the status of the project, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the Energy Commission's web page at <https://ww2.energy.ca.gov/sitingcases/laurelwood/>.

Dated: August __, 2019, at Sacramento, California

Karen Douglas
Commissioner and Presiding Member
Laurelwood Data Center SPPE
Committee

Janea A. Scott
Vice Chair and Associate Member
Laurelwood Data Center SPPE
Committee

LAURELWOOD DATA CENTER REVISED SCHEDULING ORDER
August 2019

<u>Event</u>	<u>Date</u>
Last Day to File Data Requests ²⁷	May 6, 2019
Last Day to File Petition to Intervene ²⁸	August 12, 2019
Staff Files its Environmental Analysis (Initial Study and Negative or Mitigated Negative Declaration) and sends the appropriate notice to the State Clearinghouse	August 28, 2019
Parties File Status Reports	September 20, 2019
Public Comment Period on Staff's Environmental Analysis ends ²⁹	October 3, 2019
Opening Testimony Due	October 8, 2019
Reply Testimony Due	October 15, 2019
Prehearing Conference	October 21, 2019
Evidentiary Hearing ³⁰	October 25, 2019
Committee Issues Proposed Decision	November 2019
Final Decision (Commission Business Meeting) ³¹	December 2019

The Committee may modify the schedule at any time upon either its own motion or that of a party.

²⁷ Cal. Code Regs., tit. 20, § 1941 (all data requests shall be filed within 60 days of filing of the SPPE application or a later date as approved by the presiding member).

²⁸ Cal. Code Regs., tit. 20, § 1211.7, subd. (b) (last day to file petition to intervene shall be 30 days prior to first evidentiary hearing, unless otherwise ordered).

²⁹ Pub. Resources Code, § 21082.1; Cal. Code Regs., tit. 14, § 15073.

³⁰ Cal. Code Regs., tit. 20, § 1944, subd. (b).

³¹ Cal. Code Regs., tit. 20, § 1945, subd. (b).