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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of:)
)
Application for a Small Power Plant)
Exemption for the:)
) Docket No. 19-SPPE-02
WALSH DATA CENTER)
)

COMMITTEE CONFERENCE
CALIFORNIA ENERGY COMMISSION
THE WARREN-ALQUIST STATE ENERGY BUILDING
ART ROSENFELD HEARING ROOM - FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

TRANSCRIPTION OF RECORDED PUBLIC MEETING
AUGUST 29, 2019

APPEARANCES

- COMMISSIONERS:
KAREN DOUGLAS, Commissioner, Presiding Member
PATRICIA MONAHAN, Commissioner, Associate Member
SUSAN COCHRAN, Hearing Officer

1 ADVISORS:

2 KOURTNEY VACCARO, Advisor to Commissioner Douglas

3 JANA ROMERO, Advisor to Commissioner Monahan

4 BEN DE ALBA, Advisor to Commissioner Monahan

5 KRISTY CHEW, Technical Advisor

6 SCOTT GALLATI, Applicant

7 ADAM BROWN, Applicant

8 MIKE LISENBEE, Applicant

9 LON PAYNE, Staff

10 JARED BABULA, Staff Counsel

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22 Transcribed by: Amanda M. Oliver

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1 **TRANSCRIBED RECORDED PUBLIC MEETING**

2 **August 29, 2019**

3 **HEARING OFFICER COCHRAN:** We're still waiting for
4 some of the commissioners to arrive and so we'll be
5 starting shortly. Please note that the court reporter
6 has called in to this proceeding today, so if you can
7 speak slowly and clearly, it'll help the transcript come
8 out better.

9 Also, you -- those folks who have called in have
10 been muted on our end. So you need to figure out a way
11 to let us know if you'd like to speak. When it comes
12 time for public comment and things of that nature, we
13 will tend to unmute you. But there's a raise your hand
14 function and a chat function that will allow you to
15 communicate with us so that we can get you in and on the
16 record if that's what you need.

17 So like I said we'll be starting in a few minutes.
18 Thank you for your patience.

19 (Pause)

20 **COMMISSIONER DOUGLAS:** All right. Good afternoon
21 everybody. This is the committee conference regarding
22 the proposed small power plant exemption for the Walsh
23 Backup Generating Facility.

24 The Energy Commission has assigned a committee of
25 two commissioners to conduct these proceedings. I'm

1 Karen Douglas, the presiding member. And Patty Monahan,
2 the associate member, is here to, well, my right as you
3 look at me, my left as I sit here.

4 I'd like to introduce some of the people here on the
5 dais today. So my advisor, Kourtney Vaccaro, is to my
6 right. And to my immediate left is our hearing officer,
7 Susan Cochran. And then Commissioner Monahan. And her
8 advisors, so Jana Romero and Ben De Alba. And then to
9 Ben's left is Kristy Chew. She's the technical advisor
10 to the Commission on siting matters.

11 So at this point, I'll ask the parties to please
12 introduce themselves and their representatives.

13 Starting with the petitioner.

14 **MR. GALLATI:** Good afternoon, Commissioners. My
15 name is Scott Gallati, and I represent WP -- well, 651
16 Walsh Partners, LLC. It's a partnership that's owned by
17 Digital Realty.

18 **MR. BROWN:** I'm Adam Brown (ph.) with Digital
19 Realty, the design manager for the West Coast here.

20 **MR. LISENBEE:** My name is Mike Lisenbee. I'm with
21 David J. Powers & Associates and we're an environmental
22 consulting firm that assisted with preparation of the
23 application.

24 **COMM. DOUGLAS:** Okay, thank you. Thank you.

25 And staff?

1 **MR. PAYNE:** Lon Payne, project manager. With me is
2 staff counsel, Jared Babula. And if you'll allow me a
3 personal note, I'd just like to welcome Commissioner
4 Monahan to the wonderful world of exemption proceedings.

5 **MS. MONAHAN:** I'm very much looking forward to it.

6 **COMM. DOUGLAS:** Excellent.

7 Are there any public agencies represented here in
8 the room or on the phone today? Federal government
9 agencies, local, elected, appointed officials, Native
10 American tribes?

11 Doesn't sound like it, all right.

12 I'll turn over the conduct of the rest of the
13 hearing to the Hearing Officer Susan Cochran.

14 **HEARING OFFICER COCHRAN:** Thank you very much,
15 Commissioner Douglas. Again, as a note, and for those
16 folks who may have called in late, we have muted you on
17 our end to cut down on background noise. So if you need
18 to make a comment or wish to make a comment, please
19 communicate that through the chat feature or -- letting
20 us know.

21 Also when it comes time for certain events, we will
22 unmute you, so that you have the opportunity to
23 participate.

24 Notice of today's committee conference was provided
25 on August 15, 2019. In the notice, the committee

1 directed the staff to file an issues identification
2 report and schedule and invited the applicant to file any
3 responses to the staff's filing.

4 Staff filed its issues identification report on a
5 timely manner on August 22nd. Thank you very much.

6 Applicant filed its reply on August 26th, also on a
7 timely basis. Thank you very much.

8 All of these documents are available electronically
9 on the proceedings webpage and in the Energy Commission's
10 electronic docket, also available online.

11 At today's conference, I will review what a small
12 power plant exemption, that I'm now going to say SPPE
13 from now on, is and outline some of the rules applicable
14 to Energy Commission proceedings like this SPPE. The
15 applicant will describe the project. Staff will outline
16 the issues they have identified and its process. And a
17 representative from the public advisor's office will
18 discuss opportunities for public participation.

19 The committee and the parties will then discuss a
20 schedule and any other topics regarding the SPPE.

21 So a small power plant exemption, the Energy
22 Commission has the exclusive authority to consider and
23 ultimately approve or deny applications for the
24 construction and operation of thermal power plants that
25 will generate 50 megawatts or more of electricity. The

1 law allows the Energy Commission to grant an exemption to
2 this authority if a project will generate between 50 and
3 100 megawatts.

4 Known as the small power plant exemption, it is an
5 expedited process. As required by the California
6 Environmental Quality Act, hereinafter CEQA, the Energy
7 Commission evaluates the whole of the proposed project to
8 determine generating capacity and to analyze whether the
9 construction or operation of the project would result in
10 substantial adverse impacts to either the environment or
11 to energy resources.

12 In considering an SPPE, the Energy Commission acts
13 as the lead agency under CEQA. Importantly, the Energy
14 Commission grants -- if the Energy Commission grants an
15 SPPE, the responsible local land use authorities and
16 other agencies, such as the local air management
17 district, will assume jurisdiction over the project under
18 their respective permitting processes and conduct any
19 necessary environmental review.

20 Pardon me for just a minute.

21 As I was saying, to grant a request for an SPPE, the
22 Energy Commission must determine the proposed projects
23 generating capacity. If the Energy Commission determines
24 that the project's generating capacity is less than 100
25 megawatts, the Energy Commission must then determine

1 whether the construction or operation of the proposed
2 project would result in substantial adverse impacts on
3 the environment or energy resources.

4 Oh, that's a repeat. Sorry about that.

5 Today's hearing is the first in a series of formal
6 committee events that will extend over the next several
7 months. This committee will eventually hold evidentiary
8 hearings and issue a committee proposed decision
9 containing recommendations for the full Energy Commission
10 to approve or deny the requested exemption.

11 The Energy Commission's regulations and state law
12 require that we ensure a fair process for everyone who
13 wishes to participate in this proceeding. One of the
14 ways we do that is through the ex parte rule. What this
15 means is that parties in a proceeding and interested
16 persons, either inside or outside of the Commission,
17 including the general public, are prohibited -- are
18 prohibited from communicating with presiding officers
19 outside of the noticed proceeding about anything that may
20 be in controversy or in dispute.

21 Communications include voicemail messages, text
22 messages, emails, letters, telephone calls, and in-person
23 discussions. Essentially, any form of communication,
24 unless all parties have notice and opportunity to
25 participate in the communication.

1 In Walsh, the presiding officers are the
2 commissioners, both Commissioner Douglas and Monahan, as
3 well as the other commissioners who will ultimately hear
4 the committee proposed decision, their advisors, the
5 hearing officer, me, and any attorney assisting me or the
6 committee. Here, the attorneys that we would say are
7 most like to -- likely to be included in that are Ralph
8 Lee, Galen Lemei, and Caryn Holmes. The public advisor
9 will discuss ways you may communicate with the presiding
10 officers that do not violate the ex parte rule.

11 At this point, we will now allow the applicant to
12 present an overview of the proposed project.

13 Mr. Hong, if you could bring up that drawing. Thank
14 you.

15 Applicant?

16 **MR. BROWN:** All right. Thank you. So I'll do a
17 quick discussion of the company and what we do and where
18 we're at, and then hop on the project.

19 So we're -- we're Digital Realty. We're a publicly
20 traded REIT. We've got over 210 data centers in thirty-
21 five global metros in fourteen countries across five
22 continents.

23 We're a thirty-five billion dollar enterprise value.
24 And some of our customers from our last 10K, we support
25 Facebook, IBM, Oracle, Equinix, Raxsbase (ph.), LinkedIn,

1 Verizon, JP Morgan Chase, Uber, and many, many more.

2 So for this project -- all right, if I can just
3 skip -- can we go to the next page?

4 So this is the -- the building we're proposing. A
5 four-story data center in the back. And the front part
6 there is a three-story office and storage space.

7 Totaling 435,050 square feet.

8 If we can go to the next slide. So that's the --
9 the floorplan area. So the front on the bottom part of
10 the plan there is the office space and operations. And
11 the back, we have two rooms in the middle there, two data
12 center rooms. The little hallways in the middle are the
13 cooling units. And in the back of the inside of the
14 building are the electrical rooms that serve all that to
15 make sure it's always on and running. And in the very
16 back, outside, that's our generators line-up out there.

17 To the right, outside the building, is the -- the
18 substation that we've got going there.

19 **MR. GALLATI:** A couple of key facts that I think are
20 important for the commission, as well. This particular
21 project has been designed so that the total consumption
22 of the building would not exceed 80 megawatts.

23 The project has been working with Silicon Valley
24 Power about that substation. I'd like to clear something
25 up that was extremely confusing to me this week. The

1 distribution substation that you see there is called the
2 Laurelwood Substation. It -- Silicon Valley Power
3 develops distribution substations not necessarily
4 associated with a particular project. So we had
5 difficulty understanding information that we were
6 getting, whether it went to the Laurelwood project or
7 went to our project. And I think staff had that trouble,
8 as well. We -- we figured that out.

9 So if you hear that it's the Laurelwood Distribution
10 Substation, it is serving Walsh. And for whatever it's
11 worth, Walsh is serving the Vantage project, and Matthews
12 is serving McLaren. And there's a bunch of other names
13 and none of them match.

14 So think -- I think one of the reasons that is, and
15 it's probably important to note, is normally when a
16 project builds a -- a traditional thermal power plant
17 that the Commission is used to, there is a switchyard
18 which basically is a substation. But that switchyard
19 only does one thing and that is to take electricity from
20 the generating units and transfer them to the grid.

21 So those unit -- those types of substations are
22 generally proposed and designed by the -- by the power
23 plant applicant. These are distribution substations; the
24 full purpose is to take electricity off the grid, bring
25 it into the site, and then deliver it to the -- the --

1 the data center.

2 So those are always designed and operated by the
3 utility. So the utility has a different plan for
4 substations and -- and that's how that works. So I
5 wanted to -- I wanted to talk closely about that.

6 **UNIDENTIFIED COMMISSIONER:** Mr. Gallati, could I
7 just interrupt you for just one minute. So when you were
8 speaking of the Laurelwood Distribution Substation, is it
9 marked as the utility yard on this picture?

10 **MR. GALLATI:** Yes, it is.

11 **UNIDENTIFIED COMMISSIONER:** Thank you.

12 **MR. GALLATI:** I think that's the only thing I wanted
13 to address, was let the Commission know that from a -- a
14 capacity perspective, the total building demand will be
15 80 megawatts.

16 As you've -- are -- are aware -- I know at least
17 some of you are aware, the Commission -- the generating
18 capacity, the way that these generators work is they are
19 generally put in a grouping. So for the Walsh project,
20 there are two groups of six generators. They operate as
21 if they are five. And what we mean by that is all six
22 will come on at a reduced load, so that if something
23 happens to one of the generators, you could turn it off
24 and the other five could carry the load. That -- that
25 load supports one of the rooms that you see for a server.

1 So if there's a loss of utility power, the
2 generators will come on at reduced load and that is a
3 redundant factor that's built -- built in so that if a
4 generator fails, the -- the room can still have the
5 maximum amount of power.

6 In addition, when we tell you that it's a 80
7 megawatt building, there's a certain amount of it that's
8 critical IT that serves the servers. And then there's a
9 certain amount of it that is to cool the building, or to
10 provide lights, elevator access, things like that.
11 Sometimes we call that the house load.

12 So sometimes when you see on websites and other --
13 when people describe their buildings, they describe it as
14 the megawatts associated with critical IT because that's
15 what they're selling. So if you hear a data center
16 company, or you're at a -- a conference, they'll talk
17 about a 54 megawatt critical IT building. That's just
18 the critical IT part. What we've told you is what the
19 total consumption would be.

20 We have -- we believe that -- as was done in
21 McLaren, we believe that the generating capacity of the
22 power plant that you're considering is equal to the total
23 demand of that building on the worse case day, and that's
24 80 megawatts.

25 We can answer any questions you might have about the

1 project.

2 **HEARING OFFICER COCHRAN:** I just had one other
3 question. In looking at this diagram, so you had
4 described that there's a three-story office/admin part
5 and a four-story data center. Are those totally separate
6 buildings or are they integrated, do they share a common
7 hallway or -- because I can't tell from looking at
8 this --

9 **MR. BROWN:** Yeah, they -- they share --

10 **HEARING OFFICER COCHRAN:** -- where the walls are.

11 **MR. BROWN:** They share a common hallway there. The
12 lighter building area in the front is the office
13 building. And the shaded in the -- right after that is
14 the -- is the data center. So the building around -- the
15 hallway around -- it goes all the way around the data
16 center there, and the -- the office space goes into that.

17 Thanks.

18 **HEARING OFFICER COCHRAN:** So now I will look to
19 staff to discuss the issues that you have identified thus
20 far, and your process for considering this SPPE.

21 **MR. PAYNE:** So as you noted, we did get partial
22 responses to data requests. However, the memo that we
23 submitted still stands. We have no known issues at this
24 time because we're still working through getting answers
25 to some of the questions which didn't come in with the

1 first round, but we do expect them. And -- and I know
2 the applicant's working diligently to produce them.

3 So we do potentially have -- or expect to have some
4 amount of back and forth regarding mitigation language.
5 But we are still confident we're going to be able to work
6 that out. In the context of going back and forth, we may
7 need to do a workshop to finalize it as we recently did
8 on another proceeding. But we don't know that yet. But
9 we can discuss that more in the context of project
10 schedule if you'd like, which is essentially where it --
11 kind of at this same point we were.

12 We need to figure out what the response will say,
13 whether we need to do follow up, whether we need to do a
14 mitigation workshop, before we can really plan for a
15 specific date for initial study publication. And I would
16 just say that we like Mr. Gallati's idea that we produce
17 a joint stipulated schedule. Scott had mentioned
18 possibly the 20th of September as a date that would be a
19 good time to try to put something like that together. I
20 would say in general we would support that. It -- we
21 might be even able to do it earlier if responses came in
22 earlier. So I think maybe a better way of thinking about
23 it is produce a schedule as soon as practical after we've
24 had a chance to evaluate the -- the remaining data
25 responses that would come in. That would give us some

1 flexibility to produce it even quicker if -- if we
2 thought we could.

3 Is there anything else that you need on schedule?

4 **HEARING OFFICER COCHRAN:** No, thank you.

5 So now I will invite Rosemary Avalos of the Public
6 Advisor's Office to outline how that office can help
7 members of the public participate in this proceeding.

8 Rosemary?

9 **MS. AVALOS:** I'm Rosemary Avalos from the Public
10 Advisor's Office. And I'm here on behalf of the acting
11 public advisor, Jennifer Martin-Gallardo. And I'll be
12 presenting a brief public PowerPoint about public
13 participation.

14 The public advisor is an independently appointed
15 attorney who helps the public understand the process,
16 recommends the best way to be involved, and assist in
17 successful participation in proceedings.

18 If you would like to be involved in the -- in
19 participating in the Walsh Data Center public proceeding,
20 you can submit public comment. You can also submit
21 documents with public comment. And you can find that
22 information on our public website under the Walsh Data
23 Center proceedings page.

24 In addition to that, you can subscribe to the Walsh
25 Data Center listserv which will then give you electronic

1 notifications about all materials and documentations that
2 come through the -- for the public -- I'm sorry, for the
3 Walsh Data Center.

4 And here is a page that provides information, phone
5 number for our public advisor's office, as well as our
6 address and email. And we're available to assist the
7 public in any questions they may have with regard to the
8 Walsh Data Center.

9 Thank you.

10 **HEARING OFFICER COCHRAN:** Thank you very much. And
11 this information will be placed in the docket so that
12 that way members of the public will have it to review too
13 in the event that they were unable to attend today but
14 hear this later or read the transcript. So that way,
15 they'll --

16 **MS. AVALOS:** Correct.

17 **HEARING OFFICER COCHRAN:** -- be able to let you
18 know.

19 **MS. AVALOS:** We will be docketing.

20 **HEARING OFFICER COCHRAN:** Thank you so much.

21 **MS. AVALOS:** You're welcome.

22 **HEARING OFFICER COCHRAN:** So on the agenda, we're
23 now to the part where we had identified it as discussion
24 of issues identified by staff, applicant, or the
25 committee.

1 And as I stated before, staff filed an issues
2 identification report. And Mr. Payne described it as
3 well. In addition, the committee has had a chance to
4 review the application, as well as applicant's response
5 to that. I've also had a chance to review the -- the
6 data request responses that were filed on Monday at the
7 same time.

8 And it seemed to me that there were a large number
9 of issues there. So there were twenty-two pages of data
10 request that were filed, but staff didn't highlight which
11 of those issues, if any, might be important to the
12 committee.

13 And now that you've received the responses, staff,
14 do the responses highlight issues that the committee
15 might be interested in? Will additional data requests be
16 required and how much time might be required for further
17 discovery? In addition, you talked about preparing, Mr.
18 Payne, an initial study and some sort of environmental
19 review document, whether that's a negative declaration, a
20 mitigated negative declaration, I don't know at this
21 point. But the question would be, you know, what is the
22 process then once you get these data responses and how
23 you see that going through? You also mentioned a
24 potential workshop.

25 So even before we start talking about actual dates

1 and a schedule, I'm a little bit interested in the
2 process that you're going to be following.

3 **MR. PAYNE:** I think the easiest way to put it is
4 that the receipt is still pretty recent in terms of staff
5 being able to look at it. So that review of the -- of
6 the responses that did come in is ongoing. The -- there
7 are some areas which staff thinks of as quite important
8 that sometimes take a longer time to review, air quality,
9 potentially some cultural, where those -- those responses
10 aren't in yet. And so our -- our process is basically to
11 get them in, evaluate them, and determine whether we need
12 to do follow-up requests.

13 But as of now, I haven't been told by staff that
14 they need to, or plan to, do specific follow-up
15 questions. It just hasn't been communicated to me yet,
16 so I can't communicate it to you yet.

17 **HEARING OFFICER COCHRAN:** Understood.

18 So applicant, I know that in the --

19 **MR. BABULA:** Let me just -- let me just --

20 **HEARING OFFICER COCHRAN:** I'm sorry.

21 **MR. BABULA:** -- add something. So --

22 **HEARING OFFICER COCHRAN:** Thank you, Mr. Babula.

23 **MR. BABULA:** -- just to help clarify and -- and make
24 sure we're on the same page. Staff is moving forward
25 with doing their sections right now as we speak. And as

1 of now, we know there's probably going to be some
2 additional biology mitigation that we're going to be
3 looking at.

4 But we plan to send that and docket our suggested
5 mitigation, which isn't a lot. It's just some additional
6 stuff. And then give the applicant an opportunity to
7 look that over while we progress on these other sections.
8 And then they can come back and ask -- they can come back
9 and agree and -- and incorporate that into their project
10 description, or we can add it in.

11 So we want to move forward in parallel process where
12 we're waiting for some items. But that doesn't mean that
13 the technical area's just sitting waiting. They're --
14 they're able to move forward and -- in a number of cases.
15 The additional information isn't necessarily going to
16 slow them down; it's going to just enhance and supplement
17 what they're looking at and confirm stuff.

18 So at this point, I think we are -- we just got some
19 info and we know specific things we're waiting for. But
20 because of their work, I don't want to give the sense
21 that we're just sitting here and there's going to be more
22 and more stuff. I think for the most part, we have a lot
23 of the info we need, and we know that there's specific
24 studies that are coming in. And we should be able to
25 progress rather rapidly and utilize the docket as a means

1 to -- if there's additional mitigation, to suggest that.
2 And then if needed, as we indicated in our schedule, a
3 workshop could be scheduled to kind of resolve the last
4 couple of issues.

5 But the hope is that when we come out of this and we
6 file the document -- the initial study and the
7 environmental document, we'll be in good shape to have a
8 relatively straightforward evidentiary hearing.

9 **HEARING OFFICER COCHRAN:** Thank you. I didn't mean
10 to imply or infer that staff was just going to be sitting
11 around doing nothing. I assumed that. But I -- I did
12 see that there were large swaths of documents -- and
13 additional studies. For example, air quality, public
14 health. There was one that was trailing until mid-
15 September. Air quality and public health were discussed
16 as being filed tomorrow, whereas some of the others were
17 mid-September.

18 And so when Mr. Lon -- Mr. Payne then was discussing
19 a -- a proposed schedule for further processing coming
20 out after the receipt of those, that's why I was trying
21 to get a little bit better idea of when you think, or if
22 you think, you might need additional discovery.

23 **MR. PAYNE:** I think that's a good point. The --
24 the -- the September 20th date being mentioned as a
25 possible date to produce a schedule seems to coincide

1 with a date that they thought certain items from cultural
2 might come in.

3 **HEARING OFFICER COCHRAN:** Okay.

4 **MR. PAYNE:** Which is why I thought if those take
5 longer, we're -- it's probably not a good idea for us to
6 produce a schedule with that still not having been
7 received. But should it come in quicker, we might be
8 able to produce something for you a little quicker --

9 **HEARING OFFICER COCHRAN:** Okay. Mr. --

10 **MR. PAYNE:** -- accordingly.

11 **HEARING OFFICER COCHRAN:** Mr. Hong, if you could
12 open up the document that is the schedule, the
13 WordPerfect -- the WordPerfect, that shows my age. The
14 Word document that -- so staff proposed a schedule and
15 applicant did not propose a schedule.

16 What this document shows is staff's proposed
17 schedule. And then what I also did was I filled in the
18 dates that things would be required pursuant to our
19 regulations. And so the reason I'm talking so much about
20 discovery is discovery actually closed on Monday. And so
21 if staff feels -- believes that it may additional
22 discovery time, now would be the opportunity to let us
23 know so that if we issue a scheduling order we then have
24 the right information for you. So that it's then not,
25 well, here's a motion to reopen discovery.

1 Understanding -- especially given the responses that have
2 been received thus far.

3 So if you -- if you think you need something other
4 than the last day of being -- last Monday the 26th as the
5 last day to file data requests, speak now.

6 **MR. PAYNE:** We --

7 **HEARING OFFICER COCHRAN:** Or forever hold your
8 peace.

9 **MR. PAYNE:** We simply can't -- and -- and Mr.
10 Gallati brought up in his response that he would not
11 object to follow-up questions that were within the realm
12 of the questions we'd already asked.

13 So we basically need to get complete responses, take
14 some amount of time to evaluate those responses, and then
15 come up with follow-up requests if necessary. So at this
16 point, we can't predict how long that will take. And
17 thus we don't think it would be particularly useful for
18 any of the parties to put a scheduling order out that
19 gets into specifics about when something like an initial
20 study would be published.

21 And the also -- the -- the -- the other issue that's
22 hanging out there is whether or not a workshop would be
23 needed, in which case it might be -- it -- there would be
24 a notification timeframe which could bump it an
25 additional ten days for example.

1 So I think at this point, the -- the best thing to
2 do is -- is revisit the idea of how long it might take
3 once we do get the complete set of responses. And
4 we'll -- we'll do that diligently to get you something as
5 soon as we can once we know what we're dealing with. We
6 do -- it's just too premature at this point to know.

7 **HEARING OFFICER COCHRAN:** Okay. Fair enough.

8 Mr. Gallati?

9 **MR. GALLATI:** Yes, thank you.

10 Usually I'm the one screaming for a schedule and
11 screaming that you've already missed it, so I know this
12 probably odd for you to see me not screaming.

13 **HEARING OFFICER COCHRAN:** Your application did
14 request a final decision in October, and so I was --

15 **MR. GALLATI:** Yeah, we're -- we -- we understand
16 that we're not likely to get a final decision in October.
17 What -- what I would like to just -- put these in --
18 things in perspective is sometimes we have a disagreement
19 with staff about the level of detail that they need.
20 That has certainly happened in this project, as well. We
21 have provided that level of detail and we are doing
22 studies that we don't necessarily believe we have to do.
23 But we'll do them because we are very comfortable that
24 the results of those studies are not going to show
25 anything that would cause a significant impact.

1 We believe that staff is -- is -- is being
2 conservative on what they need in the record. We're not
3 necessarily -- we don't necessarily believe that any of
4 the studies we provide is gonna cause staff to say, oh,
5 there's a significant impact that could be mitigating.

6 This is different than many other data request sets
7 that we get. We often get data requests that say, we
8 think this is an impact, how are you going to mitigate
9 it. We didn't get any -- any questions like that.

10 So for example, the public health analysis, which --
11 which have been done, all but one. They -- they show no
12 significant impacts. The construction modeling, that we
13 didn't think we needed to do, we did it; they show no
14 significant impacts. So the thermal plume analysis, we
15 know it's not going to show significant impacts because
16 we did one last year about three blocks away.

17 So we're very comfortable that -- that there's not
18 going to be a reversal of direction. That's why I --
19 that's why I wrote in my -- in my response that -- that I
20 will not object to any data requests that are based on
21 being after discovery as long as those data requests are
22 associated with what we filed on Monday and what we file
23 subsequent. And as long as they're reasonably necessary
24 to complete a CEQA analysis.

25 So some of the questions we got were how tall is the

1 pole that SPP's going to build. We don't know, so we
2 gave some typical poles. So some of those things that I
3 think that staff may be more used to a thermal power
4 plant and how a thermal power plant comes into the Energy
5 Commission, knowing that they've had to come here since
6 1975. There is a way that applicants hire and do work
7 that's different than the way data centers hire.

8 For example, none of my data centers have an EPC
9 contractor on board. That's not the case with many of my
10 power plant people. So we can call up the contractor and
11 say, how -- what's your peak on month six. They can tell
12 us. The data center people have never put together a
13 schedule like that before because it's not necessary for
14 what they do as business. And cities and counties don't
15 normally ask for that for permitting.

16 So we've had to go back and do some of these things
17 that aren't ultimately going to result in a change in the
18 analysis. They're just going to result in more facts.
19 And that's why we're pretty comfortable that this
20 approach is not going to ultimately delay when we get the
21 initial study and -- and -- and negative declaration.

22 Lastly, we did notice that Laurelwood was published.
23 We're reviewing Laurelwood and to the extent there's
24 different conditions in there that might be applicable to
25 us, we're going to be prepared for those. So that if we

1 do need to talk to staff in a public workshop, we can do
2 so. If not, we can probably just docket a reply.

3 So we -- we feel fairly comfortable. I would
4 however ask you to keep a date for a joint schedule
5 because that keeps all of us working towards it. And it
6 would at least have to give you a status report on that,
7 a status report on where you are on the schedule. And
8 maybe we can't get the joint stipulated schedule 100
9 percent, but we certainly can revise it and work together
10 towards that unless there is a dispute.

11 So I think -- because of the way discovery worked, I
12 think maybe this hearing is -- is about thirty days too
13 soon for us to be able to ask for a schedule.

14 **HEARING OFFICER COCHRAN:** Okay. Thank you very
15 much.

16 **MR. BABULA:** So I -- I would just concur with what
17 Mr. Gallati said. And as for the issue of additional
18 discovery, I -- I don't see that there would be a need
19 for too much more beyond just narrow follow ups. So I
20 would keep the option open to have -- to utilize that and
21 utilize his openness to -- to respond without the need
22 for a motion. But you know that's something we would
23 keep as a -- an option.

24 But I would agree that trying to get a joint
25 schedule and that the information coming in doesn't

1 necessarily trigger additional mitigation, it's more to
2 fill -- sort of fill out the facts and have a robust
3 record. But I think at this point, and in talking with
4 staff, the feeling is that they have a fairly good idea
5 of where things are and -- and that's existing mitigation
6 incorporated into the project is adequate in most cases.

7 And for those where we -- where there will be
8 additional, we'll get that info to -- out in the docket
9 and to the applicant as soon as possible.

10 **HEARING OFFICER COCHRAN:** Okay. Thank you.

11 So I then I wanted to talk a little bit about issues
12 that the committee has identified in reviewing the
13 application. And the first is -- and this -- this also
14 trickled through the objections to some of the data
15 requests. And that is that again the back-up generating
16 facility is, from what I can see, necessary for operation
17 of the data center based on the comments that we received
18 today about the design.

19 It seems to me as though this is one integrated
20 facility. And so in the analysis that goes forward, we
21 want to make sure that we are reviewing the whole of the
22 action. It is not merely the data center -- and I know
23 I'm preaching to the choir, I see Mr. Payne nodding his
24 head. But yes, we're considering the whole of the
25 action. And so I think that the request and the

1 information that we need to make a decision needs to
2 reflect that.

3 And again we're not here today to make any
4 decisions. We've made no decisions. But as we move
5 forward, we want to make sure that we have a robust
6 record to support whatever decision the committee and the
7 Commission ultimately make in this.

8 The second is on -- in the land use section, and
9 that the application shows that the project will exceed
10 the city's zoning limit for height. And the question is,
11 is the height limit in the zoning code designed to avoid
12 or mitigate an environmental impact because that has
13 consequences under CEQA if that is in fact inconsistent
14 with a local law that is designed to prevent an
15 environmental effect.

16 And one other question that always feeds into that
17 is how has the city dealt with this issue in the past.
18 Does it routinely grant variances, does it take a hard
19 line? Because again in an SPPE, unlike our AFC
20 jurisdiction, we don't have the ability to override an
21 inconsistency with a local ordinance. We are merely
22 looking at it to determine whether it's an adverse effect
23 on the environment or an adverse effect on energy
24 resources.

25 The third area that I would like to highlight is

1 noise. The application states that emergency operations
2 are exempt from the city's noise ordinance. And I'm not
3 sure that that's quite the correct way to look at it.
4 Lawful does not mean not impactful. And so I think that
5 there needs to be a discussion and evidence regarding
6 whether there is a potentially significant impact, even
7 of emergency operations, and how we would mitigate those.

8 The next question is on water. The application
9 indicates that the data center will require up to 25.6
10 acre feet per year of water. 20.2 acre feet per year of
11 that is for cooling. What is the source of water to meet
12 this demand? Is it reclaimed water available for cooling
13 purposes keeping in mind the requirements of our IPER,
14 California Water Code Section 13260 and the Constitution
15 regarding the use of potable water?

16 And the analysis of impact should include an
17 analysis of whether that source of supply creates an
18 environmental effect that we need to be concerned about.

19 A further area is cumulative impacts. What projects
20 have been previously approved or are under construction
21 that are being used for the cumulative impacts analysis?
22 For example, in Walsh, is Walsh on the same loop as say
23 SC-1, McLaren, and Laurelwood, for determining cumulative
24 impact for reliability?

25 Similarly, this would also impact air quality. And

1 I know that there were several data requests that staff
2 put forward about these types of issues in terms of
3 cumulative impacts analysis, but we're also very
4 interested in that. And air quality always raises to me
5 then issues of public health and environmental justice.

6 So again we're not looking for answers today, but we
7 do expect to see some analysis and evidence to help us
8 make an informed decision when it comes time for that.

9 Finally, I wanted to talk a little bit about
10 noticing for this proceeding. Because we are proceeding
11 under the California Environmental Quality Act, as
12 opposed to our certified regulatory program, there are
13 various procedural steps we need to make -- ensure that
14 we take.

15 And I note that on July 12, the request for agency
16 participation was sent to what was termed "the agency
17 distribution list". However, that agency distribution
18 list is not in the docket. So I don't know what public
19 agencies have or have not been contacted. And we need to
20 make sure that we are meeting the requirements of CEQA
21 Guidelines Section 15072 in the world of folks who are
22 entitled to notice, to make sure that we've checked that
23 box correctly.

24 I also note that at least the County of Santa Clara
25 has requested participation in review of this project,

1 specifically looking for the traffic control plan. So we
2 need to make sure that that box is checked.

3 Finally, Mineta Airport is close by and we need to
4 make sure that it is properly discussed as required by
5 Guideline Section 15074, subdivision e, to the extent
6 that this is part of the airport land use plan.

7 Sorry. Is there anything else that I haven't
8 mentioned that I should have mentioned?

9 Okay, you're not going help -- that's fine.

10 We've already talked about the schedule. And I
11 understand why September 20th was selected now.

12 Is there anything else that you would like to bring
13 up to the committee?

14 **MR. GALLATI:** I would like to clarify something. We
15 have submitted this project to you describing the impacts
16 of a back-up generating facility and the impacts of the
17 data center. Because I think that as we go forward,
18 certainly from a litigation perspective -- from my
19 perspective, I want to keep an option open which is very
20 simple. That the Commission and Commission staff have
21 used the concept of "the whole of the project"; that's
22 not the word, it's the whole of the action. Your action
23 is whether or not this thermal power plant is exempted
24 from your process. It is not whether you're approving
25 either the data center or the back-up generating

1 facility.

2 So the way we look at is CEQA does require you to do
3 an evaluation beyond what your action is. And so we
4 think you should do an environmental analysis of the data
5 center. But ultimately what you're exempting is the
6 back-up generating facility.

7 So I didn't want the application to be confusing
8 where we separate the two. But we separate the two in
9 case the Commission wants to take a -- a more narrow view
10 of what it's ultimate decision is. Or if someone were to
11 sue that there's an impact associated with the data
12 center that would prevent you from granting an SPPE, that
13 I have a record made.

14 So that's -- that's -- that -- I know that's
15 confusing, it's confusing to me. It's the best way I
16 could figure out to keep our options open. But we have
17 responded to everything that the Commission -- that CEC
18 staff has asked us about the data center. And we'll
19 continue to do so.

20 So I -- I don't believe that there is information
21 that's not being provided to staff for staff to decide
22 how the initial study and how the committee wants to
23 prepare the initial study, how it should look. We're
24 giving them the option to do it. What I would like,
25 which is that things are separated when you can. And

1 when they can't, they're -- they're part and parcel.

2 But either way, all the impacts are identified.

3 **HEARING OFFICER COCHRAN:** Understood. We're all --
4 we're all hoping for a complete record.

5 Excuse me for just a minute. Excuse me.

6 So at this point, we would like to ask for closed
7 session.

8 Mr. Hong, if you could unmute everyone on the line.

9 I'm sorry -- public comment. I'm so sorry.

10 Is there anyone here in the room in Sacramento who
11 would like to offer a public comment?

12 Seeing none, is there anyone on the phone who would
13 like to offer a public comment?

14 And while we had noticed that we would potentially
15 have a closed session, there will be no closed session
16 today.

17 Did you want to adjourn us?

18 **COMM. DOUGLAS:** All right. So with that, I want to
19 thank everyone for being here and listening in and for
20 your hard work on this. We'll look forward to seeing the
21 schedule or the -- your -- your ideas about schedule when
22 they come in.

23 And with that, we're adjourned.

24 (End of Recording)

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