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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:

WALSH DATA CENTER

Docket No. 19-SPPE-02

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
ADVISORS:

KOURTNEY VACCARO, Advisor to Commissioner Douglas
JANA ROMERO, Advisor to Commissioner Monahan
BEN DE ALBA, Advisor to Commissioner Monahan
KRISTY CHEW, Technical Advisor
SCOTT GALLATI, Applicant
ADAM BROWN, Applicant
MIKE LISENBEE, Applicant
LON PAYNE, Staff
JARED BABULA, Staff Counsel

Transcribed by: Amanda M. Oliver
eScribers, LLC
Phoenix, Arizona
HEARING OFFICER COCHRAN: We're still waiting for some of the commissioners to arrive and so we'll be starting shortly. Please note that the court reporter has called in to this proceeding today, so if you can speak slowly and clearly, it'll help the transcript come out better.

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

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

(Pause)

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

The Energy Commission has assigned a committee of two commissioners to conduct these proceedings. I'm
Karen Douglas, the presiding member. And Patty Monahan, the associate member, is here to, well, my right as you look at me, my left as I sit here.

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

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

Starting with the petitioner.

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

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

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

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

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

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

COMM. DOUGLAS: Excellent.

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

Doesn't sound like it, all right.

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

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

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

Notice of today's committee conference was provided on August 15, 2019. In the notice, the committee
directed the staff to file an issues identification report and schedule and invited the applicant to file any responses to the staff's filing.

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

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

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

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

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

So a small power plant exemption, 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 or more of electricity. The
law allows the Energy Commission to grant an exemption to this authority if a project will generate between 50 and 100 megawatts.

Known as the small power plant exemption, it is an expedited process. As required by the California Environmental Quality Act, hereinafter CEQA, 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 to either the environment or to energy resources.

In considering an SPPE, the Energy Commission acts as the lead agency under CEQA. Importantly, the Energy Commission grants -- 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 project under their respective permitting processes and conduct any necessary environmental review.

Pardon me for just a minute.

As I was saying, to grant a request for an SPPE, the Energy Commission must determine the proposed project's generating capacity. If the Energy Commission determines that the project's generating capacity is less than 100 megawatts, the Energy Commission must then determine
whether the construction or operation of the proposed project would result in substantial adverse impacts on the environment or energy resources.

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

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

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

Communications include voicemail messages, text messages, emails, letters, telephone calls, and in-person discussions. Essentially, any form of communication, unless all parties have notice and opportunity to participate in the communication.
In Walsh, the presiding officers are the commissioners, both Commissioner Douglas and Monahan, as well as the other commissioners who will ultimately hear the committee proposed decision, their advisors, the hearing officer, me, and any attorney assisting me or the committee. Here, the attorneys that we would say are most like to -- likely to be included in that are Ralph Lee, Galen Lemei, and Caryn Holmes. The public advisor will discuss ways you may communicate with the presiding officers that do not violate the ex parte rule.

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

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

Applicant?

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

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

We're a thirty-five billion dollar enterprise value. And some of our customers from our last 10K, we support Facebook, IBM, Oracle, Equinix, Raxsbase (ph.), LinkedIn,
Verizon, JP Morgan Chase, Uber, and many, many more.

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

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

Totaling 435,050 square feet.

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

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

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

The project has been working with Silicon Valley Power about that substation. I'd like to clear something up that was extremely confusing to me this week. The
distribution substation that you see there is called the Laurelwood Substation. It -- Silicon Valley Power develops distribution substations not necessarily associated with a particular project. So we had difficulty understanding information that we were getting, whether it went to the Laurelwood project or went to our project. And I think staff had that trouble, as well. We -- we figured that out.

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

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

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

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

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

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

**UNIDENTIFIED COMMISSIONER:** Thank you.

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

As you've -- are -- are aware -- I know at least some of you are aware, the Commission -- the generating capacity, the way that these generators work is they are generally put in a grouping. So for the Walsh project, there are two groups of six generators. They operate as if they are five. And what we mean by that is all six will come on at a reduced load, so that if something happens to one of the generators, you could turn it off and the other five could carry the load. That -- that load supports one of the rooms that you see for a server.
So if there's a loss of utility power, the generators will come on at reduced load and that is a redundant factor that's built -- built in so that if a generator fails, the -- the room can still have the maximum amount of power.

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

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

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

We can answer any questions you might have about the
HEARING OFFICER COCHRAN: I just had one other question. In looking at this diagram, so you had described that there's a three-story office/admin part and a four-story data center. Are those totally separate buildings or are they integrated, do they share a common hallway or -- because I can't tell from looking at this --

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

HEARING OFFICER COCHRAN: -- where the walls are.

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

Thanks.

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

MR. PAYNE: So as you noted, we did get partial responses to data requests. However, the memo that we submitted still stands. We have no known issues at this time because we're still working through getting answers to some of the questions which didn't come in with the
first round, but we do expect them. And -- and I know
the applicant's working diligently to produce them.

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

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

Is there anything else that you need on schedule?

HEARING OFFICER COCHRAN: No, thank you.

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

Rosemary?

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

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

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

In addition to that, you can subscribe to the Walsh Data Center listserv which will then give you electronic
notifications about all materials and documentations that
come through the -- for the public -- I'm sorry, for the
Walsh Data Center.

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

Thank you.

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

MS. AVALOS: Correct.

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

MS. AVALOS: We will be docketing.

HEARING OFFICER COCHRAN: Thank you so much.

MS. AVALOS: You're welcome.

HEARING OFFICER COCHRAN: So on the agenda, we're
now to the part where we had identified it as discussion
of issues identified by staff, applicant, or the
committee.
And as I stated before, staff filed an issues identification report. And Mr. Payne described it as well. In addition, the committee has had a chance to review the application, as well as applicant's response to that. I've also had a chance to review the data request responses that were filed on Monday at the same time.

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

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

So even before we start talking about actual dates
and a schedule, I'm a little bit interested in the process that you're going to be following.

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

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

HEARING OFFICER COCHRAN: Understood.

So applicant, I know that in the --

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

HEARING OFFICER COCHRAN: I'm sorry.

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

HEARING OFFICER COCHRAN: Thank you, Mr. Babula.

MR BABULA: -- just to help clarify and -- and make sure we're on the same page. Staff is moving forward with doing their sections right now as we speak. And as
of now, we know there's probably going to be some
additional biology mitigation that we're going to be
looking at.

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

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

So at this point, I think we are -- we just got some
info and we know specific things we're waiting for. But
because of their work, I don't want to give the sense
that we're just sitting here and there's going to be more
and more stuff. I think for the most part, we have a lot
of the info we need, and we know that there's specific
studies that are coming in. And we should be able to
progress rather rapidly and utilize the docket as a means
to -- if there's additional mitigation, to suggest that.
And then if needed, as we indicated in our schedule, a
workshop could be scheduled to kind of resolve the last
couple of issues.

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

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

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

MR. PAYNE: I think that's a good point. The --
the -- the September 20th date being mentioned as a
possible date to produce a schedule seems to coincide
with a date that they thought certain items from cultural
might come in.

HEARING OFFICER COCHRAN: Okay.

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

HEARING OFFICER COCHRAN: Okay. Mr. --

MR. PAYNE: -- accordingly.

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

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

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

MR. PAYNE: We --

HEARING OFFICER COCHRAN: Or forever hold your peace.

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

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

And the also -- the -- the -- the other issue that's hanging out there is whether or not a workshop would be needed, in which case it might be -- it -- there would be a notification timeframe which could bump it an additional ten days for example.
So I think at this point, the -- the best thing to do is -- is revisit the idea of how long it might take once we do get the complete set of responses. And we'll -- we'll do that diligently to get you something as soon as we can once we know what we're dealing with. We do -- it's just too premature at this point to know.

HEARING OFFICER COCHRAN: Okay. Fair enough.

Mr. Gallati?

MR. GALLATI: Yes, thank you.

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

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

MR. GALLATI: Yeah, we're -- we -- we understand that we're not likely to get a final decision in October. What -- what I would like to just -- put these in -- things in perspective is sometimes we have a disagreement with staff about the level of detail that they need. That has certainly happened in this project, as well. We have provided that level of detail and we are doing studies that we don't necessarily believe we have to do. But we'll do them because we are very comfortable that the results of those studies are not going to show anything that would cause a significant impact.
We believe that staff is -- is -- is being conservative on what they need in the record. We're not necessarily -- we don't necessarily believe that any of the studies we provide is gonna cause staff to say, oh, there's a significant impact that could be mitigating.

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

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

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

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

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

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

Lastly, we did notice that Laurelwood was published.
We're reviewing Laurelwood and to the extent there's
different conditions in there that might be applicable to
us, we're going to be prepared for those. So that if we
do need to talk to staff in a public workshop, we can do so. If not, we can probably just docket a reply.

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

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

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

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

But I would agree that trying to get a joint schedule and that the information coming in doesn't
necessarily trigger additional mitigation, it's more to
fill -- sort of fill out the facts and have a robust
record. But I think at this point, and in talking with
staff, the feeling is that they have a fairly good idea
of where things are and -- and that's existing mitigation
incorporated into the project is adequate in most cases.
And for those where we -- where there will be
additional, we'll get that info to -- out in the docket
and to the applicant as soon as possible.

HEARING OFFICER COCHRAN: Okay. Thank you.
So I then I wanted to talk a little bit about issues
that the committee has identified in reviewing the
application. And the first is -- and this -- this also
trickled through the objections to some of the data
requests. And that is that again the back-up generating
facility is, from what I can see, necessary for operation
of the data center based on the comments that we received
today about the design.
It seems to me as though this is one integrated
facility. And so in the analysis that goes forward, we
want to make sure that we are reviewing the whole of the
action. It is not merely the data center -- and I know
I'm preaching to the choir, I see Mr. Payne nodding his
head. But yes, we're considering the whole of the
action. And so I think that the request and the
information that we need to make a decision needs to reflect that.

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

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

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

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

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

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

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

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

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

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

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

I also note that at least the County of Santa Clara has requested participation in review of this project,
specifically looking for the traffic control plan. So we need to make sure that that box is checked.

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

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

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

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

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

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

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

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

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

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

But either way, all the impacts are identified.

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

Excuse me for just a minute. Excuse me.

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

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

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

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

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

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

Did you want to adjourn us?

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

And with that, we're adjourned.

(End of Recording)
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