

<b>DOCKETED</b>	
<b>Docket Number:</b>	19-SPPE-01
<b>Project Title:</b>	Laurelwood Data Center (MECP I Santa Clara I, LLC)
<b>TN #:</b>	230267
<b>Document Title:</b>	Order Denying Sarvey Motion to Compel; Granting Motion to Extend; and Adopting a Second Revised Scheduling Order
<b>Description:</b>	All parites' rebuttal testimony now due 10/22/19; Prehearing Conference Statements due 10/25/19; Prehearing Conference reinstated to October 31, 2019; Evidentiary Hearing reinstated to November 1, 2019
<b>Filer:</b>	Susan Cochran
<b>Organization:</b>	Energy Commission Hearing Office
<b>Submitter Role:</b>	Committee
<b>Submission Date:</b>	10/17/2019 4:46:24 PM
<b>Docketed Date:</b>	10/17/2019



**State of California  
State Energy Resources Conservation and  
Development Commission**  
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**APPLICATION FOR SMALL POWER PLANT  
EXEMPTION FOR THE:**

**LAURELWOOD DATA CENTER**

**Docket No. 19-SPPE-01**

**ORDER DENYING SARVEY MOTION TO COMPEL; GRANTING  
MOTION TO EXTEND DEADLINE TO FILE REBUTTAL TESTIMONY;  
AND ADOPTING A SECOND REVISED SCHEDULE**

On October 10, 2019, Intervenor Robert Sarvey (Sarvey) filed a “Motion to Compel Staff to Recognize and Respond to Intervenor Sarvey’s Comments and Testimony on the IS/MND and extend the deadline for rebuttal testimony” (Motion).<sup>1</sup> Sarvey sought an order compelling Energy Commission staff (Staff) to respond to his October 3, 2019 submission entitled “Testimony of Robert Sarvey on the Initial Study/MND for the Laurelwood Data Center” (Testimony),<sup>2</sup> which was filed in response to Staff’s Initial Study and Proposed Mitigated Negative Declaration (IS/MND).<sup>3</sup> The Motion also requested an extension of the deadline for filing rebuttal testimony to seven days after Staff filed the Committee-ordered response.

As its initial response to the Motion, the Committee issued an “Order Shortening Time on Motion to Compel, Vacating the Rebuttal Testimony Deadline, and Suspending the Prehearing Conference and Evidentiary Hearing” on October 14, 2019.<sup>4</sup> The Committee vacated the deadline for the parties to file rebuttal testimony and suspended the deadline for filing Prehearing Conference Statements and the scheduled Prehearing Conference and Evidentiary Hearing. Staff and Applicant responded to the Motion.<sup>5</sup>

The Committee now addresses the Motion on its merits. The Motion cites the Committee’s “Orders after July 23, 2019 Status Conference and Revised Scheduling Order” (Revised Scheduling Order) as supporting authority. The Revised Scheduling Order<sup>6</sup> required Staff to file a single integrated environmental review document, specified a public review and

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<sup>1</sup> TN 230110.

<sup>2</sup> TN 229959.

<sup>3</sup> TN 229584.

<sup>4</sup> TN 230172.

<sup>5</sup> TN 230200 (Staff); TN 230146 (Applicant).

<sup>6</sup> TN 229475.

comment period, and ordered “that Staff’s Opening Testimony shall include responses to any comments received during the review and comment period.”<sup>7</sup>

Staff timely filed its Opening Testimony, responding to all comments received on its IS/MND except those contained in the Testimony.<sup>8</sup> Sarvey labeled his comments as “testimony,” which caused Staff to treat them as something qualitatively separate and distinct from all of the other comments received on the IS/MND. As a result, Staff’s Opening Testimony did not directly respond to the Testimony.<sup>9</sup>

In their respective responses to the Motion, Staff and Applicant essentially argue that the Testimony warranted different treatment because it was not labeled “comment” and Sarvey did not ask that it be treated as public comment.<sup>10</sup> We disagree. Sarvey’s timely submission contained comments that Staff should have addressed in its Opening Testimony as directed by the Revised Scheduling Order. Even so, it appears that Staff’s October 15, 2019 filing of its reply to opening testimony cures the noncompliance.<sup>11</sup> For this reason, we **DENY** as moot Sarvey’s request for the Committee to direct Staff to reply to the Testimony.

The Committee will, however, **GRANT** Sarvey’s request for additional time to submit rebuttal testimony. Although Staff and Applicant assert that any such extension should not exceed October 18, 2018,<sup>12</sup> we hereby extend the deadline *for all parties* to submit rebuttal testimony to 5 p.m. on October 22, 2019.

The Committee therefore **ORDERS** as follows:

1. Staff filed its response to the Testimony on October 15, 2019. The portion of the Motion seeking an order to compel Staff to respond is **DENIED AS MOOT**.
2. The portion of the Motion requesting an extension of time to file rebuttal testimony is **GRANTED**. As set forth in the Revised Schedule, below, the Committee also establishes a new deadline for prehearing conference statements and reinstates the previously-published dates for the Prehearing Conference and Evidentiary Hearing.
3. The Committee **ADOPTS** the following schedule for this proceeding, which **supersedes** all prior schedules:

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<sup>7</sup> *Id.* at p. 4.

<sup>8</sup> TN 230062.

<sup>9</sup> *Id.* at p.1, fn. 1.

<sup>10</sup> TN 230200 and TN 230146.

<sup>11</sup> TN 230202.

<sup>12</sup> TN 230146.

EVENT	DATE
All Parties file Rebuttal Testimony	October 22, 2019
Parties file Prehearing Conference Statements, including evidence lists and witness lists <sup>13</sup>	October 25, 2019
Prehearing Conference	October 31, 2019 <sup>14</sup>
Evidentiary Hearing	November 1, 2019 <sup>15</sup>
Committee Issues Proposed Decision	November 2019
Final Decision (CEC Business Meeting)	December 11, 2019

### Public Advisor and Other CEC Contacts

The Public Advisor’s Office provides the public with assistance to participate in CEC proceedings. For assistance, please contact Noemí O. Gallardo, Public Advisor, at [publicadvisor@energy.ca.gov](mailto:publicadvisor@energy.ca.gov), (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](mailto: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](mailto:susan.cochran@energy.ca.gov) or (916) 654-3965.

Technical questions concerning the Petition should be addressed to Lisa Worrall, Project Manager, at [lisa.worrall@energy.ca.gov](mailto: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](mailto:mediaoffice@energy.ca.gov) or at (916) 654-4989.

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<sup>13</sup> The content of Prehearing Conference Statements shall be as set forth in the Notice of Prehearing Conference, Evidentiary Hearing, Scheduling Order, and Further Orders (TN 230188).

<sup>14</sup> Time and location of the Prehearing Conference are as provided in the Notice of Prehearing Conference, Evidentiary Hearing, Scheduling Order, and Further Orders (TN 230188).

<sup>15</sup> Time and location of the Evidentiary Hearing are as provided in the Notice of Prehearing Conference, Evidentiary Hearing, Scheduling Order, and Further Orders (TN 230188).

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

Dated: October 17, 2019

***ORIGINAL SIGNED BY:***

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Karen Douglas  
Commissioner and Presiding Member  
Laurelwood Data Center SPPE Committee

***ORIGINAL SIGNED BY:***

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