

DOCKETED

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Project Title:	Laurelwood Data Center (MECP I Santa Clara I, LLC)
TN #:	232325
Document Title:	Sarvey Request for Reconsideration
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State of California
State Energy Resources Conservation and Development Commission

In the matter of:

Laurelwood Data Center

Docket 19-SPPE-01

ROBERT SARVEY'S REQUEST FOR RECONSIDERATION

Pursuant to Public Resources Code section 25530, Robert Sarvey petitions this Commission for reconsideration of its Adoption Order, Findings and Order (collectively, "Decision") approving the SPPE for the Laurelwood Data Center (LDC) and its backup diesel generating system.

The reconsideration is filed because the decision makes several factual and legal errors which lead to the approval of the SPPE. The project itself does not qualify for an SPPE since its maximum generating capacity is above 100 MW. The decision fails to recognize that the project has significant impacts to SVP's energy resources. The decision ignores the project's other significant environmental impacts which require the filing of an AFC for this project. The commission's decision is prejudicial to the environmental justice community surrounding the project, as the EJ community was not properly engaged by commission staff in the proceeding. The initial study and negative declaration were improperly filed at the State Clearinghouse, leading state agencies to believe there was no public controversy related to the project and that BAAQMD was not a responsible agency.

The Projects generating capacity is over 100 MW and does not qualify for SPPE treatment.

The decision makes a factual and legal error stating that Section 2003 does not apply when determining the generating capacity of the Laurelwood Data Center.¹ The decision states, "***The uncontested evidence shows that the Backup Generators***

¹ PD Page

constitute a thermal power plant with a generating capacity in excess of 50 MW and none are or use turbine generators. This makes Section 2003 inapplicable.²

The commission has applied section 2003 to the calculation of generating capacity for power plants that utilize IC engines many times before. In the Humboldt Generating Station Proceeding (06-AFC-07) the commission determined that, *“The HBRP would consist of 10 dual-fuel Wärtsilä 18V50DF 16.3 MW reciprocating engine-generator sets and associated equipment with a combined nominal generating capacity of 163 MW.”*³ In the Eastshore Energy Center Proceeding (06-AFC-06) the commission used Section 2003 to determine that, *“The proposed facility would be a nominal 115.5 megawatt (MW) simple cycle power plant consisting of 14 Wartsila 8.4 MW 20V34SG natural gas-fired reciprocating engine generators and associated equipment.”*⁴ In the Quail Brush Proceeding (11-AFC-03) the Commission utilized Section 2003 when determining that the projects 11 internal combustion engines totaled 100 MW of capacity.⁵

The PD then alludes to the McLaren Data Center and Staff’s ad-hoc determination in that proceeding concluding that the data center load should be the generating capacity. The PD states that, *“In support of this contention, Staff cites to the recent decision in the McLaren Backup Generating Facility SPPE proceedings, in which the CEC concurred with Staff. In McLaren, a similar argument about using section 2003 to calculate generating capacity was raised. The CEC there stated that the generating capacity of that project was equal to the maximum load of the servers, ancillary load, and cooling.”*

The PD then conveniently ignores the commission’s jurisdictional decision in the Santa Clara Data Center (Attachment1). In the Santa Clara Data Center Phase 2 application, the applicant claimed the commission had no jurisdiction because the maximum generating capacity of the backup generating system would be limited by the 49.1 MW load of the data center. As the Santa Clara SPPE application states *“In a letter dated April 21, 2008, the Commission asserted permitting jurisdiction over the backup*

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³ <https://ww2.energy.ca.gov/2008publications/CEC-800-2008-005/CEC-800-2008-005-CMF.PDF> page 17 of 447

⁴ <https://ww2.energy.ca.gov/sitingcases/eastshore/documents/index.html>

⁵ <https://ww2.energy.ca.gov/sitingcases/quailbrush/index.html>

generators. (See Appendix F.) Xeres disagrees with the Commission's assertion of jurisdiction because the Data Center will never sell power on the electrical grid, is not a "power plant" under the Warren-Alquist Act, and because the maximum output of the backup generators for both project phases is 49.1 MW, which is less than the Commission's 50 MW jurisdictional threshold.⁶ The Commission clearly rejected data center load as the maximum generating capacity for the Santa Clara Data Center in 2011. In the Santa Clara Data Center Initial /Study and Mitigated Negative Declaration CEC Staff calculated generating capacity stating , "The current review by the Energy Commission considers the entire Data Center project, Phases 1 and 2, with the Phase 2 project as the trigger for analysis as it adds 16 additional backup generators, totaling 32 generators capable of 2.25 megawatts each, bringing total generation capacity of the backup system to 72 megawatts of installed capacity."⁷

The PD then conjectures that, "In the absence of on-point statutory or regulatory authority, we may take any action supported by the record that we deem reasonable and necessary to carry out the provisions of the Warren-Alquist Act, including approving the IS/PMND's methodology." The PD is dead wrong. The APA specifically prohibits any state agency from making any use of a state agency rule which is a "regulation" as defined in Government Code section 11342.600,⁸ that should have, but has not been adopted pursuant to the APA (unless expressly exempted by statute). Such a rule is called an "underground regulation". The CEC must provide the public an opportunity to comment on the proposed regulation as required by the APA. The CEC has failed to do so and the method of calculating generating capacity for a data center utilized in the PD is nothing more than an illegal underground regulation.

⁶ 11-SPPE-01 SPPE Application Page 26 of 70

https://ww2.energy.ca.gov/sitingcases/santaclara/documents/applicant/SPPE_Application/01_SPPE_Application.pdf

⁷ 11-SPPE-01 XERES VENTURES LLC, SANTA CLARA SC-1 DATA CENTER Small Power Plant Exemption Initial Study and Negative Declaration Recommendation Page 18 of 122

<https://ww2.energy.ca.gov/2012publications/CEC-700-2012-001/CEC-700-2012-001.pdf>

⁸ CA Govt Code § 11342.600 (2017) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

The commission recognized that it was implementing an illegal underground regulation. On August 14, 2019 the Commission initiated a new rulemaking proceeding Docket, 19- SIT-01. According to the OIR, *“The new rulemaking docket is opened to updating title 20 sections 2001 and 2003 relating to the methodology for determining generating capacity of power generating facilities. The rulemaking will amend regulatory language to clarify the methodology for calculating generating capacity for non-grid tied electrical generating facilities.”*

On August 17, 2019 I filed a motion to dismiss the proceeding as the project has a generating capacity of 168 MW when applying Section 2003 to determine the project’s generating capacity. Abruptly on August 29, 2019, twelve days after filing my motion to dismiss, the Commission canceled the order instituting rulemaking.

At this point it’s clear the commission is utilizing some underground regulations to process this and other data center applications in violation of the APA. They certainly are not complying with the language or purpose of the Small Power Plant Exemption. Section 2003 does not provide a method where generating capacity can be determined by data center load. Accordingly, the project DOES NOT qualify for SPPE treatment, as the LDC’s generating capacity calculated under Section 2003 is 168 MW. The applicant must now be required to submit an Application for Certification.

The Initial Study and Mitigated Negative Declaration were improperly filed.

The IS/MND was improperly filed for two reasons. First, the proposed decision adds three additional mitigation measures which were not included in the IS/MND that was circulated to the public for review on August 28, 2019.⁹ Any needed or proposed mitigation measures must be incorporated into a proposed negative declaration and the project revised accordingly before the negative declaration is released for public review. *Sundstrom v. Mendocino* (1988) 202 Cal. App. 3d 296. The commission has failed to recirculate the IS/MND since including 3 additional mitigation measures for the public to

⁹ TN 225284 Laurelwood Data Center Initial Study and Proposed Negative Declaration

review. Additionally, Guidelines, §15070(b)(1)¹⁰ require that modifications to a project must be agreed to by the project applicant before an MND is released for public review.

Secondly, CEC Staff failed to file the IS/MND correctly and misinformed the State Clearinghouse and associated state agencies. The CEC Staff failed to inform the State Clearinghouse that BAAQMD was a responsible agency.¹¹ More importantly, when the Summary Form asked the Question, *“If applicable, please describe any of the project’s areas of controversy known to the Lead Agency, including issues raised by agencies and the public.”* CEC Staff answered *“none”* as if the public had not raised any issues.¹² My petition for intervention was on filed May 5, 2019 (TN 228057). I raised several issues in that petition and the State Clearinghouse and the state agencies could not have known if there was any public controversy and what those issues were. Accordingly, the clearinghouse and the state agencies were misled and the IS/MND must be recirculated.

The Decision and the IS/MND inadequately analyzed the project’s energy impacts under Appendix F of the CEQA Guidelines.

Appendix F of the California Environmental Quality Act (CEQA) Guidelines requires that an Environmental Impact Report (EIR) include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of nonrenewable energy in order to assure energy implications are considered in project decisions. The SDC IS/MND fails to properly analyze the projects impacts to energy resources.

¹⁰ § 15070. Decision to Prepare a Negative or Mitigated Negative Declaration. A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur,

¹¹ Attachment 2 Page 2 Question 2 Please provide a list of the responsible or trustee agencies for the project?

Answer: If the Small Power Plant Exemption is issued by the California Energy Commission this document could be used by the City of Santa Clara for local permitting. (BAAQMD is not mentioned)

¹² Attachment 2 Page 2 Question 1 “If applicable, please describe any of the project’s areas of controversy known to the Lead Agency, including issues raised by agencies and the public.” CEC Staff Response “None”

The Decision and the IS/MND fail to accurately describe the projects impact on SVP’s energy supplies. According to the Decision, “On an annual basis, the project would consume up to the maximum electrical usage of 867,240 MWh per year.¹³ The decision fails to compare it to the existing energy consumption and supplies of the City of Santa Clara and SVP. SVP total electric sales for 2018 were 3,566,293 MWh.¹⁴ SDC’s potential energy use of 867,240 MWh is approximately 24% of the entire SVP sales for 2018. This would be a significant impact.

The decision and the IS/MND ignore the reasonably foreseeable cumulative energy impact of the CEC’s current review and siting of over seven other data centers. As can be seen from the table below the CEC is permitting 650 MW of data centers, not including the newly announced Lafayette Data Center.

DATA CENTER APPLICATIONS BEFORE THE COMMISSION

Facility	Docket #	Total MW	Annaul MWh	(MTCO _{2e} /yr)
McLaren Data Center	17-SPPE-01	99 MW ¹⁵	665,760 MWh ¹⁶	154,958 ¹⁷
Laurelwood Data Center	19 SPPE-01	99 MW ¹⁸	867,240 MWh ¹⁹	171,770 ²⁰
Walsh Data Center	19-SPPE-02	80 MW ²¹	700,800 MWh ²²	109,164 ²³
Sequoia Data Center	19-SPPE-03	95.5 MW ²⁴	846,340 MWh ²⁵	84,023 ²⁶
San Jose Data Center	19-SPPE-04	99 MW ²⁷	803,730 MWh ²⁸	254,122 ²⁹

¹³ Decision Page 210 of 378

¹⁴ Attachment 2 <https://www.siliconvalleypower.com/svp-and-community/about-svp/utility-fact-sheet>

¹⁵ <https://ww2.energy.ca.gov/sitingcases/mclaren/>

¹⁶ McLaren Final Decision TN 225170 Page 128 of 361

¹⁷ McLaren Final Decision TN 225170 Page 129 of 361

¹⁸ <https://ww2.energy.ca.gov/sitingcases/laurelwood/>

¹⁹ Laurelwood Proposed Decision TN 231721 Page 210 of 368

²⁰ Laurelwood Proposed Decision TN 231721 Page 211 of 368

²¹ <https://efiling.energy.ca.gov/GetDocument.aspx?tn=229419-1&DocumentContentId=60822>

²² Walsh Data Center Application TN 228877-2 Page 111 of 203

²³ Walsh Data Center Application TN 228877-2 Page 112 of 203

²⁴ <https://ww2.energy.ca.gov/sitingcases/walsh/> Page 10 of 222

²⁵ Sequoia Data Center Application TN 229419-1 Page 106 of 222

²⁶ Sequoia Data Center Application TN 229419-1 Page 131 of 122

²⁷ <https://ww2.energy.ca.gov/sitingcases/sj2/>

²⁸ San Jose Data Center Application TN 230741 Page 175 of 285

²⁹ San Jose Data Center Application TN 230741 Page 176 of 285

2305 Mission College Data	19-SPPE-05	78.1 MW ³⁰	684,156 MWh ³¹	86,762 ³²
Memorex Data Center		99 MW ³³	N/A	N/A
Totals		650 MW	4,568,006	860,799

The 2018 peak demand for the SVP service area was 526.2 MW in 2018.³⁴ With an additional 650 MW of peak demand from the CEC Data Centers under review, peak demand would increase to 1,176 MW, not including the newly announced Lafayette Data Center. The decision makes a factual error when it states, SVP currently has ownership interest, or has purchase agreements, for approximately 1,268 MW of electricity. According to CEC Staff analysis of SVP’s procurement plan, SVP currently has 839 MW of peak capacity.³⁵ According to CEC Staff’s analysis of SVP’s 2018 procurement plan, demand in SVP service area will be 823 MW in 2030.³⁶ CEC Staff’s analysis of SVP’s 2018 procurement plan reports that SVP will have 998 MW procured by 2030³⁷ which leaves a procurement shortfall of approximately 178 MW, not including the newly announced Lafayette Data Center and a planning reserve margin.

The IS/MND and the decision fail to properly identify the energy supplies that would serve the project by assuming that the data center will utilize SVP’s 2017 overall power mix of “*approximately 38 percent eligible renewable resources, 34 percent large*

³⁰ <https://ww2.energy.ca.gov/sitingcases/missioncollege/>

³¹ Mission College Data Center Application TN 230848 Page 121 of 222

³² Mission College Data Center Application TN 230848 Page 122 of 222

³³ https://ww2.energy.ca.gov/sitingcases/all_projects_cms.html

³⁴ Decision Page Attachment 2 <https://www.siliconvalleypower.com/svp-and-community/about-svp/utility-fact-sheet>

³⁵ TN230953 Review of Silicon Valley Power's 2018 Integrated Resource Plan Page 21 of 53

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwj45c3g_znAhVG7J4KHbV0AyoQFjAAegQIBRAB&url=https%3A%2F%2Fefiling.energy.ca.gov%2Fgetdocument.aspx%3Ftn%3D230953&usg=AOvVaw3yMuAH-4pkX1Gqlbkdk7nV

³⁶ TN230953 Review of Silicon Valley Power's 2018 Integrated Resource Plan Page 21 of 53

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwj45c3g_znAhVG7J4KHbV0AyoQFjAAegQIBRAB&url=https%3A%2F%2Fefiling.energy.ca.gov%2Fgetdocument.aspx%3Ftn%3D230953&usg=AOvVaw3yMuAH-4pkX1Gqlbkdk7nV

³⁷ TN230953 Review of Silicon Valley Power's 2018 Integrated Resource Plan Page 21 of 53

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hydroelectric, and 28 percent nonrenewable sources (SVP 2017).”³⁸ While that may be true for the overall power mix, the Santa Clara non-residential power mix has a much higher GHG intensity that may actually be higher than the 2018 California power mix as demonstrated in the table below.³⁹ The SVP non-residential power mix is 32% renewable, 11% hydroelectric and 34% natural gas and 23% sources of unspecified power as shown in the table below. The non-residential mix consumes all of the natural gas fired generation owned by SVP and also consumes all of the 23% of sources that are unspecified.

2018 Power Content Label

SILICON VALLEY POWER				
ENERGY RESOURCES	SILICON VALLEY POWER RESIDENTIAL MIX	SILICON VALLEY POWER NON- RESIDENTIAL MIX	SANTA CLARA GREEN POWER (100% VOLUNTARY)	2018 CA POWER MIX**
Eligible Renewable	45%	31%	2%	31%
Biomass & Biowaste	0%	2%	0%	2%
Geothermal	0%	5%	0%	5%
Eligible Hydroelectric	0%	13%	0%	2%
Solar	26%	0%	2%	11%
Wind	19%	11%	0%	11%
Coal	0%	0%	0%	3%
Large Hydroelectric	55%	11%	0%	11%
Natural Gas	0%	34%	0%	35%
Nuclear	0%	0%	0%	9%
Other	0%	0%	98%	<1%
Unspecified sources of power*	0%	24%	0%	11%
TOTAL	100%	100%	100%	100%
<p>* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.</p> <p>** Percentages are estimated annual by the California Energy Commission based on the electricity generated in California and net imports as reported to the Quarterly Fuel and Energy Report database and the Power Source Disclosure program.</p>				

³⁸ IS/MND Page 140 of 32

³⁹ Exhibit 300 Page 18 of 26, Exhibit 303 Page 14 of 26

The IS/MND and the Decision fail to properly quantify the projects GHG emissions

CEQA Guidelines § 15064.4. (a) requires that, “The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency **shall** make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.”

The initial study underestimates the LDC’s indirect GHG emissions from electricity use. The initial study estimates the indirect GHG emissions from the project’s electricity use as 171,770 MTCO₂e/yr. In estimating the project’s indirect GHG emissions, the initial study utilizes Silicon Valley Power’s overall 2017 GHG emissions factor of 430 pounds of CO₂e/MWh. As I pointed out in my comments on the initial study and rebuttal testimony⁴⁰ SVP’s overall GHG emission factor of 430 pounds of CO₂e/MWh is not applicable to the project’s GHG emissions. SVP has a residential mix which is 100% renewable but their non-residential power mix is almost identical to the 2018 California Power Mix, as can be seen from the 2018 Power Content Label below.

⁴⁰ Exhibit 303 Pages 12,13,14 - Exhibit 300 pages 16,17

2018 Power Content Label

SILICON VALLEY POWER				
ENERGY RESOURCES	SILICON VALLEY POWER RESIDENTIAL MIX	SILICON VALLEY POWER NON- RESIDENTIAL MIX	SANTA CLARA GREEN POWER (100% VOLUNTARY)	2018 CA POWER MIX**
Eligible Renewable	45%	31%	2%	31%
Biomass & Biowaste	0%	2%	0%	2%
Geothermal	0%	5%	0%	5%
Eligible Hydroelectric	0%	13%	0%	2%
Solar	26%	0%	2%	11%
Wind	19%	11%	0%	11%
Coal	0%	0%	0%	3%
Large Hydroelectric	55%	11%	0%	11%
Natural Gas	0%	34%	0%	35%
Nuclear	0%	0%	0%	9%
Other	0%	0%	98%	<1%
Unspecified sources of power*	0%	24%	0%	11%
TOTAL	100%	100%	100%	100%
<p>* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.</p> <p>** Percentages are estimated annual by the California Energy Commission based on the electricity generated in California and net imports as reported to the Quarterly Fuel and Energy Report database and the Power Source Disclosure program.</p>				

CEC Staff's response to my testimony about the SVP 2018 non-residential power mix chart that I provided stated, "*Thank you for the information.*"⁴¹ The CEC Staff then admits in its testimony that, in fact, SVP's current non-residential power mix matches California power mix. As CEC reply testimony states, "*That SVP's mix matches California's mix today, in one snapshot in time, does not mean that SVP and California's power mix will remain in lockstep as renewables are added, demand and efficiency measures are implemented, and demand changes across California and its electricity providers.*"⁴² Despite admitting that the SVP's non-residential power mix that will be utilized by the LDC is the same as the 2018 California Power Mix, the CEC Staff fails to reevaluate the project's indirect GHG emissions from electricity use. Utilizing the 2018

⁴¹ TN 230202 California Energy Commission Staff Reply to Opening Testimony Page 17 of 17

⁴² TN 230202 California Energy Commission Staff Reply to Opening Testimony Page 17 of 17

California statewide average emissions factor of 1,004 pounds of CO₂ per megawatt ⁴³, the projects indirect GHG emissions from the use of energy are approximately 395,059 MTCO₂e/yr. That is 233% of the amount of GHG emissions estimated by CEC Staff in the initial study. Additionally, 24% of SVP's non-residential power comes from unspecified sources of power as compared to the 11% unspecified sources of power in the 2018 California Power Mix. The SVP non-residential power mix may in fact have a higher GHG emission rate per megawatt than the 2018 California Power Mix. Despite providing evidence and a fair argument that the initial studies GHG emission calculations are erroneous and understated the Decision states that, "*Intervenor Sarvey's contention about SVP's power mix is irrelevant.*"⁴⁴

The decision violates **CEQA Guidelines § 15064.4.** (a) which requires the lead agency to properly evaluate the projects GHG emissions. Without a proper quantification of GHG emissions it is impossible to determine if the projects GHG emissions are significant or not.

The Commission decision fails to consider an appropriate time frame for the project as required by CEQA Guidelines § 15064.4 (b)

CEQA Guidelines § 15064.4 (b) requires that, "In determining the significance of a project's greenhouse gas emissions, the lead agency should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. The agency's analysis should consider a timeframe that is appropriate for the project. CEQA requires agencies to consider a project's direct and indirect significant impacts on the environment, "giving due consideration to both the short-term and long-term effects." The IS/MND and the decision fail to consider the timeframe of the project or estimate the projects lifetime emissions and long term effects. The decision and the IS/MND both violate CEQA Guidelines § 15064.4 (b) because they fail to consider the projects lifetime impacts and emissions.

Data Center indirect GHG emission impacts are significant

⁴³ TN 229584 Initial Study/MND Page 162 of 291

⁴⁴ Decision Page 36 of 338

The decision and the IS/MND utilize BAAQMD's 2017 CEQA Guidelines significance levels to determine if the projects emissions have a significant impact on the environment. The decision states, "*the 2017 BAAQMD Guidelines include recommended thresholds for use in determining whether projects would have significant adverse environmental impacts under CEQA. For commercial/industrial land use development projects, BAAQMD has adopted a numeric threshold of 1,100 million metric tons of CO₂e per year (MTCO₂e/yr) and a qualitative threshold of complying with a qualified greenhouse gas reduction strategy.*"⁴⁵

Clearly the indirect GHG emissions from the data centers electrical use are well over 1,100 MTCO₂e/yr, so the projects indirect GHG emissions are significant. The record of the proceeding contains unrefuted testimony and evidence that the GHG emissions from LDC emissions are not consistent with the Santa Clara Climate Action Plan. The decision itself admits that the LDC's GHG emissions will equal 14% of the City of Santa Clara current GHG emissions, but claims this is not a significant impact. The evidence shows that the LDC's GHG emissions of 171,770 MTCO₂e/yr is more than the entire GHG emissions from the city of Santa Clara's residential energy sector, which is 132,912 MTCO₂e/yr.⁴⁶ The LDC GHG emissions of 171,770 MTCO₂e/yr is higher than the combined total of the City of Santa Clara's Residential sources (132,912 MTCO₂e), Solid Waste sources (25,724 MTCO₂e) and Water & Wastewater sources (24,292 MTCO₂e) GHG totals.

While the decision insists that the projects GHG emissions are consistent with the City of Santa Clara CAP, the decision fails to analyze if in fact these GHG emissions will be consistent with the cap. The evidence in the proceeding is that the City of Santa Clara, "achieved a 4.5 % reduction in GHG emissions in eight years (2008-2016), and that it is highly unlikely they will reduce another 10.5 % in GHG emission reductions to meet the 2020 GHG emission reduction target in just four years."⁴⁷

The decision claims the project is consistent with the Santa Clara CAP because the project includes several mitigation measures from the Santa Clara CAP that the

⁴⁵ Decision Page 34 of 368

⁴⁶ Decision Page 208 of 368

⁴⁷ Exhibit 303 Page 15

project is implementing without ever analyzing the reductions in GHG emissions from the mitigation measures and then determining whether the projects emissions will actually be consistent with the Santa Clara CAP.

The decision then tries to claim that the project is consistent with the City of Santa Clara General plan. The decision tries to make the ludicrous claim that the project *“Encourages implementation of technological advances that minimize public health hazards and reduce the generation of air pollutants”* and yet the project proposes to use of 54 three MW diesel engines. Then the decision claims that the project encourages measures to reduce greenhouse gas emissions to reach 30 percent below 1990 levels by 2020, despite the fact that the evidence shows that the projects GHG emission are 14% of the total GHG emissions in the City of Santa Clara.

The decision then goes on to claim that the project’s 171,770 MTCO₂e/yr are consistent with the SB 100 because, *“This project could significantly reduce GHG emissions by purchasing all of its electricity from Santa Clara Green Power, which is available through SVP. The project could further reduce its GHG impacts by installing solar panels over parking spaces and any roof area not being used for the adiabatic condenser cooling system or other equipment, consistent with a City of Santa Clara design review condition, should one be issued.”*⁴⁸ The decision merely states the project could be consistent with SB100 if it implemented the above mitigation measures, but none of these mitigation measures are required, so the project’s consistency with SB 100 is speculative and does not qualify as evidence that the project is consistent with SB 100.

The decision then claims the project is consistent with AB 32 because, *“The vast majority of the project’s GHG emissions would result from energy use. Multiple AB 32 Scoping Plan measures address GHG emissions from energy use.”* The decision never discusses how the project will implement measures required by AB 32, except for the cap and trade program. Ironically the project’s GHG emissions from the use of the diesel generators will not be covered under the cap and trade program because those GHG emission are less than 10,000 MTCO₂e/yr. Further, as the evidence

⁴⁸ Decision page 215 of 368

demonstrates, 24% of SVP's commercial energy mix is from unspecified sources⁴⁹ which may or may not be subject to California Cap and Trade program. Any power source that emits less than 10,000 MTCO₂e/yr, such as the Gianera Generating Station in Santa Clara which provides power to the community, will also not be required to participate in the cap and trade program. Without analysis no claim can be made that the project is consistent with AB 30.

Cumulative GHG impacts

The CEC is permitting over seven data centers in Santa Clara. According to the applications, the combined total of GHG emissions from the seven data centers is over 860,000 MTCO₂e/yr as seen in the table below. The seven data centers' GHG emissions of 860,799 MTCO₂e/yr equal almost half of the total 2016 GHG emissions from the City of Santa Clara which was 1,769,178 MTCO₂e/yr.⁵⁰ With that increase in GHG emissions from data center electricity use a fair argument can be made that the project's emissions will not comply with EO S-3-05, SB 100, AB 32, and other state, local, and regional plans to reduce GHG emissions. From 2008 to 2016 the Santa Clara Climate Action Plan progress report shows the City of Santa Clara reduced GHG emissions by 85,122 MTCO₂e/yr.⁵¹ The GHG emissions from the LDC alone would be twice the amount of GHG reductions the City of Santa Clara has achieved from 2008 to 2016, essentially neutralizing any GHG mitigation measures proposed in the Santa Clara Cap.

⁴⁹ Exhibit 300 Page 18 of 26, Exhibit 303 Page 14 of 26 9

⁵⁰ Exhibit 3 Page 10 of 29

⁵¹ Exhibit 3 Pages 10 of 29, and 8 of 29

DATA CENTER APPLICATIONS BEFORE THE COMMISSION

Facility	Docket #	Total MW	Annual MWh	(MTCO _{2e} /yr)
McLaren Data Center	17-SPPE-01	99 MW ⁵²	665,760 MWh ⁵³	154,958 ⁵⁴
Laurelwood Data Center	19 SPPE-01	99 MW ⁵⁵	867,240 MWh ⁵⁶	171,770 ⁵⁷
Walsh Data Center	19-SPPE-02	80 MW ⁵⁸	700,800 MWh ⁵⁹	109,164 ⁶⁰
Sequoia Data Center	19-SPPE-03	95.5 MW ⁶¹	846,340 MWh ⁶²	84,023 ⁶³
San Jose Data Center	19-SPPE-04	99 MW ⁶⁴	803,730 MWh ⁶⁵	254,122 ⁶⁶
2305 Mission College Data Center	19-SPPE-05	78.1 MW ⁶⁷	684,156 MWh ⁶⁸	86,762 ⁶⁹
Memorex Data Center		99 MW ⁷⁰	N/A	N/A
Totals		650 MW	4,568,006	860,799

Cumulative Impacts

According to the decision, *“Intervenor Sarvey argues that the IS/PMND did not include an analysis of the Project’s cumulative air quality impacts because it did not analyze the impacts from Highway 101 or additional new data center projects (with backup generating facilities) in the area.”*⁷¹ I raised the issue of including the new Mission College Data Center in cumulative analyses in my opening testimony⁷² and also

⁵² <https://ww2.energy.ca.gov/sitingcases/mclaren/>

⁵³ McLaren Final Decision TN 225170 Page 128 of 361

⁵⁴ McLaren Final Decision TN 225170 Page 129 of 361

⁵⁵ <https://ww2.energy.ca.gov/sitingcases/laurelwood/>

⁵⁶ Laurelwood Proposed Decision TN 231721 Page 210 of 368

⁵⁷ Laurelwood Proposed Decision TN 231721 Page 211 of 368

⁵⁸ <https://efiling.energy.ca.gov/GetDocument.aspx?tn=229419-1&DocumentContentId=60822>

⁵⁹ Walsh Data Center Application TN 228877-2 Page 111 of 203

⁶⁰ Walsh Data Center Application TN 228877-2 Page 112 of 203

⁶¹ <https://ww2.energy.ca.gov/sitingcases/walsh/> Page 10 of 222

⁶² Sequoia Data Center Application TN 229419-1 Page 106 of 222

⁶³ Sequoia Data Center Application TN 229419-1 Page 131 of 122

⁶⁴ <https://ww2.energy.ca.gov/sitingcases/sj2/>

⁶⁵ San Jose Data Center Application TN 230741 Page 175 of 285

⁶⁶ San Jose Data Center Application TN 230741 Page 176 of 285

⁶⁷ <https://ww2.energy.ca.gov/sitingcases/missioncollege/>

⁶⁸ Mission College Data Center Application TN 230848 Page 121 of 222

⁶⁹ Mission College Data Center Application TN 230848 Page 122 of 222

⁷⁰ https://ww2.energy.ca.gov/sitingcases/all_projects_cms.html

⁷¹ Decision Page 33 of 368

⁷² Exhibit 300 page 6

in my rebuttal testimony⁷³ based on my review of the data centers' impacts from the City of Santa Clara's MND on the Mission College Facility.⁷⁴ The Mission College Data Center is less than 1,000 feet from the LDC and is now under review by the Energy Commission.⁷⁵ Its SPPE was filed on November 25, 2019. According to the decision, the Mission College Data Center and other data centers under review by the commission need not be considered in a cumulative assessment because the, "*The IS/PMND reviewed the Project's potential to have a significant adverse impact by evaluating whether the Project's criteria pollutant emissions exceeded any of the BAAQMD construction or operation emissions significance thresholds.*"⁷⁶

14 CCR § 15065 (a) (3) states, "*The project has possible environmental effects that are individually limited but cumulatively considerable. 'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.*"

CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but "cumulatively considerable." (Pub. Resources Code, §21083(b); Cal. Code Regs., tit. 14, §15065.) "Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, **and the effects of probable future projects.**" (Cal. Code Regs., tit. 14, §15065, emphasis added.) In addition to analyzing the direct impacts of a project, CEQA requires a determination of whether or not a project will result in a significant cumulative impact. The analysis must include other past, present and **probable future projects causing related cumulative impacts**, regardless of whether such projects are within the control of the lead agency. (Cal. Code Regs., tit. 14, §15130, subs. (a)(1) & (b)(1).)

California courts have repeatedly emphasized that the rationale for the cumulative impact analysis is to provide the decisionmaker a broad perspective on the

⁷³ Exhibit 303 page 8

⁷⁴ <https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/221/3650?npage=2>

⁷⁵ 19-SPPE-05

⁷⁶ Decision Page 33 of 368

overall impact of a project. (See *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263; *Citizens Association v. County of Inyo* (1985) 172 Cal.App.3d 151.) In *Bozung*, the State Supreme Court termed the CEQA cumulative impact requirement a “vital provision” which “directs reference to projects, existent and planned, in the region so that the cumulative impact of all projects in the region can be assessed.” (*Bozung v. Local Agency Formation Com.*, supra, 13 Cal.3d 263, 283, emphasis added.)

As noted by the courts, “a cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker’s perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval.” (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431)

In this case the Energy Commission is actually the lead agency in reviewing the Mission College Data Center, which is less than 1,000 feet from the LDC and CEQA requires it be included in the cumulative analysis. Therefore, the decision fails to comply with CEQA requirements and must be vacated.

Public Health

BAAQMD’s CEQA Guidelines for assessing cumulative health risk impacts recommend that a lead agency evaluate **all** sources of toxic air contaminants (TACs) within 1,000 feet of a proposed project to ensure that the cumulative health risk from the project plus other nearby sources will not exceed a chronic Hazard Index of 10 or a carcinogenic risk of 100 additional cancers per million exposed population.⁷⁷ BAAQMD’s Recommended Methods for Screening and Modeling Local Risks and Hazards guidelines require that, “*The user should include all past, present, and foreseeable future sources within a 1,000 foot radius (or beyond where appropriate) from the fenceline of the sources, or from the location of a receptor, plus the contribution from the project.*”⁷⁸ The commission is currently analyzing the Mission

⁷⁷ See attachment 1 TN 232242 Page 4 of 6

⁷⁸ BAAQMD Recommended Methods for Screening and Modeling Local Risks and Hazards Page 87 of 94
<https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/baaqmd-modeling-approach.pdf>

College Data Center which is less than 1,000 feet from the LDC and according to BAAQMD Recommended Methods for Screening and Modeling Local Risks and Hazards Guidelines, the Mission College Data Center must be included in the cumulative health risk assessment. The decision does not require such an assessment in violation of BAAQMD CEQA guidelines, which the energy commission allegedly evaluated the projects air quality impacts with.

The evidence shows that the Intel Data Center located across the street from the LDC has a cancer risk of 205 in a million by itself because of its back up diesel generators.⁷⁹ The Intel Data Center health risk exceeds BAAQMD's 100 in million cancer risk threshold by itself. The evidence also shows that the project is in an area that BAAQMD states has high levels of pollution and toxic air contaminants, where best practices and further study are necessary.⁸⁰

Public Participation and Environmental Justice

The Energy Commission failed to engage the general public, much less the confirmed environmental justice community that will be impacted by this proposal. The Commission failed to hold the traditional Informational Hearing and Site Visit.⁸¹ An informational hearing is sponsored by the Energy Commission to inform the public about the project and to invite public participation in the review process. No document handling memo was sent out to the librarians informing the public where the proceedings documents could be accessed.⁸² The notice of the application was published once in the Chinese journal, but no project materials were provided to the public in Chinese, Spanish or other appropriate foreign languages. In fact, because of the lack of outreach, the Staff didn't know what languages were predominately used by the EJ community. No hearings were held in Santa Clara. No workshop on the initial

⁷⁹ Exhibit 300 Page 6

⁸⁰ Exhibit 307

⁸¹ Title 20 § 1709.7. Informational Hearing, Site Visit, and Schedule

(a) Within 45 days after the acceptance of a notice of intent or application for certification, the presiding member shall hold one or more informational hearings and site visits as close as practicable to the proposed sites. Notice of the first informational hearing shall comply with section 1209, shall include information on how to participate in the proceeding, and shall be provided to all persons identified by the applicant under section (a)(1)(E) of the information requirements in Appendix B.

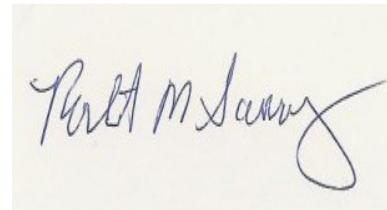
⁸² <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-01>

study was conducted in Santa Clara. All of the customary procedures for Energy Commission proceedings were not conducted and the EJ population was disenfranchised by the CEC.

Conclusion

The project does not qualify for SPPE treatment because its generating capacity is over 100 MW. The project's criteria pollutant and GHG emissions are significant and the applicant must now be required to file an Application for Certification. The project itself and the seven other data centers being reviewed by the commission constitute a significant impact on SVP's energy resources. The commission staff failed to engage the environmental justice community as evinced by the fact they did not even contact one environmental justice organization in Santa Clara,⁸³ or any sensitive receptor who would be impacted by the project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert M. Sarvey", is centered within a light beige rectangular box.

Robert M. Sarvey
501 W. Grant Line Rd.
Tracy, CA. 95376
209 835-7162

⁸³ Exhibit 207 Page 9 of 11

Attachment 1 Letter from Melissa Jones to Mr. Cantrell

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



April 21, 2008

Mr. W. Tate Cantrell, Jr.
Vice President, Data Center Technologies
DuPont Fabros Technology, Inc.
1212 New York Avenue, NW
Suite 900
Washington, DC 20005

RE: Diesel Backup Generators (Xeres Permit S-1 through S-32)

Dear Mr. Cantrell:

The California Energy Commission has received information regarding 32 low-use diesel backup generators that we understand Xeres Ventures, LLC, plans to install to support a data center at 535 Reed Street in Santa Clara, California. We also understand each backup generator has a rated capacity of 2.87 megawatts, which would make the total generating capacity at the site be 91.8 megawatts. We also understand Xeres is seeking a permit from the Bay Area Air Quality Management District, as well as a use permit from the City of Santa Clara.

The purpose of this letter is to inform you that the Energy Commission has permitting jurisdiction over the 32 diesel generators. As a general matter, the Energy Commission has jurisdiction over any site for a thermal power plant with a generating capacity of 50 megawatts or more. (Pub. Resources Code §§ 25110, 25120, 25500.) Here, the 32 generators, each to use diesel as a source of thermal energy to generate electricity, constitute a thermal power plant with more than 50 megawatts in generating capacity.

The aggregation of all 32 generators is based on their common location for a computer server campus and their common purpose to provide power conditioning and backup power to the data center that is also planned for the site. The issue of whether to aggregate the backup generators and view them as a thermal power plant under the Energy Commission's jurisdiction is one we have dealt with on more than one occasion. In all these cases, including a few in which the power plants were to be located a mile or more apart and two others which also involved diesel backup generators for a data center, the Energy Commission's Chief Counsel concluded the Commission has jurisdiction based on aggregating the proposed power plants, including backup diesel generators.

The factors supporting aggregation include such matters as the separate generating units: (a) being served by common structures, for example, a common control room or a common gas line, (b) if lacking a common control room, nevertheless being triggered to operate by the same event, for example, grid failure, (c) being under common ownership or subject to a common permit to operate, (d) being proposed as part of a foreseeable plan of development and, thus, constituting a "project" under the California Environmental Quality Act for purposes of environmental review by the permitting agency, and (e) being installed to serve a common industrial or commercial host.

Here, the generators will be located on one site proposed for the development of a data center. The generators are considered by the Air District to be components of a single project. The generators have the common purpose of serving as power conditioning and backup generators for a computer server campus being developed by a single project proponent. Their operation is likely to be triggered by the same event, for example, lightning storms or grid failure. Moreover, the potential for the generators to operate simultaneously should be analyzed in a comprehensive environmental document in accordance with the California Environmental Quality Act. Such analysis would identify the project's emissions, assess their impacts, identify feasible mitigation, and assess the potential health risks from this concentration of diesel engines.

For all these reasons, we believe the Energy Commission has permitting authority over the 32 generators, regardless of whether the power will be sold to the grid or used exclusively on-site. Thus, to receive a valid permit for the 32 diesel generators, Xeres must file with the Energy Commission either an application for a small power plant exemption (for a thermal power plant of 50 to 100 megawatts) or an application for certification. We believe an application for certification would be most appropriate, given the potential for adverse impacts from the use of diesel fuel in as many as 32 generators operating at one time.

In either case, the Energy Commission, as a matter of statute, serves as lead agency under the California Environmental Quality Act. As lead agency, it is responsible for preparing the appropriate environmental document for public review and consideration in deciding whether to approve the application. In the case of a small power plant exemption, the project is exempted from the Commission's jurisdiction and permitted at the local level. In the case of an application for certification, the project is permitted by the Energy Commission. During the certification process, the Commission and its staff work with the Air District, which is required under the Commission's regulations to issue a determination of compliance with the District's rules. The conditions of the District's determination, provided within the timeline of the Commission's proceeding, are incorporated into and become enforceable through the Commission's final decision.

Attachment 2- Form F Summary for Document Transmittal

Sample Summary for Electronic Document Submittal

15 copies of this document may be included when a Lead Agency is submitting electronic copies of environmental impact reports, negative declarations, mitigated negative declarations, or notices of preparation to the SCH. The SCH will still accept other summaries, such as an EIR summary prepared pursuant to CEQA Guidelines Section 15123, attached to the electronic copies of the document.

SCH # _____

Lead Agency: California Energy Commission

Project Title: Laurelwood Data Center

Project Location: City of Santa Clara Santa Clara
City *County*

Please provide a Project Description (Proposed Actions, location, and/or consequences).

MECP1 Santa Clara 1, LLC (Applicant) is seeking an exemption from the California Energy Commission's jurisdiction (Small Power Plant Exemption, or SPPE) and proceed with local approval rather than requiring a certificate by the California Energy Commission. Section 25519(c) of the Public Resources Code designates the California Energy Commission as the California Environmental Quality Act (CEQA) lead agency, as provided in section 21165 of the Public Resources Code, for all projects that seek an exemption from the California Energy Commission's power plant certification process.

The applicant proposes to construct and operate the Laurelwood Data Center (LDC or project) at 2201 Laurelwood Road, in Santa Clara, California. The LDC would include two multi-storied data center buildings, and 56 3.0 megawatt (MW) standby backup diesel-fired generators capable of providing electrical power during utility outages or certain onsite electrical equipment interruption or failure. The maximum electrical load of the LDC would be 99 MW, inclusive of tenant-installed information technology (IT) equipment in the LDC and cooling and ancillary electrical and telecommunications equipment operating to support IT equipment. The LDC would also include an onsite 60 kilovolt substation with an electrical supply line that would connect to a Silicon Valley Power distribution line located 0.1 miles west of the LDC. To make way for the project, demolition of asphalt/foundations and underground utilities would be necessary, prior to construction.

Please identify the project's significant or potentially significant effects and briefly describe any proposed mitigation measures that would reduce or avoid that effect.

See Attached

If applicable, please describe any of the project's areas of controversy known to the Lead Agency, including issues raised by agencies and the public.

None

Please provide a list of the responsible or trustee agencies for the project.

If the Small Power Plant Exemption is issued by the California Energy Commission this document could be used by the City of Santa Clara for local permitting.