

DOCKETED	
Docket Number:	19-SPPE-02
Project Title:	Walsh Data Center
TN #:	232877
Document Title:	NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING, REVISED SCHEDULING ORDER, AND FURTHER ORDERS
Description:	The PREHEARING CONFERENCE will be held on: MONDAY, MAY 18, 2020 2:00 p.m. The EVIDENTIARY HEARING will be held on: WEDNESDAY, MAY 27, 2020 10:00 a.m.
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
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**State of California
State Energy Resources Conservation and
Development Commission**
1516 Ninth Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov

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

***WALSH BACKUP GENERATING
FACILITY***

Docket No. 19-SPPE-02

**NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING,
REVISED SCHEDULING ORDER, AND FURTHER ORDERS**

On June 28, 2019, 651 Walsh Partners, LLC (Applicant) submitted an application (Application) to the California Energy Commission (CEC)¹ for a small powerplant exemption for the Walsh Backup Generating Facility in Santa Clara, California.²

PLEASE TAKE NOTICE that the Committee³ has scheduled a **PREHEARING CONFERENCE** and an **EVIDENTIARY HEARING**:

The **PREHEARING CONFERENCE** will be held on:

**MONDAY, MAY 18, 2020
2:00 p.m.**

The **EVIDENTIARY HEARING** will be held on:

**WEDNESDAY, MAY 27, 2020
10:00 a.m.**

The Prehearing Conference and Evidentiary Hearing will be held remotely, consistent with Executive Orders N-25-20 and N-29-20 and the recommendations from the California Department of Public Health to encourage physical distancing in order to slow the spread of COVID-19. The public and parties will be able to

¹ The CEC is formally known as the "State Energy Resources Conservation and Development Commission." (Pub. Resources Code, § 25200. All subsequent citations are to the Public Resources Code unless otherwise specified.)

² All of the documents related to the Application can be found at:
<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?doctetnumber=19-SPPE-02>.

³ The CEC designated a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Patty Monahan, Commissioner and Associate Member, to preside over the Application on July 15, 2019 (TN 228984).

participate and/or observe the proceedings consistent with the direction in these Executive Orders. The Committee strongly encourages anyone who wishes to provide public comment to do so in writing in advance.

*To participate in the Prehearing Conference and/or Evidentiary Hearing remotely, please see the instructions below under the section “**REMOTE ATTENDANCE**”*

*To submit comments in advance of the Prehearing Conference and/or Evidentiary Hearing, please see the instructions below under the section “**AGENCY AND PUBLIC PARTICIPATION**”*

BACKGROUND

The Application⁴

The Applicant applied on June 28, 2019 for a small power plant exemption (SPPE) for the proposed Walsh Backup Generating Facility (Backup Generators) to be located at 651 Walsh Avenue in Santa Clara, California. The Backup Generators would be used to ensure an uninterruptible power supply for the Walsh Data Center (Data Center). The Data Center consists of a four-story, 435,050 square foot data center building that will house computer servers in a secure and environmentally controlled structure and a three-story administrative building, containing support facilities such as the building lobby, restrooms, conference rooms, and office space.

The Applicant proposes to install the Backup Generators: 33 diesel-fired generators distributed in two different redundant configurations⁵ to provide up to 80 MW, the maximum building load of the Data Center. The Backup Generators also include a single 2-MW diesel-fired generator to support the administration space, shipping and receiving, and common building systems such as elevators. This generator would have a 4,000-gallon fuel storage tank. The generators for both the data center building and the administrative building would have a total combined fuel storage of 218,400 gallons—an amount sufficient to provide 24 hours of emergency generation at peak demand of the Data Center and administrative building.

The Applicant would also construct a substation with connections to existing distribution lines with Silicon Valley Power (SVP). The substation will allow delivery of power from SVP but will not allow any electricity generated from the Backup Generators to be distributed to the transmission grid. Construction of the substation includes electrical switchgear and distribution lines between the substation and buildings as well as from the backup generator yards and each respective building.

We refer to the Data Center, the Backup Generators, the substation, and other project features collectively as the “Project.”

⁴ The information in this section is taken from section 2 of the Application. (TN 228877-2)

⁵ The Project would have four systems where five units would be available, but only four would actually run and two systems where six units would be available, but only five would actually run.

Small Power Plant Exemptions

The CEC has the exclusive authority to consider, and ultimately approve or deny, applications for the construction and operation of thermal powerplants that will generate 50 megawatts (MW) or more of electricity.⁶ If a proposed project will generate between 50 MW and 100 MW of electricity, the CEC may grant an exemption to this exclusive certification jurisdiction through an SPPE if it makes three distinct findings:

- the proposed powerplant has a generating capacity up to 100 MW;
- no substantial adverse impact on the environment will result from the construction or operation of the powerplant; and
- no substantial adverse impact on energy resources will result from the construction or operation of the powerplant.⁷

For purposes of reviewing an SPPE, the CEC is the “lead agency”⁸ under the California Environmental Quality Act (CEQA).⁹ In reviewing an SPPE, the CEC considers the “whole of the action.”¹⁰ For the Application, the “whole of the action” means the Backup Generators, the Data Center, and the other project features, such as the substation.

If an SPPE is granted, responsible local land use authorities and other agencies, most notably any local air management or air pollution control district, conduct further review of the project, including any necessary additional environmental review as “responsible agencies” under CEQA.

Parties to the Proceeding

The parties to the proceeding are:

1. Applicant;
2. Staff;¹¹
3. Helping Hand Tools;¹²
4. California Unions for Reliable Energy (CURE);¹³ and

⁶ §§ 25120, 25500.

⁷ § 25541; Cal. Code Regs., tit. 20, §§ 1934 *et seq.*

⁸ § 25519(c).

⁹ The CEQA statutes, California Public Resources Code section 21000 *et seq.*, and CEQA Guidelines, California Code of Regulations, title 14, section 15000 *et seq.* (Guidelines), detail the protocol by which state and local agencies comply with CEQA requirements. We refer to the statute and the Guidelines collectively as “CEQA.”

¹⁰ Cal. Code Regs., tit. 14, §15378.

¹¹ Cal. Code Regs., tit. 20, § 1937.

¹² By Committee order. TN 230809.

¹³ By Committee order. TN 230808.

5. Robert Sarvey.¹⁴

Parties have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing party witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.¹⁵

SCHEDULING ORDER

The schedule attached to this Notice **supersedes** all other schedules issued by the Committee.

PURPOSE OF THE PREHEARING CONFERENCE

The Prehearing Conference is a public forum where the Committee will assess the parties' readiness for an Evidentiary Hearing, identify matters in dispute, and discuss the remaining schedule and procedures necessary to conclude the SPPE process.

PURPOSE OF THE EVIDENTIARY HEARING

The Committee's review is primarily conducted through an administrative adjudicatory process. The Evidentiary Hearing is a major component of the administrative adjudicatory proceeding where evidence is received into the hearing record from the parties to the proceeding. As part of the review process, the Committee will conduct evidentiary hearings and receive public comment.¹⁶ Only the parties (Applicant, Staff and Intervenors) may present evidence for introduction into the hearing record.

Members of the public may present comments at the Evidentiary Hearing that become part of the hearing record.¹⁷

Formal Hearing Procedures

Although Committees have typically opted to utilize informal hearing processes in similar proceedings, this proceeding will follow formal hearing procedures.

The formal hearing procedure will proceed in the following order:

1. All parties' experts on the contested subject area are sworn in as a group.
2. Opening Testimony: The designated expert witness(es) for each party provides a brief opening statement summarizing the key points and conclusions of their testimony. The order of opening testimony and examination of witnesses shall be as follows: Applicant, Staff, Helping Hand Tools, CURE, Mr. Sarvey.
3. Cross Examination: At the conclusion of the opening statements from each party's designated expert witness(es), parties may cross-examine the other

¹⁴ By Committee order. TN 230849.

¹⁵ Cal. Code Regs., tit. 20, § 1212, subd. (a).

¹⁶ Cal. Code Regs., tit. 20, § 1212, subd. (b).

¹⁷ Cal. Code Regs., tit. 20, § 1212, subdivs. (b)(1)(B), (c)(4).

parties' expert(s). Each witness will testify and respond to questions individually (not as a group). The order of examination of witnesses shall be as follows: Applicant, Staff, Helping Hand Tools, CURE, Mr. Sarvey.

4. At the conclusion of the parties' examination of the experts, the Committee may ask witnesses additional questions.

NOTICE OF CLOSED SESSION DELIBERATIONS

At any time during the Prehearing Conference or Evidentiary Hearing, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

ORDERS REGARDING RESPONSES TO COMMITTEE QUESTIONS, PREFILING EVIDENCE, EXHIBIT LISTS, AND PREHEARING CONFERENCE STATEMENTS

Committee Questions

As indicated in the memorandum regarding "Direction Regarding Opening and Rebuttal Testimony" filed on April 7, 2020,¹⁸ the Committee wishes to ensure a complete and robust record on potential air quality, greenhouse gas emissions, and public health impacts. To that end, the Committee issues the following questions for the parties to address. The parties' answers to these questions should be addressed in testimony or briefings or both.

All parties intending to submit evidence responsive to these questions are **ORDERED** to submit the evidence as or with opening testimony no later than **May 13, 2020**.

We also invite the Bay Area Air Quality Management District (BAAQMD), the City of Santa Clara, and Silicon Valley Power to answer these questions and to provide any relevant information related to these questions in their respective areas of expertise. The Committee would appreciate the filing of any written answers **by May 13, 2020** and oral comments are welcome during the Evidentiary Hearing.

¹⁸ TN 232685.

Public Health Pertaining to Toxic Air Contaminants (TACs):

- In “Staff’s Responses to Comments Received on the Initial Study,”¹⁹ Staff states that it will work with BAAQMD staff to resolve BAAQMD’s comments on the TACs analysis and Health Risk Assessment (HRA).²⁰ Has Staff resolved BAAQMD’s comments regarding whether the analysis of TACs and the HRA is correct? Explain.
- If Staff has not resolved BAAQMD’s comments on the TACs analysis and HRA, is the analysis nonetheless CEQA compliant and consistent with the BAAQMD methodology? Explain.

Greenhouse Gas (GHG) Emissions:

- What is the CEC’s legal obligation to evaluate potential impacts of GHG emissions from the Project, including operations of the Data Center, beyond calendar year 2020? What thresholds of significance must or may be applied?
- Were any of the methodologies or thresholds identified in CEQA Guidelines sections 15064.4 or 15183.5, or the BAAQMD CEQA Guidance used? If so, identify where, using reference to docketed documents specifying titles, transaction numbers and specific page numbers. If not, explain why and the legal significance, if any, of not including the methodologies or thresholds identified in CEQA Guidelines sections 15064.4 or 15183.5, or the BAAQMD CEQA Guidance.
- Explain whether and how the goal identified in the City of Santa Clara’s 2020 Climate Action Plan, for data centers to achieve a power usage effectiveness below 1.2, is applicable to and whether it is feasible for the Project?
- If the GHG emissions impacts from Project operation are found to be significant, what, if any, mitigation measures could be adopted to bring the GHG emissions below the threshold of significance?

Prefiling Evidence

All written testimony (whether opening or rebuttal) and documentary evidence must be filed in this proceeding’s docket (19-SPPE-02) and have a transaction number assigned by the CEC Docket Unit in accordance with the “General Orders Regarding Motions, Electronic Filing, Service of Documents, and Other Matters,” filed July 31, 2019.²¹

All parties intending to submit evidence for consideration at the Evidentiary Hearing are **ORDERED** to docket evidence, written testimony, exhibit lists, and prehearing conference statements no later than 5:00 p.m. on the dates specified in the attached Schedule, unless otherwise directed by the Committee.

¹⁹ TN 232611.

²⁰ *Id.* at p. 7.

²¹ TN 229159.

Because the Prehearing Conference and Evidentiary Hearing will be held with remote access only (no physical location for participants to gather), failure by a party to comply with the filing requirements stated in this Order shall preclude that party from participating in the Evidentiary Hearing. Any party precluded may still offer public comment.

Use of Documents

Because the Evidentiary Hearing will be held with remote access only (no physical place for participants to gather), no party may use a document that is not included on the Exhibit List.

If a party wishes to use a document during opening, rebuttal, or cross-examination, including for the purpose of impeachment, the document shall be identified at least one (1) business day prior to the start of the Evidentiary Hearing by reference to its number on the Exhibit List. This identification will allow for the documents to be available at the start of the Evidentiary Hearing, to be shared with the participants to the hearing, and to avoid delays in locating documents for use. When documents are used during the questioning of witnesses, the questioner shall provide cites to the page(s) of the relevant document.

Prehearing Conference Statements

The Prehearing Conference Statement must specify under separate headings:

1. The subject areas that are complete and ready to proceed to Evidentiary Hearing.
2. The subject areas upon which any party proposes to introduce testimony in writing rather than through oral testimony.
3. The subject areas that are not complete and not yet ready to proceed to Evidentiary Hearing and the reasons therefor.
4. The subject areas that remain disputed and require adjudication, the issues in dispute, and the precise nature of the dispute for each issue.
5. The identity of each witness the party intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witness(es) will offer testimony, whether the testimony will be oral or in writing, a brief summary of the testimony to be offered by the witness(es), qualifications of each witness, and the time required to present testimony by each witness.
6. Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions (including questions regarding witness qualifications), the issue(s) to which the questions pertain, and the time desired to question each witness. (Note: a party who fails to provide, with specificity, the scope, relevance, and time for questioning other parties' witness(es) risks preclusion from questioning witnesses on that subject area.)

7. A list identifying exhibits with transaction numbers that the party intends to offer into evidence during the Evidentiary Hearing and the technical subject areas to which they apply (see below for further details on Exhibit Lists).
8. Proposals for briefing deadlines or other scheduling matters.

Exhibit List

The parties shall exchange documentary evidence, including written testimony, by filing an **Exhibit List**. Each document shall be numbered and identified on the Exhibit List as follows:

- Applicant's exhibits shall be numbered *consecutively* as **Exhibits 1 through 199**.
- Staff's exhibits shall be numbered *consecutively* as **Exhibits 200 through 299**.
- Intervenor Helping Hand Tools' exhibits shall be numbered *consecutively* as **Exhibits 300 through 399**.
- Intervenor CURE's exhibits shall be numbered *consecutively* as **Exhibits 400 through 499**.
- Intervenor Robert Sarvey's exhibits shall be numbered *consecutively* as **Exhibits 500 through 599**.

The Exhibit Lists shall be formatted with four columns. The first column shall list the proposed exhibit number. The second column shall identify the transaction number of the corresponding document. The third column shall state the title of the document as shown in the docket. The fourth column shall state the subject area(s) to which the exhibit applies. The Hearing and Policy Unit of the CEC's Chief Counsel's Office will ensure the addition of the exhibit number information into the e-filing system and the issuance of a Master Exhibit List.

All exhibits must have a transaction number and be filed in this proceeding's docket. Exhibits will not be received into evidence unless they have been previously identified in both the Prehearing Conference Statement and under the "Use of Documents" procedure set forth above.

TRANSCRIPTS

Parties are responsible for identifying errors in the transcripts of the proceedings. Corrections to the transcripts must be filed within 30 days of the filing of a transcript.

AGENCY AND PUBLIC PARTICIPATION

Local, state, federal, and tribal governmental agencies and members of the public are welcome to attend and offer oral or written comments at the Prehearing Conference and Evidentiary Hearing. It is not necessary to be an Intervenor to participate in the public process. Comments may be submitted electronically at the [19-SPPE-02 docket page](#) found at

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=19-SPPE-02>.

Otherwise, written comments may be submitted for posting on the proceeding docket by emailing them to the Public Advisor at public.advisor@energy.ca.gov or e-mailing them to docket@energy.ca.gov,

For all comments, please include the docket number and proceeding name “**Docket No. 19-SPPE-02, Walsh Backup Generating Facility**” in the subject line and on the cover page.

Please note: Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via search engines such as Google and Yahoo.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC’s Public Advisor’s Office provides the public assistance in participating in CEC proceedings. For information on how to participate in this proceeding, or to request language services or other reasonable accommodations, please contact the Public Advisor, Noemí O. Gallardo, at publicadvisor@energy.ca.gov, or by phone at (916) 654-4489, or toll free at (800) 822-6228. Requests for language services and reasonable accommodations should be made at least five days in advance. The CEC will work diligently to accommodate late requests.

WebEx: If you experience difficulties with the WebEx system, please contact the Public Advisor’s Office via email or phone. See contact information above.

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

Technical questions concerning the SPPE should be addressed to Leonidas (Lon) Payne, Project Manager, at leonidas.payne@energy.ca.gov or at (916) 651-0966.

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

REMOTE ATTENDANCE

You may participate in this meeting through WebEx, the CEC's on-line meeting service. Any presentations will appear on your computer screen and you may listen to audio via your computer or telephone. Please be aware that the meeting may be recorded. WebEx technical support is available at (866) 229-3239, or you may contact the CEC’s Public Advisor’s Office at publicadvisor@energy.ca.gov, or (800) 822-6228.

Via Computer: Go to <https://energy.webex.com> and enter the meeting number for the event in which you wish to participate. When prompted, enter your name, email address, and the password.

Event	Date	Meeting Number	Password
Prehearing Conference	May 18, 2020	925 655 114	WSPPE@42020
Evidentiary Hearing	May 27, 2020	925 631 241	WSPPE@52720

The “Join Conference” menu will offer you a choice of audio connections:

1. To call into the meeting: Select "I will call in" and follow the on-screen directions.
2. To have WebEx call you: Enter your direct dial phone number (no extensions are permitted) and click "Call Me."
3. To listen over the computer: If you have a broadband connection, and a headset or a computer microphone and speakers, you may use VoIP (Internet audio) by going to the Audio menu, clicking on “Use Computer Headset,” then “Call Using Computer.”

Via Telephone Only (No Visual Presentation): Call (866) 469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number for the event:

Event	Date	Meeting Number	Password
Prehearing Conference	May 18, 2020	925 655 114	WSPPE@42020
Evidentiary Hearing	May 27, 2020	925 631 241	WSPPE@52720

Via Mobile Access: Access to WebEx meetings is now available from your mobile device. To download an app, go to:

<https://signin.webex.com/collabs/#!/meetings/joinbynumber?TrackID=&hbhref=&goid=attendee-meeting>

Muting

We greatly appreciate your cooperation in reducing noise on the audio connection by muting your line when you are not speaking. Mute your line rather than placing your phone on hold. Using WebEx, you may mute yourself by right clicking on your name in the panelists or attendees list and selecting “Mute.” If you are only using a telephone connection, press “*6” once to mute and again to unmute.

AVAILABILITY OF DOCUMENTS

Information about the Application, 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/walsh/>

IT IS SO ORDERED.

Dated April __, 2020

Dated April __, 2020

Approved by:

Approved by:

Karen Douglas
Commissioner and Presiding Member
Walsh Backup Generating Facility SPPE
Committee

Patty Monahan
Commissioner and Associate Member
Walsh Backup Generating Facility SPPE
Committee

Mailed to list number: 7530

AGENDA

Walsh Backup Generating Facility SPPE (19-SPPE-02) Prehearing Conference

May 18, 2020
2:00 p.m.

Remote Access Only

To participate in the Prehearing Conference remotely, please see the instructions above under the section "REMOTE ATTENDANCE"

1. Call to Order
2. Prehearing Conference

Report from the Applicant, Staff, and Intervenors regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses, Committee discussions with the parties about the order of subject areas, use of formal procedures, and other matters in preparation for the Evidentiary Hearing.

3. Public Comment

Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

4. Committee Closed Session Deliberations on the Application for a small power plant exemption for the Walsh Backup Generating Facility.²²
5. Adjourn

²² The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

AGENDA

Walsh Backup Generating Facility SPPE (19-SPPE-02) Evidentiary Hearing

**May 27, 2020
10:00 a.m.**

Remote Access Only

To participate in the Evidentiary Hearing remotely, please see the instructions above under the section “REMOTE ATTENDANCE”

1. Call to Order
2. Evidentiary Hearing

Receipt of evidence from the Applicant, Staff, and Intervenors on the application for a small power plant exemption for the Walsh Backup Generating Facility.

3. Public Comment

Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

4. Committee Closed Session Deliberation on the Application for a small power plant exemption for the Walsh Backup Generating Facility.²³
5. Adjourn

²³ The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

**WALSH BACKUP GENERATING FACILITY SPPE (19-SPPE-02)
APRIL 2020 REVISED SCHEDULE**

EVENT	DATE
Staff Published the Initial Study and Proposed Mitigated Negative Declaration (IS/PMND)	February 18, 2020
Public Comment Period on the IS/PMND closed	March 23, 2020
Last Day to File Petition to Intervene	March 30, 2020
Staff's Responses to comments received on the IS/PMND filed	April 1, 2020
All Parties filed Opening Testimony on topics other than potential air quality, greenhouse gas emissions, and public health impacts	April 8, 2020
All Parties filed Rebuttal Testimony on topics other than potential air quality, greenhouse gas emissions, and public health impacts	April 15, 2020
All Parties file Opening Testimony responsive to the Committee Questions on potential air quality, greenhouse gas emissions, and public health impacts	May 13, 2020
Agency and public responses to Committee Questions on potential air quality, greenhouse gas emissions, and public health impacts	May 13, 2020
All Parties file Prehearing Conference Statements	May 15, 2020
Prehearing Conference	May 18, 2020

All Parties File List of Documents to be used during Evidentiary Hearing	May 26, 2020
Evidentiary Hearing	May 27, 2020
Committee files Committee Proposed Decision	June 2020
Final Decision Adoption Hearing at CEC Business Meeting	July 2020