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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:	
SAN JOSE CITY DATA CENTER	Docket No. 19-SPPE-04

CALIFORNIA UNIONS FOR RELIABLE ENERGY DATA REQUEST SET NUMBER TWO

November 19, 2020

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CALIFORNIA UNIONS FOR RELIABLE ENERGY
DATA REQUEST SET NUMBER TWO

Pursuant to sections 1716 and 1941 of Title 20 of the California Code of Regulations, California Unions for Reliable Energy ("CURE") requests the information in the enclosed Data Requests ("DR") for the San Jose City Data Center, Docket No. 19-SPPE-04 ("Project").

Section 1716 (b) grants "any party" the right to request from the applicant any information which is reasonably available to the applicant and relevant to the application proceedings or reasonably necessary to make any decision on the application. Pursuant to section 1941, data requests must be submitted no more than sixty days after a small power plant exemption ("SPPE") application is filed. However, pursuant to section 1941, the presiding member may allow data requests to be submitted more than sixty days after an SPPE is filed.

In this case, there is good cause for the presiding member to allow CURE to submit additional data requests. The applicant filed an amended SPPE with a new reconductoring analysis on October 29, 2020. CURE seeks information related to the applicant's amended application. Specifically, CURE seeks the information in Data Request Set Number Two, attached as Appendix A, pertaining to the air quality and biological resources impacts from the amended Project. Therefore, CURE respectfully requests that the presiding member allow CURE to submit its second set of data requests.

Dated: November 19, 2020

Respectfully submitted,

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APPENDIX A

BIOLOGICAL RESOURCES

Western Snowy Plover Sites

The amended SPPE application's account of western snowy plover nesting locations are limited to data available from the California Natural Diversity Database ("CNDDB"). The San Francisco Bay Bird Observatory ("SFBBO") conducts annual surveys of San Francisco Bay salt ponds to determine western snowy plover breeding locations; the CNDDB does not contain all of SFBBO's survey data. Western snowy plovers are extremely sensitive to disturbance, especially during the nesting season. As a result, the ability to avoid Project impacts to snowy plovers is dependent on an accurate understanding of snowy plover nesting habitat within the reconductoring study area. Please provide the following:

1. Please incorporate SFBBO's snowy plover data into the amended SPPE application's description of the environmental setting.

Impacts from Helicopters

Project-related reconductoring activities entail the use of helicopters in the vicinity of the reconductoring laydown and staging areas and along the existing transmission line. Noise and activity associated with helicopters can have negative impacts on special-status wildlife. In addition, helicopters can directly impact special-status birds if: (a) birds collide with the helicopter, or (b) if the helicopter causes the birds to collide with other structures (e.g., transmission lines). These impacts can occur at any time of year and thus would not necessarily be prevented by seasonal restrictions.

According to the amended SPPE application, helicopters will add "temporary and limited noise increases."[1] However, the amended SPPE application does not provide any data on the anticipated duration, frequency, or decibel levels of helicopter noise in relation to habitats that may contain special-status species. This precludes the ability to understand the potential for, and severity of, impacts on special-status species (and other wildlife such as migratory water birds) due to helicopters. Please provide the following information:

2. Please clarify whether there would be any spatial or temporal restrictions on helicopter usage.
3. Please provide data on noise levels associated with the helicopters that would be used for the Project. In addition, please discuss how long and often sensitive habitat areas would be exposed to helicopter noise.
4. Please analyze how helicopter use associated with the Project could impact: (a) special-status animal species, and (b) wildlife use of habitat within the Don Edwards National Wildlife Refuge.

[1] Amended SPPE application, p. 31.

5. Measure BIO-Hot Zone-8 states: "[t]o avoid take of salt marsh harvest mouse, the biologist will assess the site to determine if…use of helicopters is needed." Please explain how this assessment would avoid take of salt marsh harvest mouse.

Impacts from Ground Disturbance

The amended SPPE application indicates the Project could impact sensitive natural communities and habitat for special-status species due to vegetation removal or trimming activities to clear work areas, by project vehicles accessing work areas, and/or by staging vehicles and equipment in work areas. The amended SPPE application does not quantify these impacts. This precludes the ability to understand the magnitude of the Project's impacts on sensitive natural communities and special-status species.

6. Please quantify the estimated level of direct impacts to each of the landcover (habitat) types in the reconductoring study area.
7. Please clarify whether line trucks or other vehicles would enter (be driven in) brackish marsh, salt pond, salt panne, salt marsh, and seasonal wetland habitats.

Impacts to Special-Status Plants

According to the amended SPPE application: "[s]pecial-status plants can be damaged or destroyed as a result of vegetation removal or trimming activities to clear work areas, by project vehicles accessing work areas, and/or by staging vehicles and equipment in work areas. Special-status plants also can be indirectly affected by soil compaction and the spread of nonnative invasive species from project equipment."

The amended SPPE application concludes that impacts to special-status plants would be less than significant. The rationale for this conclusion is that direct impacts to special-status plant species will be avoided through implementation of PDFs (mitigation measures), which consist of: surveys, biological monitoring, a Worker Environmental Awareness Program ("WEAP"), buffers, exclusion fencing, and demarcation of special-status plant populations.

According to the Project Description, each pull and tension site would be 40 feet wide by 100 feet long and would be located immediately adjacent to poles within existing PG&E easements. Special-status plants have been documented near some of the poles and have the potential to occur at pull and tension sites. Therefore, it is unclear how direct impacts to special-status plants would be avoided if the plants occur within pull and tension sites. Please clarify:

8. Please discuss how much flexibility there is in the specific location of a pull and tension site in relation to the pole.
    a. What is the range of distances the line truck can be from the pole to effectively pull the conductor?
    b. What is the maximum permissible angle between the line truck and the pole alignment (i.e., can pull and tension sites be offset to one side of the easement)?
9. Please provide a map depicting the locations of pull and tension sites and any off-road routes that would be used to access those sites.
10. Please clarify how direct impacts to special-status plants would be avoided if the plants encompass all feasible locations for a pull or tension site.
11. Please identify the mitigation measures that would prevent (or minimize) spread of nonnative invasive species from project equipment.
12. Please clarify whether the surveys conducted under BIO-Reconductoring-1.1 would entail visits to reference sites and would adhere to the botanical survey protocols issued by the California Department of Fish and Wildlife.

Western Pond Turtle Mitigation

Western pond turtles use terrestrial habitat for refuge, nesting, and resting. Rathbun et al. (2002) reported mean maximum distances of 49.7 meters, 93.7 meters, and 12.0 meters from the nearest water for these three types of terrestrial habitat use, respectively.[2] Please provide the following information:

13. Please provide the rationale for the 50-foot buffer proposed in BIO-Wetland-2.
14. Please clarify how impacts to pond turtle nests and hatchlings would be avoided.

California Ridgeways' Rail, Salt Marsh Harvest Mouse, and Salt Marsh Wandering Shrew

The California Ridgway's rail, salt marsh harvest mouse, and salt marsh wandering shrew have the potential to occur in the Project are. The use of equipment or presence of workers within and near marsh habitat could injure or crush these species or their nests; disturb nesting and foraging via noise, vibratory, or visual disturbance; and potentially cause nest abandonment and habitat degradation. The amended SPPE application identifies 12 PDFs to avoid impacts to these species. The PDFs include: BIO-FP-16 (Sensitive Biological Resource Areas Buffer), BIO-FP-

[2] Rathbun GB, NJ Scott Jr, TG Murphey. 2002. Terrestrial Habitat Use by Pacific Pond Turtles in a Mediterranean Climate. Southwestern Naturalist 47(2):225-235.

18 (Avoidance of Nests), BIO-Hot Zone-8 (Minimization of Impacts to Salt Marsh Habitat and Species), BIO-Reconductoring-1.1 (Conduct Preconstruction Survey(s) for Special-Status Species and Sensitive Biological Resource Areas), and BlO-Reconductoring-1.2 (Exclusion Fencing). Please provide the following:

15. BIO-Hot Zone-8 requires a biologist to assess the site to determine if vegetation protection mats are appropriate. Please provide more information on protection mats as an avoidance measure, including any available scientific literature pertaining to the efficacy of protection mats in preventing impacts to salt marsh and brackish marsh habitat. In addition, please identify the criteria that would be assessed to determine whether vegetation protection mats are appropriate.
16. BIO-Reconductoring-1.1 requires a qualified biologist to conduct pre-construction surveys within 48 hours prior to construction activities. Special survey techniques (or protocols) are required to detect the California Ridgway's rail, salt marsh harvest mouse, and salt marsh wandering shrew. Therefore, please identify the pre-construction survey techniques that will be implemented for these species. In addition, please identify what qualifications the biologists would need to have to be considered a "qualified biologist."
17. BlO-Reconductoring-1.2 calls for the installation of exclusion fencing around workspaces "as appropriate," and at the discretion of the qualified biologist. Although exclusion fences can minimize impacts, they also can result in "take" of wildlife. Therefore, please identify what variables would be considered to determine whether exclusion fencing is appropriate at a work site, and if fencing is installed, what measures would be taken to minimize the potential for "take" caused by the fencing.

Impacts to Tricolored Blackbird, Burrowing Owl, Western Snowy Plover, Yellow Rail, Northern Harrier, White-Tailed Kite, American Peregrine Falcon, Saltmarsh Common Yellowthroat, California Black Rail, Alameda Song Sparrow, and Other Birds Protected Under the Migratory Bird Treaty Act

The Project area contains potential nesting habitat for the tricolored blackbird, burrowing owl, western snowy plover, yellow rail, northern harrier, white-tailed kite, American peregrine falcon, saltmarsh common yellowthroat, California black rail, and Alameda song sparrow. Reconductoring activities have the potential to impact nesting individuals of these and other species protected under the Migratory Bird Treaty. The amended SPPE application identifies eight PDFs that would be implemented to avoid the potential for direct impacts to these species. The PDFs are: BIO-1.1 and 1.2; BIO-2.1 through 2.4; BIO-3.2; and BIO-5.1. Please clarify the following:

18. Special survey techniques are needed to detect rails, and to avoid stepping on western snowy plover nests. Therefore, please identify the pre-construction survey techniques that will be implemented under PDF BIO-1.1.

19. Identifying the location of western snowy plover, northern harrier, saltmarsh common yellowthroat, and Alameda song sparrow nests can be extremely difficult, especially without introducing the risk of inadvertently stepping on (or otherwise damaging) the nest. Finding rail nests can be nearly impossible. PDF BIO-1.1 requires a construction-free buffer "if a nesting migratory bird were to be detected." This condition is vague. Please clarify how the biologist would determine whether the migratory bird is nesting in the area, and whether the construction-free buffer would only be implemented if the biologist locates the nest.

20. Please clarify the geographic scope of the preconstruction surveys in relation to Project activities that could impact nesting birds. Based on the language in PDF BIO-1.1, it appears the surveys would be limited to direct impact areas, except that areas within 250 feet of direct impact areas would also be surveyed for nesting raptors.

21. Western snowy plovers are extremely sensitive to human activity. Therefore, please identify the minimum size of construction-free buffers for any snowy plover nests that are detected. In addition, please clarify the activities that would be permissible within construction-free buffers. For example, would any human activities (e.g., walking, driving, or helicopter flights) related to the Project be allowed within the buffers?

22. Measure BIO-1.1 states the actual size of the construction-free buffer will depend on three variables: the species, topography, and type of activity that will occur in the vicinity of the nest. The amended SPPE application identifies: (1) the species that could nest in the Project area, and (2) the types of activities that could occur in the vicinity of a nest. According to the amended SPPE application, the topography in the Project area is relatively flat. Thus, the three variables (and combination thereof) that would dictate the appropriate buffer size are already known. Please identify the minimum permissible buffer size that would be implemented for the Project and explain why determination of the appropriate buffer size needs to be deferred.

23. The amended SPPE application identifies BIO-2.1 (Burrowing Owl Fees) and BIO-2.4 (Burrowing Owl Passive Relocation) as two of the PDFs that would be implemented to avoid impacts to burrowing owls.[3] However, there is no description of these PDFs, nor does the amended SPPE application include them in its list of PDFs that "will be required to be imposed."[4] Please clarify whether PDFs BIO-2.1 and BIO-2.4 are Project requirements. If PDF BIO-

[3] Amended SPPE application, p. B-27.
[4] Amended SPPE application, p. B-33.

2.1 is a requirement, please explain how the burrowing owl fees would be calculated. If the Project may entail passive relocation of burrowing owls (i.e., PDF BIO-2.4), please provide analysis of impacts associated with passive relocation and explain the process that would be implemented to passively relocate the owls.

24. Measure BIO-2.2 requires two preconstruction surveys for burrowing owls. If no burrowing owls or fresh sign of burrowing owls are observed during the preconstruction surveys, construction may proceed. Please provide scientific evidence that only two surveys are needed to infer absence of burrowing owls.

25. Measure BIO-2.2 states: "[i]f an active [burrowing owl] nest is found, a qualified biologist shall establish a 250-foot non-disturbance buffer around all nest sites. If the biologist determines that the nest is vacant, the non-disturbance buffer zone may be removed, in accordance with measures described in the SCVHCP." The amended SPPE application fails to provide the rationale for the 250-foot buffer. Please provide scientific evidence that a 250-foot buffer is sufficient to avoid impacts to burrowing owls. In addition, please identify the methods the biologist would implement to confirm the nest is vacant, and thus, that the non-disturbance buffer zone may be removed.

26. The amended SPPE application's analysis of impacts to special-status birds concludes with the following statement: "[g]iven the limited size of the work areas relative to adjacent areas, and disturbed nature of these sites, the temporary loss of foraging habitat is not expected to adversely affect these or other bird species."[5] The rationale for the amended SPPE application's conclusion is not supported by evidence or analysis. Please identify the measures that would be taken to facilitate revegetation of Project impact areas and how long it would take vegetation to return to pre-impact conditions. The amended SPPE application's reference to the "disturbed nature of these sites" appears to be inconsistent with the Project Description, the landcover types depicted in Figure 2, and the amended SPPE application's description of those landcover types. Whereas some of the laydown/staging areas and pull sites would be located in developed or disturbed areas, it appears others would not. Therefore, please modify Figure 2 (Land Cover Types in the Reconductoring Study Area) such that it identifies where impacts to habitat might occur (including impacts from pull sites and off-road access routes).

[5] Amended SPPE application, p. B-28.

Impacts to Northern Coastal Salt Marsh

In California, sensitive natural communities are classified according to the National Vegetation Classification System's hierarchy of alliances and associations.[6] The landcover types described in the amended SPPE application do not conform to that classification system. This precludes proper understanding of the sensitive natural communities in the Project area, their rarity, and the sufficiency of the proposed PDFs. At a minimum, the wetland landcover types in the Project area qualify as sensitive natural communities.

According to the amended SPPE application, impacts to sensitive natural communities would be limited to potential direct impacts to Northern Coastal Salt Marsh. The amended SPPE application concludes impacts to this natural community would be avoided through implementation of PDF BIO-3.4 (among other PDFs). PDF BIO-3.4 states: "[t]he project applicant shall verify that all seed mixtures used for revegetation of the impacted wetland area shall be locally native or sterile nonnative species only. No invasive non-native plant species shall be used for revegetation." Please provide the following information:

27. Please clarify which of the landcover types used in the amended SPPE application's description of the environmental setting qualify as Northern Coastal Salt Marsh.
28. Please clarify whether the Project might have direct impacts on the following landcover types: Vernal Pool, Freshwater Marsh/Emergent Wetland, Brackish Marsh, Salt Marsh, and Seasonal Wetland.
29. Please use the National Vegetation Classification System to classify and map vegetation communities in the reconductoring study area.
30. Please clarify the revegetation requirements for impacts to Northern Coastal Salt Marsh and any sensitive natural communities that might be impacted by the Project.
31. Please provide performance standards for wetland revegetation and identify the monitoring and enforcement mechanisms that would ensure those performance standards are achieved.
32. Please clarify whether Northern Coastal Salt Marsh in the Project area is comprised of native or nonnative species.
33. Please explain why seed mixtures comprised of sterile nonnative species are an acceptable substitute to those comprised of native (marsh) species.
34. Please provide a definition for "sterile seeds" and explain the rationale for the conclusion that revegetation with sterile nonnative species would mitigate impacts to Northern Coastal Salt Marsh.

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[6] *See* California Department of Fish and Wildlife. 2020. Natural Communities [web page]. Available at: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

Impacts to Wetlands

The amended SPPE application's analysis of impacts to state or federally protected wetlands is confusing. Page B-29 states potential direct impacts to wetlands will be avoided through implementation of PDFs.[7] However, PDF BIO-3.3 suggests the Project may require removal of wetland vegetation. This is consistent with page 8 and B-30 of the amended SPPE application, which suggest there is potential for direct impacts to wetlands despite implementation of the PDFs.[8]

The amended SPPE application suggests an aquatic resources delineation (PDF BIO-5.2) would be conducted to facilitate avoidance of wetlands.[9] However there is no description of this PDF, nor is it listed as one of the measures needed to ensure impacts to wetlands are less than significant.[10] Please provide the following information:

35. Please clarify whether the Project could have direct or indirect impacts on wetlands and other jurisdictional waters. If impacts could occur, please provide analyses of those impacts.
36. Please provide a description of PDF BIO-5.2 and clarify whether a jurisdictional determination would be obtained from the U.S. Army Corps of Engineers prior to initiation of ground-disturbance activities.

Impacts to Wildlife Corridors

The amended SPPE application describes the importance of San Francisco Bay and the Don Edwards National Wildlife Refuge to migratory shorebirds. It then states: "[r]econductoring activities are similar in scope and duration to existing ongoing activities which birds are expected to be habituated to, so continuation of these activities is not expected to interfere with migratory shorebirds' use of the reconductoring study area."[11] This conclusion is not supported by evidence because the amended SPPE application does not describe the "existing ongoing activities" that it claims are similar in scope and duration to those that would be conducted for the Project. Please explain the following:

37. Please describe the importance of the reconductoring study area to migratory waterfowl.
38. Please provide a description of the "existing ongoing activities" within the reconductoring study area. The description should include data on the abundance, frequency, and duration of those activities, including helicopter activities.

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[7] Amended SPPE application, p. B-29.
[8] *Ibid*, pp. 8 and B-30.
[9] Amended SPPE application, p. B-29.
[10] *See* Amended SPPE application, p. B-33.
[11] Amended SPPE Application, p. B-30.

Habitat Conservation Plans

The amended SPPE application states the reconductoring study area is within the area covered by the Santa Clara Valley Habitat Conservation Plan ("SCVHCP") and PG&E's Bay Area Operations and Maintenance Habitat Conservation Plan. The amended SPPE application makes references to compliance with conditions in the SCVHCP; however, the amended SPPE application does not identify whether the Applicant intends to seek take coverage under the SCVHCP. Please provide the following information:

39. It appears that only a portion of the reconductoring study area is within the area covered by the SCVHCP. Therefore, please clarify the portions of the reconductoring study area that are within the area covered by the SCVHCP.
40. Please clarify whether the Applicant will be seeking take coverage under the SCVHCP.

AIR QUALITY AND PUBLIC HEALTH

The amended SPPE application does not contain all supporting information necessary to evaluate the accuracy of the air quality impacts and modeling. Please provide the following information:

41. Unlocked Excel spreadsheets supporting all emissions calculations,
42. Unlocked CalEEMod files, showing all inputs and outputs, and
43. Air quality modeling files including all AERMOD input and output files in native electronic format, including supporting pre-processing (BPIP-PRIME, AERMAP) files, all met files in native electronic format, and all plot files in native electronic format.