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**Exhibit 318 April 21, 2008 Letter CEC Executive Director Melissa Jones to W. Tate 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.


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If Xeres wishes to claim otherwise about the Commission's jurisdiction, or seek a formal opinion from the Energy Commission, you may file a request for a jurisdictional determination under the Commission's regulations, specifically, section 1230 et seq. in Title 20 of the California Code of Regulations.

In any event, the staff of the Energy Commission is interested in working with you, DuPont Fabros Technology, Inc., and Xeres in a productive manner. Please do not hesitate to contact Arlene Ichien at (916) 654-3959 or by e-mail at [aichien@energy.state.ca.us](mailto:aichien@energy.state.ca.us) if you have any questions whatsoever.

Sincerely,



ARLENE L. ICHIE  
Assistant Chief Counsel



MELISSA JONES  
Executive Director

cc: Michael J Tollstrup, Air Resources Board  
Tamiko Endow, Bay Area Air Quality Management District  
Gerardo Rios, US Environmental Protection Agency  
Terrance O'Brien, California Energy Commission