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CALIFORNIA ENERGY COMMISSION

COMMITTEE CONFERENCE AND CLOSED SESSION

APPLICATION FOR SMALL)
POWER PLANT EXEMPTION)
FOR THE:)
)
Gilroy Backup Generating) Docket No. 20-SPPE-03
Facility)
_____)

REMOTE ACCESS WITH ZOOM

The Committee Conference 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 participate in and/or observe the proceedings consistent with the direction in these Executive Orders.

MONDAY, JUNE 28, 2021

11:00 A.M.

Reported by:
Jacqueline Denlinger

APPEARANCES

Commissioners:

Commissioner Karen Douglas, Presiding Member
Commissioner Andrew McAllister, Associate Member

Staff Present:

Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Bryan Early, Advisor to Commissioner McAllister
Fritz Foo, Advisor to Commissioner McAllister
Ralph Lee, Hearing Officer
Noemi Gallardo, CEC Public Advisor
RoseMary Avalos, CEC Public Advisor's Office
Leonidas (Lon) Payne, CEC Project Manager
Kerry Willis, CEC Staff Counsel
Renee Webster-Hawkins, CEC Staff Counsel
Liza Lopez
Giana Villegas

Project Applicant Representatives Present:

Scott Galati, DayZen LLC, Project Attorney
John Carlton, Amazon Data Services

I N D E X

Items	Page
1. Call to order and introductions.	4
2. Presentations:	
a. Overview of the Small Power Plant Exemption (SPPE) process and rules applicable to this proceeding (Hearing Officer Lee).	7
b. Overview of opportunities for public participation (CEC Public Advisor's Office, RoseMary Avalos.	17
c. Presentation of the Gilroy Backup Generating Facility and Data Center Project (Applicant, Scott Galati).	25
d. Presentation on CEC Staff's Issues Identification Report, Status Report, and Proposed Schedule (CEC Staff).	31
3. Discussion of issues, status, schedule, and next steps (Committee and Parties).	
4. Public Comment.	55
5. Committee closed session consideration of the following items:	56
Deliberation on the Small Power Plant Exemption Application for the Gilroy Backup Generating Facility.	
6. Adjourn.	57

P R O C E E D I N G S

1 JUNE 28, 2021

11:02 a.m.

2 COMMISSIONER DOUGLAS: So welcome, everybody.

3 This is the Committee Conference regarding the Application
4 for a Small Power Plant Exemption for the Gilroy Backup
5 Generating Facility. The California Energy Commission has
6 assigned a Committee of two Commissioners to conduct these
7 proceedings. I'm Karen Douglas, the presiding member of
8 this Committee. Commissioner Andrew McAlister is the
9 associate member of the Committee.

10 We are all participating remotely today using
11 Zoom. I'd like to now introduce some people in attendance
12 today. So we have Commissioner Andrew McCallister, Bryan
13 Early, his advisor; Kourtney Vaccaro and Eli Harland, my
14 advisors; and Fritz Foo as well, advisor to Commissioner
15 McAllister. John Hilliard is here, technical advisor to
16 the Commission on siting members -- on siting matters, and
17 Ralph Lee, the hearing officer for the proceeding. I'd
18 also like to introduce RoseMary Avalos from the Energy
19 Commission's Public Advisor's Office.

20 At this time, I'd like to ask the parties to
21 introduce themselves and their representatives, starting
22 with the Applicant.

23 MR. GALATI: Good morning, Commissioners. This
24 is Scott Galati. I'm representing Amazon Data Services,

1 also Amazon Web Services, the Application in this
2 proceeding. As a panelist, and who will be speaking today,
3 I'll let him introduce himself in a minute is John Carlton.
4 We do have a couple of members on the phone. They can be
5 promoted if we need them to answer any questions. I see
6 Steve Botic, who is our Regional Environmental manager with
7 AWS. And I believe we will also be supported by Soechgen
8 Mulia, who is also with AWS, and he's in charge of
9 construction. So John, could you please introduce
10 yourself?

11 MR. CARLTON: Certainly, Scott. So I'm John
12 Carlton. I'm actually a senior technical program manager
13 with Amazon Web Services. I'm looking after projects right
14 now, mostly in the Bay Area. And you'll be hearing a bit
15 more from me, I believe, in just a moment.

16 COMMISSIONER DOUGLAS: All right. Thank you.
17 Anything else, Scott?

18 MR. GALATI: No. Thanks very much.

19 COMMISSIONER DOUGLAS: Absolutely. All right.
20 We'll go on. Staff, could you introduce yourself, please?

21 MR. PAYNE: Good morning, everyone.
22 Commissioners, this is Lon Payne, appearing for Staff.
23 I've got Counsel, Renee Webster-Hawkins with me and we've
24 got a bunch of folks on the line in case you have any
25 questions that need, technical staffers particularly, to

1 answer, we can promote about the panelists and get you
2 answers. But that's it for introductions for Staff.

3 COMMISSIONER DOUGLAS: Thank you very much. I
4 will now invite any public agencies to introduce
5 themselves. So if you're representing a public agency,
6 please unmute yourself. First of all, anyone here
7 representing any federal government agencies or state
8 agencies other than the Energy Commission. You. Do we
9 have that one here representing Native American tribes or
10 nations? How about local jurisdictions, City of Gilroy?
11 Bay Area AQMD?. Santa Clara Valley Transit Authority? Any
12 others? All right.

13 Commissioner McAllister, do you have any opening
14 remarks?

15 COMMISSIONER MCALLISTER: Thank you, Commissioner
16 Douglas. And I just want to thank everybody for their
17 attention here. Thank Ralph and the rest of the staff for
18 their diligence and preparation and, you know, looking
19 forward to getting this process kicked off. So thank you.
20 Commissioner Douglas, back to you.

21 COMMISSIONER DOUGLAS: Great. Thank you very
22 much. And with that then, I'll turn the proceeding over to
23 Ralph Lee, the hearing officer, to discuss small power
24 plant exemptions generally, and then to lead a discussion
25 specifically about the Gilroy Backup Generating Facility

1 Application for a Small Power Plant Exemption. Go ahead,
2 Ralph.

3 HEARING OFFICER LEE: Thank you. Good morning.
4 My name is Ralph Lee, Hearing Officer with the California
5 Energy Commission. My role is to assist the Committee with
6 the conduct of Committee events like this Committee
7 Conference and with preparing documents such as orders,
8 notices and ultimately a decision. A Save the Date for
9 today's Committee Conference was filed in the docket for
10 this proceeding on June 1st, 2021. Formal Notice of
11 today's Committee Conference was filed on June 8, 2021 in
12 both English and Spanish.

13 The Energy Commission created an online docket.
14 The documents associated with this proceeding, Docket No.
15 20-SPPE-03. The notice and other documents related to this
16 proceeding are available on the Energy Commission's website
17 in the electronic docket for this proceeding.

18 First, I have some housekeeping matters to
19 discuss. Consistent with Governor Newsom's Executive Order
20 N-08-21, in order to continue to help California respond
21 to, recover from, and mitigate the impacts of the Covid-19
22 pandemic, we are conducting this Committee Conference
23 remotely using Zoom. We set up the Zoom meeting so that
24 most participants will not be able to mute or unmute
25 themselves to speak. You will have the opportunity to

7

1 speak during the public comment period, as I will describe
2 in a moment. You may still mute your phone by pressing *6.
3 You should still be able to hear the Committee Conference.

4 Today we have a court reporter transcribing all
5 the statements made and questions asked. I therefore must
6 ask that only one person speak at a time. If you wish to
7 be recognized, please use the Raise Hand feature. If
8 you're on the phone, that's *9 to raise your hand. If
9 you've muted your phone by pressing *6, please be sure to
10 unmute yourself by pressing *6 again. The Raise Hand
11 feature creates a list of speakers based on the time when
12 your hand was raised. We will call on you in that order.
13 I will review these directions again before we start the
14 public comment period.

15 Please identify yourself before you speak. When
16 you speak for the first time, please say and spell your
17 name slowly. That's important for me and for the court
18 reporter. If you do not identify yourself, either the
19 court reporter or I may interrupt you to ask that you do so
20 to ensure that we have a complete and accurate record of
21 today's Committee Conference. If you run into any
22 difficulties, please contact the Public Advisor's Office or
23 the Zoom Help Center. Contact information for both is
24 listed on page 6 of the notice of today's Committee
25 Conference.

1 Are there any questions? Okay. Hearing none,
2 next, the purpose of today's Committee Conference is to
3 review the current status of the proceeding to provide the
4 public with an overview of the process the Energy
5 Commission plans to use to review the Application, to hear
6 about the Application and the project that is proposed to
7 be built, to address any outstanding issues, and finally,
8 to develop a schedule for this proceeding. To those
9 purposes of today's Committee Conference, first I'll give a
10 brief overview of the Application that is subject to this
11 proceeding.

12 I will describe a Small Power Plant Exemption
13 known as an SPPE, and then I will outline some of the rules
14 applicable to the Energy Commission's proceedings. After I
15 give that overview, the Energy Commission's Public
16 Advisor's Office will discuss opportunities for public
17 participation in this proceeding.

18 Following that, we'll hear from the Applicant
19 about its Application. Then Energy Commission Staff will
20 present on its Issues Identification Report, Status Report,
21 and Proposed Schedule for the proceeding. Following
22 Staff's presentation, as stated in today's agenda, the
23 Committee and the parties may discuss a schedule and other
24 topics regarding the Application. There will be an
25 opportunity for public comment toward the end.

1 The Committee has also given notice that it may
2 hold a closed session. We will decide whether that's
3 necessary after we've heard from everyone. After that,
4 we'll adjourn the Committee Conference.

5 Now, turning to the Application at issue in this
6 proceeding, on December 17th, 2020, Amazon Data Services,
7 which I will refer to as the Applicant, filed an
8 Application with the California Energy Commission
9 requesting a Small Power Plant Exemption for the Gilroy
10 Backup Generating Facility. I will refer to this
11 Application simply as the Application.

12 The Applicant proposes to build and operate a
13 data center in Gilroy, California, that would consist of
14 two data center storage buildings, which would provide
15 secure and environmentally controlled structures to house
16 computer servers, and the Applicant would also build an
17 on-site security building. The Applicant also proposes to
18 build and operate a Backup Generating Facility that would
19 ensure reliable backup electricity to the Data Center in
20 the event of loss of electrical service from its local
21 utility, the Pacific Gas and Electric Company, commonly
22 known as PG&E.

23 The Backup Generating Facility would consist of
24 50, 2.5 megawatt diesel fired backup generators. The
25 Backup Generating Facility would also include three

1 additional smaller diesel generators, diesel fired
2 generators, one to support each of the buildings in case of
3 an emergency. The most common operation of the backup
4 generators would occur during routine testing and
5 maintenance. The backup generators will not be
6 interconnected to the electrical transmission system known
7 as the Grid, and therefore no electricity could be
8 delivered off-site.

9 The Backup Generating Facility would supply power
10 only to the Data Center. The maximum electrical demand of
11 the Data Center would be 96 megawatts. The Applicant
12 reported, in its response to Staff's Issues Identification
13 Report, that it intends to file a revised project
14 description by July 2nd, 2021. The revised project would
15 add battery energy storage system components to the
16 project. These components would provide at least four
17 hours of electric -- emergency battery backup electricity
18 to the Data Center in the event of an outage.

19 However, the battery backup would not eliminate
20 the need for the backup generators originally proposed
21 because the uncertainty of the length of any interruption
22 in power to the Data Center, the Applicant would build and
23 maintain related facilities, including for example, a
24 substation and landscaping in addition to the Data Center
25 Backup Generating Facility and the battery energy storage

1 system. Now, I will describe the SPPE process.

2 The California Energy Commission was created in
3 1974 by the passage of the Warren-Alquist State Energy
4 Resources Conservation and Development Act, commonly
5 referred to as the Warren-Alquist Act. This is law that
6 may be found in the California Public Resources Code.
7 Under this law, the Energy Commission has the exclusive
8 authority to consider and ultimately approve or deny
9 applications for the construction and operation of thermal
10 power plants that generate 50 megawatts or more of
11 electricity. An exemption from the Energy Commission's
12 exclusive authority is available under the Warren-Alquist
13 Act, which allows builders of thermal power plants that
14 will generate 50 to 100 megawatts to apply to the Energy
15 Commission for an exemption from its exclusive jurisdiction
16 if the proposed power project meet certain criteria. This
17 exemption is known as the Small Power Plant Exemption, or
18 as I mentioned, an SPPE for short.

19 In order to grant an SPPE, the Warren-Alquist Act
20 states that the Energy Commission must make three separate
21 and distinct determinations. First, that the proposed
22 power plant has a generating capacity of no more than 100
23 megawatts. Second, that no substantial adverse impact on
24 the environment would result from the construction or
25 operation of the power plant. And finally, that no

1 substantial adverse impact on energy resources would result
2 from the construction or operation of the power plant.

3 In addition, the Energy Commission must also
4 meet -- also analyze the SPPE Application under the
5 California Environmental Quality Act, known as CEQA. The
6 Energy Commission is the CEQA lead agency and considers the
7 whole of an action. For this application, considering the
8 whole of an action means not just the battery, not just the
9 Backup Generating Facility, but also the entire Data Center
10 Complex that the Backup Generating Facility would support.
11 It includes other project features such as the submit
12 station and landscaping. This whole of the action is
13 collectively called the project, which again is the Backup
14 Generating Facility, the Data Center, and other project
15 features.

16 It's important to note that if the Energy
17 Commission decides to grant the Small Power Plant
18 Exemption, that decision would not constitute project
19 approval. Instead, upon being granted an exemption from
20 the Energy Commission's licensing process, the project
21 owner would then need to seek any necessary permits and
22 licenses from other local agencies, which for the Gilroy
23 project includes without limitation, the City of Gilroy and
24 the Bay Area Air Quality Management District. Those
25 agencies will also conduct any other necessary

1 environmental analysis as responsible agencies under CEQA.

2 Consideration of an SPPE begins with the filing
3 of an application. The Application for the Gilroy Backup
4 Generating Facility SPPE, was originally filed on December
5 17th, 2020. It was subsequently revised on April 20th,
6 2021 to upgrade the 50 2.5 megawatt generators that
7 support -- that would support IT load in an outage to
8 upgrade them to Tier 4 compliant generators.

9 Energy Commission Staff has filed requests for
10 information from the Applicant who referred to staff's
11 requests for information as data requests or discovery.
12 Staff uses this information to prepare an environmental
13 document, which includes the information required by both
14 CEQA and the Warren-Alquist Act. And this information is
15 also used by the Committee and the full Energy Commission
16 to decide whether to approve or deny the Application for
17 Exemption.

18 The Energy Commission will review Staff's
19 Environmental Analysis. During its review, the Energy
20 Commission uses an adjudicative process. The Committee
21 will eventually conduct an Evidentiary Hearing, which is
22 similar to a trial. At the hearing, the Committee -- the
23 committee will receive evidence from the parties and
24 comments from the public about whether or not to grant or
25 deny the SPPE application. After the Evidentiary Hearing,

1 the Committee will prepare a Proposed Decision. This
2 Proposed Decision will include the Committee's analysis of
3 the project and then both the Warren-Alquist Act and CEQA.
4 The Committee's Proposed Decision is then considered by the
5 full Energy Commission at a Public Business Meeting. The
6 Energy Commission will ultimately decide whether to adopt,
7 modify, or reject the Committee's Proposed Decision.

8 In all SPPE proceedings there are at least two
9 parties, the Applicant requesting the exemption and the
10 Energy Commission staff. Organizations and members of the
11 public can become parties as well by intervening. The
12 Public Advisor's Office will describe that opportunity, as
13 well as other ways to provide comments in just a few
14 minutes.

15 Now, I need to briefly discuss the ex parte
16 rules, which prohibit off the record communications with
17 the presiding officers and their advisors. Because we use
18 an adjudicative process, the Energy Commission's
19 regulations and state law require that we ensure a fair
20 process for everyone who participates in this proceeding.
21 The Energy Commission's ultimate decision will be based
22 solely on evidence contained in the record for this case.

23 One way we ensure a fair process is through the
24 ex parte rule, which states that parties to a proceeding
25 and interested persons outside of the Energy Commission,

1 which is to say the general public, are prohibited from
2 communicating with the presiding officers about anything
3 that may be in controversy or in dispute unless Notice is
4 given to allow an opportunity for all the other parties to
5 participate in the communication, or the communication is
6 in writing shared with the public and the parties.

7 Prohibited communications include voicemail messages, text
8 messages, email letters, telephone calls and in-person
9 discussions, essentially any form of communication.

10 In this proceeding, the presiding officers are
11 the members of this Committee, both Commissioner Douglas
12 and Commissioner McAllister, as well as the other three
13 members of the Energy Commission. Presiding officers also
14 include me as the hearing officer. Ex parte communications
15 are also prohibited with individuals assisting these
16 presiding officers, which for this proceeding includes
17 anyone serving as an advisor to the Commissioners and any
18 attorney or other expert assisting the Committee or
19 Commissioners with this proceeding. Today's Conference is
20 one of several public events that will extend over the next
21 several months. At these events, members of the public can
22 provide comments about the project.

23 I now invite the Public Advisor's Office to
24 present on how it can assist members of the public to
25 participate in events regarding the Application. Then

1 after that, we'll move on to the Applicant's presentation.

2 MS. AVALOS: Thank you, Hearing Officer Lee.

3 Hello, my name is RoseMary Avalos and I work for the Public
4 Advisor's Office. This is the Public Adviser's

5 presentation for today's Gilroy Backup Generators Facility
6 Committee Conference. Go ahead and put the slides up.

7 Thank you.

8 I'm here today to help inform the public about
9 how to navigate and participate in this Small Power Plant
10 Exemption proceeding. Generally, State proceedings may
11 seem like a long one and perhaps generate confusion, but
12 the CEC's Public Adviser's Office is here to provide
13 guidance. The CEC values public participation and wants to
14 hear from an array of stakeholders with different
15 perspectives because having a robust record helps the
16 Committee make a thoroughly informed decision.

17 The process I will review with you in this
18 presentation will include information about the Public
19 Advisor, outreach conducted to the public, and stakeholders
20 meeting proceedings, instructions about how to participate
21 in this proceeding, informal and formal methods. An
22 explanation of this process to obtain information about
23 this proceeding, next steps for participating in this
24 proceeding, and contact information for the CEC's Public
25 Advisor's office. Next slide, please. Thank you.

17

1 A little bit about the CEC Public Advisor. The
2 Public Advisor's role is mandated by statute in the
3 Warren-Alquist Act. The Public Advisor must be a licensed
4 attorney who was nominated by the Energy Commission and
5 appointed by the governor for three year term. The Public
6 Advisor's duties and tasks include helping the public
7 understand Commission processes, assisting the public to
8 participate in proceedings, recommending to the Commission
9 approaches to engage the public, and sharing timely notices
10 to public, identifying missing stakeholders and helping
11 conduct outreach to them, assisting with access to language
12 services, and reasonable accommodation. Next, see.

13 The key takeaway from this presentation is that
14 the CEC values public participation and the Public Advisor
15 is here to function as a bridge between the public to help
16 ensure any stakeholder or member of the public can
17 participate meaningfully in the CEC's proceedings, such as
18 today. Our staff has a lot of experience to answer
19 questions, and we can access the Commission subject matter
20 experts when we don't have immediate answers. Please don't
21 hesitate to contact us with questions for guidance at our
22 email, PublicAdvisor@energy.ca.gov, or call at
23 916-654-4489. Next slide, please.

24 The CEC conducts significant outreach from
25 beginning to the end of every proceeding to ensure we cast

1 a wide net to inform the public and stakeholders. Staff,
2 the Committee for this proceeding, and the Public Advisor's
3 Office have taken on various responsibilities to conduct
4 outreach. Some of the key outreach conducted has been
5 mailing of the Notice of Receipt to residents and property
6 owners within a thousand feet of the project site, to
7 California Native American tribes associated with the
8 project area, and to others. This Notice is important
9 because it notifies people about the proceeding, its
10 beginning, and it informs people about signing up on the
11 listserv to ensure that we receive future notices. Please
12 note that the full mailing list will be published in the
13 Environmental Assessment Document.

14 The Notice of this Committee Conference was
15 mailed to residents and property owners within a thousand
16 feet of the project site, emailed to parties to the
17 proceeding, and emailed to the Gilroy listserv. And I
18 should note that all Notices are filed in the Docket.
19 Because we're very diligent at the CEC, additional outreach
20 was conducted to notify people about this proceeding.
21 Outreach was conducted to the following types of
22 stakeholders via mailing, email, or phone: they are local
23 and State representatives, Air, Water and Transit District
24 officials, community based organizations, environmental and
25 social justice advocates, library, school, and school

1 district. Next slide, please.

2 There are two ways to participate in SPPE
3 proceedings, informal as a member of the public, like you
4 would in any other CEC event, and the other is formal as an
5 Intervenor. This proceeding will consist of various types
6 of events that we encourage you to attend in order to
7 participate in the proceeding. In every event, such as
8 today's Committee Conference, time will be carved out
9 specifically for public comment and that is your
10 opportunity to speak to the issue. Aside from providing
11 verbal comments during events, you can also provide
12 comments in writing to the Public Advisor, and she will
13 relate the main point on your behalf. Finally, you may
14 also submit written comments through our docket system to
15 be included in the record. Next slide, please.

16 The formal approach to participate in SPPE
17 proceedings is to become an intervenor. An intervenor is a
18 person or group that is a party to the proceeding. Like
19 any other party to the proceeding, an intervenor may
20 present evidence and witnesses, object to other party's
21 evidence, cross-examine other witnesses, and file motions.
22 In order to become an intervenor, you must file a petition
23 to intervene. We emphasize that even if you are not sure
24 whether you want to become an intervener or if you do not
25 end up participating at all in the proceeding, it is best

20

1 to go ahead and file so that you don't miss key deadlines
2 and opportunities to engage. Anyone may file a petition,
3 and to be crystal clear, you do not need to be an attorney
4 or have legal representation in order to file a petition.

5 There is not a specific point to follow, but you
6 must include the required information in the petition you
7 file. For example, the petition must identify grounds for
8 the intervention, position and interests of the petitioner,
9 and the extent to which the petitioner desires to
10 participate in the proceeding. The petition must be filed
11 in the docket and include the docket number. Please note a
12 deadline for intervenor, intervening has not yet been set.
13 And I emphasize you do not need to be an attorney or a
14 legal -- or have legal representation to participate during
15 this proceeding. Next slide, please.

16 Whether you decide to engage in the proceeding as
17 a member of the public or an intervenor, we highly
18 recommend you go to the Gilroy Backup Generating Facility
19 Project webpage to obtain the most current information
20 about the proceeding. Here's what the project's webpage
21 looks like. The red arrow points to the link where you can
22 submit electronic comment. The blue arrow points to the
23 e-filing link, which is the preferred pathway for Staff and
24 parties to the proceeding to submit material. The gold
25 arrow points to the docket log link. The docket log is a

1 repository for documents filed by all parties to the
2 proceeding and for public comment. Basically, it's where
3 you will find all material submitted for this proceeding.
4 The green arrow is a section where you will sign up for the
5 Gilroy Backup Generating Facility listserv. Signing up for
6 the listserv is very important. It's basically a lifeline
7 to the proceeding. We will go over the steps to sign up on
8 the next slide.

9 Additionally, this webpage also contains the
10 contact information for Staff who can answer more questions
11 about the Gilroy Backup Generating Facility proceeding and
12 contains the Public Advisor's Office contact information.
13 If you need assistance with any of these processes, please
14 contact the Public Advisor's Office. Next slide, please.

15 Signing up for the proceedings listserv is a
16 voluntary procedure. We highly recommend it because it's
17 the most efficient way to receive the most current
18 information about the proceeding, including alerts about
19 what is happening in the proceeding and notifications about
20 material that has been docketed. Signing up for the
21 listserv is a quick process. First, you'll go to the
22 project webpage Notice here, and in the last slide, when
23 you scroll down, you'll find a box that looks like this one
24 on the slide titled Subscribe Gilroy Backup Generating
25 Facility listserv. Enter your first and last name along

22

1 with your email, then hit send. You will then receive an
2 automated email from the CEC asking you to complete your
3 subscription.

4 Please be on the lookout for this email because
5 you won't be able to join without responding to it. You'll
6 have 24 hours to confirm your subscription. If you do this
7 successfully, you will then receive an email notifying you
8 that your subscription was accepted, and you'll begin to
9 receive material for this proceeding. Next slide, please.

10 Today is the first Committee Conference for this
11 proceeding and a schedule will -- with specific deadlines
12 for the rest of the proceeding is forthcoming. You will be
13 able to locate these materials on our webpages and you'll
14 receive email notification and alerts when you sign up for
15 the listserv.

16 We want to emphasize a few significant
17 opportunities you'll have to participate. First is the
18 publication of CEC Staff's Environmental Assessment
19 Document. CEQA allows for a public review and comment
20 period on Staff Environmental Assessment documents. This
21 is a period during which Staff will prepare a Proposed
22 Mitigated Negative Declaration, or an Environmental Impact
23 Report based upon the assessment of potential environmental
24 impacts outlined in the staff's initial study.

25 Staff will respond to comments and questions in

1 the Proposed Decision. If necessary, a workshop may be
2 held to address any unresolved issues. The prehearing
3 conference and Evidentiary Hearing are other opportunities.
4 Subsequent to the Environmental Assessment is a Prehearing
5 Conference, followed by an Evidentiary Hearing. The
6 Prehearing Conference is a public forum where the Committee
7 will assess the party's readiness for an Evidentiary
8 Hearing and public comment will be taken. The Evidentiary
9 Hearing is an administrative adjudicatory proceeding to
10 receive evidence into the formal Hearing record from the
11 parties. Members of the public may present comments at the
12 Evidentiary Hearing that become part of the Hearing record.

13 Commission Decision at Business Meetings.
14 Towards the end of the proceeding, the Commission will
15 decide on whether to approve or deny the Proposed Decision
16 during a regularly scheduled CEC Business Meeting. Public
17 comment will also be accepted and considered prior to the
18 vote of the Commissioners. Next slide, please.

19 This is the contact information for the Public
20 Advisor's Office. The best way to get a hold of us is via
21 email at PublicAdvisor@energy.ca.gov or give us a call at
22 the numbers you see on the slide. I'd also like to note
23 that at the end of this week, we'll post this presentation
24 through our online docket system for public access. Thank
25 you. Now, to Hearing Officer Lee.

1 HEARING OFFICER LEE: Thank you. All right. Now
2 I invite the Applicant to provide an overview of the Gilroy
3 SPPE Application, and after that we'll hear from Staff.

4 MR. GALATI: Thanks very much. John Carlton will
5 give this part of the presentation and I will follow up.
6 So John, go ahead.

7 MR. CARLTON: Thank you, Scott. So first of all,
8 if I could, I'd just like to give a quick introduction of
9 myself and the project. My name is John Carlton and I'm a
10 technical program manager with Amazon Data Services. And I
11 guess when most people hear the name Amazon, they tend to
12 think of us as the everything store, which is
13 understandable since that's how most people interact with
14 us. But in reality, this is just one aspect of our
15 business and the project that we're discussing today
16 relates to our Cloud Services platform.

17 So for those who may not be familiar with such
18 services, we basically offer computing capacity, data
19 storage, various other building blocks that businesses and
20 other customers can use to create their own services.
21 Examples here would be Netflix, LinkedIn, Adobe, BBC, ESPN.
22 These are all examples of customers who offer services
23 which are built on our platform. And we also support a lot
24 of non-commercial customers such as schools and hospitals,
25 and government entities. In fact, our call today is likely

25

1 dependent upon some of the Data Centers that we're
2 discussing. So as you can imagine, with everyone working
3 from home, studying from home recently, keeping up with the
4 need for such services has become even more challenging and
5 critical. And my role is to work with the things which
6 monitor usage and project the demands for our customers to
7 ensure that we are developing additional capacity on-time
8 so that it will be available to them when they need it.

9 And the project that we're discussing today is an
10 important part of our plans to keep up so that we don't
11 constrain any of the customers who are depending on our
12 platform. And can we go to the next slide, please?

13 So we've been working with the City of Gilroy for
14 the past year or so to develop plans for a Data Center
15 Facility there, which will also include some office space,
16 will include some FLEX warehouse space that could be used
17 for the Amazon Data Services Applications. Just to
18 differentiate it clearly, it's not actually warehouse space
19 that would be used for fulfillment, but it's specific to
20 the Data Centers, and a backup facility that would be able
21 to support the Data Centers in the event of a prolonged
22 electrical outage. And in the top left here, you can see
23 just a general layout of what the site is expected to look
24 like when fully developed. The two largest buildings that
25 are towards the center include Data Centers and office

1 space, as well as some of the warehouse space that we were
2 referring to. And you'll also see space for a substation
3 and two that are marked BESS, or Battery Energy Storage
4 System, which we'll come back to in just a moment.

5 We're planning to deploy a high efficiency
6 evaporative cooling system, which we use in most of our
7 Data Centers, anywhere the environmental conditions permit
8 us to do so. And it's actually pretty advanced. We're
9 pretty good at being able to use the evaporative cooling,
10 or Free-R cooling whenever we're able to so that we can
11 reduce our energy demands for cooling the Data Center, and
12 at this point, we are either at or near best in class in
13 terms of efficiency, or the PUE, for cooling our Data
14 Centers.

15 As we heard mentioned previously, we'll also have
16 several generators here. These are diesel generators, Tier
17 4, EPA standard compliant. These will be used for backup
18 in the event of a prolonged outage. However, we're also
19 looking to add a battery energy storage system to this
20 site. And the BESS, or Battery Energy Storage System,
21 would operate in the event of an emergency loss of
22 electrical power. We anticipate that the BESS would be
23 capable of supporting the Data Center for four to six
24 hours, but we will still need the Generation Facility for
25 backup in the rare event of a prolonged outage, which lasts

1 too long for us to cover it with the BESS alone. We're
2 currently investigating opportunities to participate in RA,
3 or load shedding initiatives, in the future possibly, but
4 at this time we are only proposing to use the BESS for
5 emergency backup.

6 You will also see a tentative construction
7 timeline here. We're looking to begin construction on the
8 first site, a security building and the substation as soon
9 as we are able to do so. Here, you'll see it's marked as
10 Q1 of next year, although obviously that's contingent upon
11 being able to get our appropriate approvals in time to do
12 so. But we do already have a general contractor on board.
13 And at this point, our timeline will basically be just
14 determined by when we can have a proper review and receive
15 permission to proceed with our project.

16 And as noted here, the Power Plan is basically to
17 launch with about 18 to 20 megawatts of temporary power so
18 that we don't have to wait until the permanent substation
19 has been constructed in order to begin using it. The
20 permanent substation is contracted to go up to 99
21 megawatts, although I believe the maximum load that we're
22 calculating for this site would be about 96.5, as I recall.

23 And thank you for your attention. That's the end
24 of my presentation. Scott, anything you'd like to add.

25 MR. GALATI: Yes. Thank you, John, for that. I

1 just wanted to add a couple of things to the Committee
2 here. You know, I wrote the Status Report that we
3 provided, which was in response to the Issue Identification
4 Report, and I just wanted to clarify something and make
5 sure it was clearly understood. It's while we're
6 investigating load shedding and resource adequacy
7 opportunities for the BESS, we are proposing all of that
8 behind the meter. So we're not proposing, at this time, to
9 generate electricity and send it to the Grid. So that
10 might be something that happens in the future, but right
11 now, what we're doing is trying to do all of that behind
12 the meter.

13 So the project Description that we're hoping to
14 revise, we're working on it now to get Staff the more
15 specifics than the drawing that you see here describing the
16 two battered -- Battery Energy Storage System. One will be
17 in that green area that you see up in the upper right hand
18 corner of the site. The second will be in and around the
19 substation you see down in the lower purple area. We're
20 shooting to be able to file that Revised Project
21 Description by this Friday. And we'll do our best on that.

22 And also wanted to let the Committee and the
23 staff know we were behind on a few data requests. We
24 received some information on Friday, which we'll be
25 docketing today, which is information from PG&E about the

1 interconnection, which is fairly straightforward here and
2 would not be changing because the Battery Storage System
3 are brought online.

4 We also are responding to Staff's set number 2,
5 which included some air quality information and remodeling
6 that they'd asked for. So that we're shooting for July
7 7th. So we're moving quickly, and we thank you for your
8 opportunity to present the project here to the Committee.

9 We also have a couple more people online should
10 they be necessary. We have Emily Wynn [ph.] from Trinity
11 Consultants that can answer any Air Quality questions. We
12 have Desiree de Rossi [ph.] from David G. Powers and
13 Associates. She's our overall environmental consultant for
14 CEQA purposes. So I think we'll just wait for questions
15 unless you have any questions of John and myself at this
16 moment.

17 HEARING OFFICER LEE: Thank you. I don't think
18 so. Not at this moment.

19 In the June 9th Notice of today's Committee
20 Conference, we directed Staff to file an Issues
21 Identification Report, Status Report, and Proposed
22 Schedule. Staff timely filed that document on June 14th,
23 2021. The Notice also ordered the Applicant to file a
24 response to Staff's Issues Identification Report, Status
25 Report, and Proposed Schedule. The Applicant timely filed

1 its response on June 21st, 2021. We thank Staff and the
2 Applicant for their timely submissions.

3 Now, Energy Commission Staff will present on its
4 Issues Identification Report, Status Report, and Proposed
5 Schedule.

6 MR. PAYNE: Hello, everyone. Lon Payne, Project
7 Manager for Staff. First of all, I'd just like to thank
8 Hearing Officer Ralph Lee and the Applicant for that
9 excellent rundown on the project as it currently stands and
10 the process. That saves me a certain amount, a lot of
11 time. And I'll try to focus my brief comments on the
12 status of the Analysis itself.

13 So we're in a rather interesting point in time
14 with respect to this project, because we, although this
15 project has been known about since December, as you can see
16 it's been a bit of a moving target and we are still rather
17 early, in the context of our overall Analysis. But at the
18 same time, there have been three pretty significant
19 developments in our work since we filed the Issue ID Report
20 on the 14th. And I wanted to go through each of those so
21 that everyone is sort of right, you know, right up to the
22 moment where we are with this Analysis. So what you see up
23 here is a marked-up updated version of our Issue ID Report.
24 And I'll -- and I'll run through the three main things that
25 have happened since. So Liza, thanks for putting that up.

31

1 If you could scroll down to sort of the first area of text
2 that is highlighted? That's right there.

3 So as we've been talking about, the first major
4 development has been this announcement of an intention to
5 add Battery Energy Storage System to the project. We will
6 certainly be evaluating that. We may have additional data
7 requests about that, but I just wanted folks to know that
8 was not something that was available when we did our Report
9 on the 14th. We now have that, so we've updated our Report
10 accordingly. Liza, if you could scroll down a bit further
11 to the next area. That's good.

12 So the other major development is, as Scott
13 mentioned, that we're in an ongoing effort, they're
14 replying to data requests that we put out, in some cases,
15 from quite some time ago from the first Project Description
16 we got. The Applicant has, in fact, provided responses to
17 Data Request Set 2. So we have -- I'm not sure if they're
18 absolutely complete, but they covered most of the issues in
19 that letter. We, however, are still waiting on responses
20 to Data Request Set 1. Those may be some of the more
21 complicated ones that Scott referred to. So we're still
22 waiting on additional information to come in. We know we
23 will do Data Request Set 3 in the next few weeks, we
24 assume. We know we have some questions on transportation
25 issues. We are assuming we will have additional questions

1 related to the Second Project Revision, and any other
2 follow-ups, once we get responses to the prior Data Request
3 Sets, we'll also try to get all that into Data Request Set
4 3. So we're still very much in Discovery. We're not, but
5 you know, we, at the same time, we have had this project
6 for a fair amount of time and Staff has been working to
7 knock out any technical sections that we had all the
8 information we needed to get it forward. So if you could
9 scroll down just a slight bit more or less, that would be
10 helpful. Thank you.

11 So the first thing in the context of Issues,
12 Staff doesn't have anything today to report, in terms of
13 the significant issue. So these, to me, the various
14 technical sections, they kind of fall into one of two
15 groupings. The first is ones where Staff has the
16 information we needed to do our Analysis and have, and
17 because we've done it and put that through our internal
18 review, we have a pretty good sense that there are no
19 issues in the following technical areas. So at this point,
20 that would cover an aesthetics, Ag forestry, biological
21 resources, cultural and tribal cultural resources, geology
22 and soils, land use, minerals, noise, population and
23 housing, public services, recreation, and wildfire. You'll
24 notice that I've scratched through Energy and Energy
25 Resources, and Hazards and Hazardous Materials. That's not

33

1 to indicate that we yet know of an issue associated with
2 those technical areas. It's Staff's determination that
3 because of the addition of the Battery System, we probably
4 need to re -- we need to look at the information and re-
5 evaluate whether we do have an issue on that once that
6 information comes in. So basically, Energy and Energy
7 Resources, and Hazards moved to our second grouping of
8 things, which it's, simply, it's too early to say whether
9 we have an issue on any of these until we get the
10 information we requested and had a chance to digest it and
11 evaluate it. So this sort of out, we don't know the answer
12 yet grouping, is Air Quality, Energy and Energy Resources,
13 Greenhouse Gases, Hazards and Hazardous Materials,
14 Hydrology and Water Quality, Transportation, Utilities and
15 Service System, and Environmental Justice.

16 So that's, you can say generally, in terms of the
17 numbers of sections, it's maybe half of the sections at
18 this point had written -- had been written and gone through
19 internal review. But those of you who are familiar with
20 this type of proceeding, know that Air Quality tends to be
21 sort of the largest, most complicated issue area and that
22 work is definitely not done. I don't want to give anyone
23 too optimistic sense of how far along the document is. I,
24 even though we're probably maybe more than half on the
25 number of document -- of the number of technical sections

1 we've got in the can, we probably aren't more than 25% done
2 with the material that will actually go into the
3 Environmental Document when we publish.

4 So the third thing I wanted to go over for
5 everyone's benefit, if you could scroll down. Oh actually,
6 it's right there. We're already there. It's that Staff
7 has determined that an EIR would be appropriate for this
8 document. Again, that's not, at this stage, tied to any
9 particular impact that we think is driving that. But there
10 are -- there are reasons that we think that that might be
11 the best way to go. And that's -- the Applicant has been
12 informed of that. And if you have any additional questions
13 on that particular topic, I'll defer those to Counsel,
14 Renee Webster-Hawkins. So if we could scroll down a bit
15 further down to the actual Schedule portion. That's a good
16 place.

17 So now that we have determined we're going to go
18 with an EIR, there's a number of EIR specific type tasks
19 we're now going to be engaged in. So we need to put out a
20 Notice of Preparation. We need to determine if a Scoping
21 Meeting is needed. We, obviously if we're doing an EIR, we
22 need to develop an Alternative Section and none of that
23 work has commenced yet. And we, like I mentioned before,
24 would potentially be preparing additional rounds of data
25 requests around the idea of alternatives and around the New

1 Project Description element. So, again, we're still very
2 much in Discovery, and that's -- that makes it difficult to
3 give any real, hard estimates of when documents might come
4 out. So if you could scroll down actually to the Proposed
5 Schedule itself, that would be most helpful. It's sort of
6 a line by line of bullets. Has anyone got control of the
7 document and can scroll down to the. Thanks, that's great.

8 So yeah, this basically shows what has happened
9 and transpired so far. We got the Original Application in.
10 We got Data Requests out quite quickly. We got some
11 partial responses to that first set, but as Scott
12 mentioned, there's more info forthcoming on Air Quality and
13 other Issues. We got out a second set of Data Requests.
14 We then turned in our Issue ID Report with the best
15 information we had at that moment, which obviously, if it
16 had been two weeks later, we may have been able to get more
17 to you. But you know, here we are. We're -- you've gotten
18 responses from the Applicant to our Data Request Set 2. So
19 thank you again, Scott at Amazon, for getting those into
20 us. When today we're at the Committee Status Conference.
21 So as I mentioned, Data Request Set 3 will be coming.

22 We'll eventually get complete responses to
23 everything. And at that point, based on what we've done in
24 prior proceedings and what we're proposing for this
25 proceeding, we would like to be able to tie publication of

1 our Environmental Document to our acknowledgement of having
2 everything we need and that we have no more Data Requests.
3 So this was essentially the language that was used in the
4 Lafayette Scheduling Order. We would ask that that be
5 reproduced for this one so that we would acknowledge we
6 have no further Data Requests and that would sort of set a
7 60-day clock for us to get out our Environmental Document.
8 So we're proposing that again, like we did in Lafayette.
9 The rest of the deadlines tend to fall from the date that
10 we publish. So often we've seen Scheduling Orders where
11 they say, you know, after this event occurs, it would be
12 two weeks later or that. Most of the Hearing Officer and
13 the Committee know what they want to do with that aspect of
14 it. And we'll just let those dates fall where they come
15 from our Environmental Document.

16 One thing I did want to make sure people saw is
17 the place where I struck through 30 days, under the
18 Deadline for Staff's, for Comments. Since we're looking at
19 any EIR, we're sure that'll be 45 rather than 30. So that
20 was another change I wanted to clue everyone to.

21 And the other part of the Issue ID Report that I
22 don't want to spend too much time on, but I just
23 wanted -- Liza, if you could scroll down a little further
24 to the bullets at the very end. Staff has various -- a
25 little bit higher. There we go. Thank you. Staff has

1 various requests that we'd like the Committee to consider
2 in terms of how they put together the Scheduling Order.
3 And these are, for the most part, repeated from all of our
4 prior Issue ID and Schedule requests. So if you could
5 consider those and we think that application of these,
6 putting these rules in, will make things go a lot quicker.

7 So thanks. Thanks very much. And we're
8 available for questions if you have any. And like I said,
9 if it's for a particular technical specialist, we'd
10 appreciate it if you let us know what the issue is so we
11 can try to get that person promoted to panelists. If you
12 have a question about a particular technical area. Thank
13 you.

14 HEARING OFFICER LEE: Thank you, Mr. Payne. Were
15 you expecting Chris Wright to speak? Is he one of your
16 people?

17 MR. PAYNE: No.

18 HEARING OFFICER LEE: Okay. He may have a public
19 comment, but he does have his hand raised. I guess I
20 should ask the Applicant. Was the Applicant expecting Mr.
21 Christ Wright to speak?

22 MR. GALATI: No, I don't believe that he's with
23 our team.

24 HEARING OFFICER LEE: Okay. Thank you. Speaking
25 of, Mr. Galati, does the Applicant have any response to

1 anything that Staff just made during its presentation or
2 anything else regarding the Issues, Status, or Proposed
3 Schedule?

4 MR. GALATI: Yes. I would like to take some time
5 and address Staff's most recent change to propose an EIR
6 for this project. I am thankful that earlier this week, or
7 early or late last week, I did get a -- have a conversation
8 with Staff Counsel in which they were reiterating that they
9 would be changing from an IS/MND for this project to an
10 EIR. We did have conversation about the concept of an EIR
11 and an IS/MND, not only to this project, since I understand
12 that Staff's going to be proposing this for all projects,
13 and that the primary purpose is to protect the Commission
14 from a Fair Argument potential lawsuit, in light of the
15 recent cases that talked about the Fair Argument Standard.
16 I would note that that is a very conservative approach and
17 view not shared by many counties and cities who implement
18 CEQA projects just like this all the time.

19 If the cases were interpreted that I believe the
20 way that Staff believes that they are, that it would
21 basically do away with the Initial Study and Mitigated
22 Negative Declaration process at all times since it is,
23 since Fair Argument is so easy to make. The primary thing
24 that I think the Committee should reject Staff's
25 requirement to do an EIR and direct them to do an Initial

1 Study and Mitigated Negative Declaration, is that we
2 basically did an Initial Study and Mitigated Negative
3 Declaration supporting, in our application, showing that
4 all impacts were mitigated or less than significant.

5 Second, clearly we understand Data Centers very
6 well now, and the kinds of data that we're being asked is
7 not necessarily to determine if there is an impact, it's to
8 understand the Analysis proving that it was -- that there
9 are no impacts. We also included in our application an
10 Alternative Analysis that actually showed which
11 alternatives were rejected based on not being able to meet
12 the Reliability Standards and the project Objectives. So
13 Staff has that information. And if they wanted to include
14 that in the Initial Study and Mitigated Negative
15 Declaration, you certainly could.

16 Lastly, the Committee and Commission process is
17 not following CEQA directly. We have a whole other process
18 that takes months to complete once the Document is
19 circulated, and comments are received, and that is the
20 Evidentiary Process. And what basically happens in that
21 Evidentiary Process is anyone who could make a Fair
22 Argument that an item should have been looked at, or that
23 there was a significant impact, the evidence beyond that,
24 behind that Fair Argument is tested. And it's tested in a
25 way that no other agency is capable of testing it and that

1 is the testimony, professional expert witnessing, and
2 cross-examination and inquiry from the Committee, and
3 briefing. That entire process, I believe, insulates the
4 Commission from the Fair Argument Standard that an EIR
5 should have been prepared because someone brought up thane
6 issue because it isn't a Fair Argument if it's not
7 supported by evidence, and that's what the Committee says.

8 There is always a risk for any project that is
9 that a disgruntled party or a member of the public could
10 sue. That is not a reason to move forward with an EIR for
11 all projects. And it certainly isn't a reason for this
12 project to go forward with an EIR when it has just added a
13 very environmentally friendly feature. Those are the kinds
14 of things that should be rewarded to an Applicant who
15 spends money that they don't need to spend to put in this
16 Battery Energy Storage System. So I'm worried about what
17 the Commissioners, the Committee, if it ordered Staff to do
18 an EIR, would be telling Applicants in the future that
19 Initial Studies, Mitigated Negative Declarations are not
20 available at the Commission.

21 There certainly is nothing unique that Staff has
22 raised about this project, other than many of the technical
23 areas already done. So we are trying to capture lost time.
24 We filed in December. Three days after we filed the Bay
25 Area Air Quality Management District changed back, even

1 though we were working with them on other projects right up
2 until that point. So we had to go back to the drawing
3 board, redesigned the project, redo a bunch of Air Quality
4 Analysis and all the other analysis, and resubmit that
5 Revised Project Description, which took quite some time.
6 So we've already lost that. This project has a very
7 determined certain schedule and has already hired its
8 contractors. We do not agree that Staff will be able to
9 prepare a EIR in the same time frame, follow the same
10 procedures as they would an IS/MND. So we asked the
11 Committee to please move forward and reward this project
12 for coming in already mitigating and including facilities
13 that actually ensure that the diesel generators run even
14 less than the very infrequent time that they would run.
15 Thank you.

16 HEARING OFFICER LEE: Thank you. We touched on a
17 few things, I think we may have some questions. Mr. Payne
18 mentioned his requests regarding the schedule.
19 Specifically, and I don't think he highlighted them, but he
20 showed us the spot where in the Issue Identification Report
21 he mentioned it. In the Proposed Schedule Staff filed on
22 June 14th, 2021, and in Applicant's reply on June 21st,
23 both the Staff and Applicant requested concurrent deadlines
24 for opening testimony with comment on the Environmental
25 Document and reply testimony with Staff's response to

1 comment on Environmental Document. And Mr. Payne mentioned
2 today that that was an issue of timing and I guess this
3 question is for the Staff, Mr. Payne or
4 Ms. Webster-Hawkins, what benefit would there be to the
5 proceeding, aside from saving the couple of weeks or so?
6 What benefit would there be to the proceeding from setting
7 a deadline for opening testimony concurrent with the
8 deadline for public comment and/or setting the deadline for
9 reply testimony concurrent with the deadline for Staff's
10 response to public comment? Can -- does the staff have
11 anything to add on that? Then I'll ask Mr. Galati after
12 that.

13 If Staff is -- oh here, we have Mr. Payne.

14 MR. PAYNE: Yeah. My understanding of this
15 issue, and this has been brought up in several prior
16 proceedings is simply, it's easier -- it's an easier lift
17 for Staff to be responding to everything at once. And when
18 we end up doing one set of responses to public comments and
19 then a second set of responses to things that we get in
20 opening testimony a couple of weeks later, we're
21 essentially doing that process twice and we think the best
22 -- the best value for everyone, timing and otherwise, would
23 be for us to be looking at all of those things at the same
24 time. So it's really focused on Intervenor opening
25 testimony that we could then reply to everything at the

43

1 same time. So that's the reason. And I'm sure that Scott
2 Galati, who's also raised the same issue several times in
3 prior proceedings, might have words on that as well. And
4 obviously when they tried manipulating [indiscernible]..

5 HEARING OFFICER LEE: Yeah. I'll stay with Mr.
6 Payne or his Counsel, Ms. Webster-Hawkins, for just a
7 second. It appears that that Proposal could prevent an
8 Intervener from intervening -- from testifying in response
9 to Staff's response to comments. Is that -- would that be
10 correct? They wouldn't have the opportunity to testify
11 that, in response to Staff's response to public comments on
12 the Environmental Document?. Does the Staff -- does the
13 Staff have anything, thoughts on that?

14 MR. PAYNE: I do not, but perhaps Renee does.

15 MS. WEBSTER-HAWKINS: Thank you, Hearing Officer
16 Lee. I, not knowing the specifics, my guess would be that
17 the filings prior to the response to comments would be well
18 known and hopefully the opening testimony of the Intervenor
19 would address anything that they might have also had
20 questions on. So I believe that there would be a full and
21 ample opportunity for the Intervenor to file opening
22 testimony and addressing all the issues raised by the prior
23 filings.

24 HEARING OFFICER GALATI: Thank you. Mr. Galati,
25 did you have any response to that?

1 MR. GALATI: Yeah. I think what we're trying to
2 prevent is an Intervenor that files a set of comments,
3 Staff's response to comments, and then opening testimony is
4 not about Staff's response to comments. It's new issues,
5 and then reply testimony is new issues. That has happened
6 on many of our projects by one or two interveners. In
7 fact, the only interveners normally involved in these
8 particular projects. So what I would say is that opening
9 testimony is the response to comments to the Environmental
10 Document and that Staff's then response to those comments
11 is their reply testimony that the Committee could easily
12 give another week for reply testimony to be to that reply.
13 That, and remember, the rule should be that the reply
14 testimony is in reply. It's not raising new issues and
15 providing new support for new issues or reiterating the
16 issues already raised in your opening testimony. I think
17 that will make the issues much more narrow at Evidentiary
18 Hearing, make it easier to follow for writing the Proposed
19 Decision. And quite frankly, I think it's fair.

20 HEARING OFFICER LEE: Well, thank you for that.
21 And let's see, I did have another question. This one's for
22 the Applicant, and it's regarding the recently proposed
23 Battery Energy Storage System components. And you know,
24 excuse, I might just be ignorant in this, I just -- I just
25 had the thought, is it -- would the use, or configuration

45

1 of the Battery Energy Storage System, allow the Backup
2 Generating Facility to generate more than 100 megawatts if,
3 for example, the Backup Generating Facility were to
4 recharge batteries while it's also supporting the Data
5 Center during an extended outage.

6 MR. GALATI: Well first I'll let you know that if
7 you were looking at this as a facility that the Energy
8 Commission had jurisdiction over, a thermal power plant,
9 the generation of electricity from the battery energy
10 storage system would be exempt from that calculation
11 because it's not thermally generated. Second is the
12 purpose. It will only generate electricity that matches
13 the demand of the building at any point in time. So while
14 it may draw electricity from the Grid and it, that while
15 charging the battery, that is not generating capacity.
16 That is use of electricity to charge the Battery Energy
17 Storage System, which is exempt from Energy Commission
18 jurisdiction.

19 So the correct way to look at this, I believe Mr.
20 Hearing Officer, is if there is a curtailment of
21 electricity and so there is no ability to support the Data
22 Center buildings at the -- from the substation, there would
23 be two things that happen. The Battery Energy Storage
24 System would be drained and the amount of electricity that
25 would be used would be up to the maximum demand of the

1 building, which we calculated as, of the two buildings,
2 which we calculated at 96 megawatts. So that would be for
3 some period of time, and then when it is no longer
4 available, the generators would kick on and even though
5 there's significant redundancy in the generators, the most
6 electricity that can be generated would be the actual
7 generating that would be consumed. We would not use the
8 generators to charge the batteries.

9 HEARING OFFICER LEE: Okay. And that's
10 what --that's what I was getting to, and I was getting to a
11 more, you know, not would you do, but what could be done?
12 I mean, you may not have the answer to this right now. I
13 just wanted to make sure that the backup generators could
14 not be used to also recharge the batteries at the same
15 time.

16 MR. GALATI: Yeah. Thank you for that. We will
17 make that clear in our Project Description.

18 HEARING OFFICER LEE: Okay. Excellent. Thank
19 you. And I guess, you know, this is the first, today, that
20 the Committee's heard of a potential EIR. And then this,
21 so I have one just brief opportunity for Staff, and Mr.
22 Payne already touched on it. And he said that maybe if we
23 had additional questions, Ms. Webster-Hawkins might have
24 some additional information. I was just wondering if Staff
25 had any additional support for its decision to take an EIR

47

1 in this case.

2 MS. WEBSTER-HAWKINS: Thank you, Hearing Officer
3 Lee. Yes. I would like to just clarify that the Staff is
4 not making a firm black and white decision that all
5 Exemptions or Small Power Plant Exemptions for Data Centers
6 will be EIR. In this case, given the siting of this
7 project in proximity to several other Data Centers that
8 Staff has analyzed recently and in the Region, we have
9 enough information, aside from the information that we're
10 still awaiting that's specific to this project, to believe
11 that in the Evidentiary Process that Mr. Galati described,
12 there could be substantial weighing of the evidence. And
13 while Mr. Galati is correct that the Environmental Document
14 needs to be supported by a Fair Argument in our process
15 here at the Commission, we don't approve the Environmental
16 Document until after the Evidentiary Hearing. And if
17 there's an opportunity for the Committee to weigh evidence,
18 it may, that process of weighing the evidence may fall
19 outside what CEQA permits for Mitigated Neg Deck.

20 So again, in this case, given the outstanding
21 questions that we have and Staff's experience with
22 analyzing the specific technical information related to air
23 quality and greenhouse gas emissions, given the importance
24 of transportation in the Region, in our estimation, at this
25 point, it's more prudent to go forward with the

1 Environmental Impact Report as Mr. Payne indicated. The
2 timing, it's not going to add much if any, significant time
3 to the actual timeline between Project Application and
4 Project Approval. Given the fact that we do have the
5 Evidentiary Process, given that CEQA only requires an
6 additional 15 days for public comment beyond the 30 we
7 would offer for a Mitigated Neg Deck and because we have
8 significant information that we can build upon from the
9 other recent projects in the area, plus the Alternatives
10 Analysis that Mr. Galati described that was provided in the
11 Application, Staff is quite a ways along the timeline of
12 developing the Environmental Document. So for all those
13 reasons, again, we believe it's prudent to address the
14 issues of this project in an Environmental Impact Report
15 for the Committee and Commission's consideration.

16 HEARING OFFICER LEE: Thank you. And I'll just,
17 as a matter of course, offer to Mr. Galati to respond.

18 MR. GALATI: Yes. Thank you Mr. Hearing Officer.
19 I understand what Staff is intending to do. I don't
20 believe there's anything unique about this project that
21 this one should have an EIR. The two that that Staff did
22 decide to do an EIR, one, it was a prior approval in the
23 City of San Jose in which the prior approval of the project
24 was an EIR, and there were some findings of overriding the
25 age for that project. So with some real issues, there was

49

1 a lawsuit associated with that project. So there were some
2 real issues and public outrage and public controversy.

3 And in the second project, because that was in
4 the same city, Staff also thought that would be prudent,
5 especially to look at alternatives. At that time that
6 Applicant was proposing Tier 2 diesel generators. Here in
7 this case, the projects, our project, is proposing Tier 4
8 diesel generator, which is the lowest emissions you can get
9 from these generators. It will have a Battery Energy
10 Storage System to eliminate their need to run during
11 emergency operations. It is on a piece of ground that has
12 been zoned for industrial development and this industrial
13 development that we're doing would be far less intensive
14 than that that was identified under the General Plan.
15 There is nothing unique about this project that would
16 warrant taking a view that their issues could come up, that
17 are unique and different than what the Commission has
18 already heard.

19 Remind the Commission that there's been three,
20 four approvals now under an IS/MND in the City of Santa
21 Clara. This is the only project in Gilroy. We've been
22 working with Gilroy for a long time and they're very, very
23 supportive of the project. So I think it is certainly too
24 early for Staff to identify that there might be an Air
25 Quality Impact when the emissions are significantly less

1 than they were from Tier 2.

2 So again, I think this is about potential
3 protection from litigation in the future, and we just ask
4 the Commission to consider that your Evidentiary Hearing
5 and how you do your Evidentiary Hearings to remove that
6 risk, we think significantly. If not, do the EIR and have
7 no Evidentiary Hearings. Staff only needs to respond to
8 comments and people can come to a meeting and instead of
9 following the very detailed rules of the Commission, can
10 come and make their comments and Staff could -- and there
11 could be a vote. Because that's what happens in cities and
12 counties. There is no additional process where arguments
13 are tested to determine whether or not they merit an EIR.

14 So lastly, I would say is Staff told me in the
15 Great Oaks South Project that there would be no time delay.
16 There's a Notice of Preparation with the new comment
17 period. There is a Scoping Meeting with Noticing period
18 and new comment period. And it took three and a half
19 months to get the scoping -- the notice out and perform the
20 Scoping Meeting. During that time, no additional
21 information is going to be accepted that is going to change
22 what Staff does. They already look at every single
23 environmental area to very detailed look. So the scoping
24 has generally defined some sections that no one wants to
25 have covered in an EIR, or in an IS/MND, and doesn't need

51

1 to be covered here. There will be full covering as the
2 Commission does its work and there is no need to be making
3 the decision now that an EIR is warranted because it just
4 simply is not. Thank you.

5 HEARING OFFICER LEE: Thank you. And I think
6 actually, I think that warrants one more follow up to Ms.
7 Webster-Hawkins. We don't have to ultimately decide the
8 issue on this at this Committee Conference, but Mr. Galati
9 said that, you know, there is nothing unique about this
10 project. Do you have any response to that? Is there's
11 something unique about this project that is taking Staff
12 lean toward an EIR?

13 MS. WEBSTER-HAWKINS: A couple of technical areas
14 that remain undrafted by Staff, as Mr. Payne indicated,
15 could be a close call. One is the Transportation Section,
16 which was at issue in the Microsoft San Jose Data Center
17 Project, and which supported the use of an EIR in that
18 project. And here we have outstanding questions related to
19 transportation. Another important one, which is just truly
20 too soon to tell, but we want to make sure that the public
21 has ample opportunity to participate is the area of
22 environmental justice. Just in November 2020, the City of
23 Gilroy adopted an Economic Enhancement District, which is
24 essentially their [indiscernible] for disadvantaged
25 communities. It's designated based on CalEnviroScreen 3.

1 0. And this project is located inside the boundaries of
2 that EED designated by City of Gilroy. So there could be
3 an environmental justice issue. Again, which is too early
4 to know.

5 We have not decided whether or not to conduct a
6 Scoping Meeting. It is optional under CEQA and is only
7 required where there's matters of statewide significance or
8 a member of the public requests it. So that's not, at this
9 point, that's not necessarily anything that we're planning
10 to do. But will, if required, Staff is already drafting
11 the Notice of Preparation. So that's well underway and we
12 should be getting that out onto the docket within the next
13 week or so.

14 HEARING OFFICER LEE: Thank you. And Mr. Galati,
15 I'll give you the last word, final word.

16 MR. GALATI: I think this is a disturbing trend,
17 the fact that there might be issues. We've not been asked
18 any Data Requests to address environmental justice as that
19 was just identified, or we would have. We've already done
20 our own work, like I said, for a year and a half with the
21 City of Gilroy. There is no indication that the City of
22 Gilroy believes that this needs to be an EIR. And if this
23 project were less than 100, less than 50 megawatts, the
24 City had already talked to us about doing in this Initial
25 Study Mitigated Negative Declaration.

1 So we'd just asked the Committee to have Staff
2 hold off, process, ask these questions, then we can revisit
3 this because we don't believe that there are impacts unique
4 to this project that would warrant anything. There is an
5 analysis being done on vehicle miles traveled, as Ms.
6 Hawkins identified. We've been working with the City of
7 Gilroy and we're coming up with mitigation that we think
8 will be sufficient and so does the City. So that
9 is -- that is something that is relatively new, but it
10 certainly doesn't mean that that is something that is
11 potentially litigable, or that in and of itself would
12 require an EIR. So we just have the Committee to ask Staff
13 to go forward with there IS/MND. Keep us on that path.

14 HEARING OFFICER LEE: Great. Thank you. That's
15 all I had. Commissioner Douglas and Commissioner
16 McAllister, do either of you have any additional questions
17 for the parties at this time?

18 COMMISSIONER DOUGLAS: This is Commissioner
19 Douglas, I do not have any additional questions, but
20 obviously the presentations and the discussion's been
21 helpful. Thank you.

22 COMMISSIONER MCALLISTER: This is Commissioner
23 McAllister. Same for me. I think the -- some of the
24 operational questions and other impact, you know,
25 assessments can -- will -- I think that we have time to

1 work through all of those issues. So I don't have any
2 specific questions at this moment.

3 HEARING OFFICER LEE: Great. Thank you. Well,
4 then that concludes our discussion of Schedule Status
5 Issues and Next Steps. We will now take public comments.
6 Comments are limited to three minutes per person. If
7 you're on your computer, use the Raise Hand feature to let
8 us know you'd like to make a comment. If you change your
9 mind, you can lower your hand, and we will call on you in
10 the order you're in line so that you can state your
11 comment. We will call on you and open your line so that
12 you can state your comments. For those on the phone, you
13 may dial *9 to raise your hand. If you've muted yourself,
14 press *6 to unmute your phone line. We will unmute your
15 phone lines from our end. We will call on you in the order
16 you raise your hand. If you're on the phone, we will tell
17 you that your line is open and call you -- if you're on the
18 phone, we'll call you by reading off the last three numbers
19 of your phone number.

20 I'm not seeing any raised hands at this time.
21 I'll give it just one more second for any potential
22 commentors to raise their hand? I do not see any hands
23 raised or comments on them.

24 At this time, I ask the Public Advisor's Office
25 whether it's aware of anyone who'd like to make a public

1 comment at this time.

2 MS. AVALOS: Hi. This is RoseMary from -- Avalos
3 from the Public Advisor's Office. At this time, we have
4 not received public comment within our - the Public
5 Advisor's Office.

6 HEARING OFFICER LEE: Okay. That concludes
7 public comment. Commissioner Douglas or Commissioner
8 McAllister, do either of you have any comments that you'd
9 like to make before we close or actually before we decide
10 whether we need a closed session?

11 COMMISSIONER DOUGLAS: I was just going to say
12 briefly, that I think a closed Session would be helpful. O

13 HEARING OFFICER LEE: Okay.

14 COMMISSIONER MCALLISTER: Agree. Yup, I agree.

15 HEARING OFFICER LEE: Very good. The Committee
16 will now adjourn to a closed session in accordance with
17 California Government Code section 11126 subdivision
18 (c)(3), which allows the state body, including a delegated
19 committee, to hold a closed session to deliberate on a
20 decision to be reached in a proceeding the state body was
21 required by law to conduct.

22 We're going to return here. I don't -- I don't
23 have an estimate of how long it will take. So we will
24 return here, let's say I'll try to, if we are finished,
25 I'll be back at 1:00 p.m. to close down this. Otherwise

1 we'll be back as soon as we're finished thereafter. And so
2 with that, we're adjourned the closed session.

3 (Closed Session from 12:27 p.m. until 1:00 p.m.)

4 COMMISSIONER DOUGLAS: Hi. This is Commissioner
5 Douglas. Ralph, I think you're on, right? So please.

6 HEARING OFFICER LEE: Yes. Hello. Yeah, we're
7 back from closed session. If you want to just go ahead and
8 adjourn the meeting.

9 COMMISSIONER DOUGLAS: Yep. I will do that.
10 We're back from closed session. We've got no reportable
11 items and we're now adjourned. Thank you.

12 (Committee Conference adjourned at 1:00 p.m.)

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REPORTER' S CERTIFICATE

I do hereby certify that the testimony in the

foregoing hearing was taken at the time and place

therein stated; that the testimony of said witnesses were reported by me,

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of And I further certify that I am not

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IN WITNESS WHEREOF,

I have hereunto set my hand this 6th day of July, 2021.



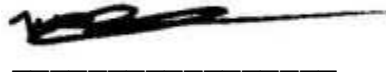
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of July, 2021.



Myra Severtson
Certified Transcriber
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