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BEFORE THE
CALIFORNIA ENERGY COMMISSION

COMMITTEE CONFERENCE

In the matter of,

STACK Backup Generating Facility) Docket No. 21-SPPE-02

IN PERSON ANDREMOTE VIA ZOOM VIRTUAL MEETING

Warren-Alquist State Energy Building
Rosenfeld Hearing Room (Hearing Room A)
1516 9th Street,
Sacramento, CA 95814

TUESDAY, AUGUST 2, 2022
1:30 P.M.

Reported By:
Elise Hicks
APPEARANCES

Commissioners
Commissioner Andrew McAllister, Presiding Member
Commissioner Kourtney Vaccaro, Associate Member

Advisors
Bryan Early, Advisor to Commissioner McAllister
Eli Harland, Advisor to Commissioner Vaccaro
Natalie Lee, Advisor to Commissioner Vaccaro

Hearing Officers
Deborah Dyer, Hearing Officer
Ralph Lee, Hearing Officer

Staff
Jared Babula, Staff Counsel
Kari Anderson, Staff Counsel
Eric Knight, Branch Manager, Environmental Branch

Applicant
Chris Kapper, STACK Infrastructure, Director of Strategy and Development
Scott Galati, Attorney, DayZen, LLC

Public Advisor
Dorothy Murimi

Public Speakers
James Dobson, San Jose Fire Department
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COMMISSIONER McALLISTER: All right.

Greetings everyone. First of all, I want to start with an apology for getting my wires crossed on my schedule and that's the reason we're starting late, so that's my bad. I’m Commissioner Andrew McAllister, the lead commissioner on this, the STACK Trade Zone Boulevard Technology Park backup Generating Facility Small Power Plant Exemption case.

So, so welcome, everyone. Thanks very much.

The time is 1:55 on Tuesday, August 2nd, 2022. So, this is the Committee Conference regarding the proceeding on the application for a Small Power Plant Exemption for the STACK Trade Zone Boulevard Technology Park as SVY Backup Generating Facility.

The California Energy Commission has assigned a Committee of two Commissioners to conduct these proceedings. I'm Commissioner Andrew McAllister, the presiding member of this Backup Generating Facility Committee, and I'm joined by Commissioner Kourtney Vaccaro, who is the associate member of the conference— I mean of the Committee, sorry.

Now I want to introduce some other people that are in attendance here today, key folks here as well.
Brian Early, my advisor. Is Eli here? Perhaps remotely? No. Not sure. Eli Harland and Natalie Lee may be here, advisors to Commissioner Vaccaro. And Ralph Lee and Deborah Dyer are the Hearing Officers for this, for this proceeding.

So, I would ask the parties to please introduce themselves and their representatives at this time starting with the Applicant. Applicants, go ahead.

MR. GALATI: Good afternoon, this is Scott Galati. I’m pleased to represent STACK Infrastructure. With me we have some members, not as panelists, that could be called in on our team if necessary to answer questions. But primarily who will be speaking today is Chris Kapper, he is the director of strategy and development with STACK and we’re excited to bring the Trade Zone Park development to you.

COMMISSIONER McALLISTER: Great, thank you. And Mr. Galati, you are also the attorney for the Applicant?

MR. GALATI: Yes, I’m counsel for the Applicant.

COMMISSIONER McALLISTER: Okay, terrific. Then follow up with staff. Staff, please introduce yourself as well.

MR. KNIGHT: Good afternoon. This is Eric
Knight, manager of the Siting and Environmental office. I'm here on behalf of Lisa Worrall, who is on vacation. She's our project manager for the STACK Small Power Plant Exemption. And I'm joined with Diane Borders, who is Assistant Chief Counsel. And then I believe Jared Babula, also with the Chief Counsel's office, is on the line.

COMMISSIONER MCALLISTER: Okay.

MR. KNIGHT: And then we also have a number of staff online to chime in if there's any questions that Committee may have.

COMMISSIONER MCALLISTER: Great. Thank you, Mr. Knight, and thank you Ms. Borders and Mr. Babula as well. So now I invite any representatives from public agencies or tribal governments to introduce themselves. Do we have any representative of agency or tribes on the line?

I see we do not have any in the room. Sounds like not. Okay, none. None, no public agencies or tribal governments on the Zoom call?

If you would like to talk, please use the raise hand feature so I can make sure to unmute you.

MR. DOBSON: Hi, this is James Dobson with, with—from the San Jose Fire Department.

COMMISSIONER MCALLISTER: Great. Well thank
you very much for being here. Looking over at the Zoom administrators here to see if we have any other hands up?

No other hands, okay. Maybe I'll just run through the list just for completeness here. Do we have, let's see. Any elected or appointed officials from state county or local jurisdictions? In this case, relevant would be the city of San Jose, Santa Clara County, The Bay Area AQMD, Santa Clara Valley Transit Authority, Santa Clara Valley Water District, any public officials listening in? We'd like to know and give you a chance to make any—to announce yourself.

Great, okay. Well with that, I will pass the microphone to Commissioner Vaccaro, in case you have any remarks?

COMMISSIONER VACCARO: Thank you, Commissioner McAllister. First of all, looking forward to working with you on this case. I think this will be nice for us to partner together. And I just wanted to extend welcome to everyone who's participating today. And just state that I'm looking forward to engaging with the parties, with the intervenors, and other stakeholders as this proceeding progresses.

I think it's off to a good start. I've already been able to take a look at the documents in the
docket. There’s already been, I think, really good
diligence on the part of the Applicant and Staff at this
early stage. So just looking forward to that continuing
effort and for Staff and the Applicant to continue
working together on information gathering and moving
this forward so that we can meet the timelines that are
set for us in the Commission's regulations.

COMMISSIONER MCALLISTER: Thank you. Thank
you very much Commissioner Vaccaro. And I am really
looking forward to partnering with you on this as well.
And, yeah, I was a little off balance, because I don't
make it a habit of being late. So, thanks, thanks a
lot. So anyway, apologies to everyone that's tuned in,
again, for that.

With that, I think we can begin the rest of
the proceeding. And I'll hand it over to Hearing
Officer Ralph Lee. Mr. Lee?

MR. LEE: Yes, thank you. Good afternoon. My
name is Ralph Lee, Hearing Officer with the California
Energy Commission. My role is to assist the Committee
with conducting committee events like today's Committee
Conference, and preparing documents such as orders,
notices and decisions.

A save the date for today's Committee
Conference was filed in the docket for this proceeding
Formal notice of today's Committee Conference was filed on July 14th, 2022, in English, Spanish, Vietnamese and Chinese. The Energy Commission created an online docket for documents associated with this proceeding, docket number 21-SPEE-02. The Notice of today's event, and other documents related to this proceeding, are available on the Energy Commission's website in the electronic docket for this proceeding.

We're conducting today's Committee Conference in a hybrid format, which means some participants are in person in the Rosenfeld Hearing Room at the Warren Alquist building in Sacramento, and others are participating via Zoom. To those on Zoom, to find your participation options, look for the black bar at the bottom of your Zoom screen.

We set the Zoom meeting so that many participants will not be able to mute or unmute themselves to speak. But you will have the opportunity to speak during the public comment period, as I will describe in a moment. You may still mute your phone by pressing star-six, and you should still be able to hear the Committee Conference.

The party's representatives may be participating in Zoom as panelists, which means that they may— they will be able to mute and unmute
themselves to speak and have the option to use the video feature. If you want to be recognized, please use the raise-hand feature. If you're connected to Zoom by your phone, press star-nine to raise your hand.

If you've muted your line by pressing star-six, please be sure to unmute yourself by pressing star-six again. The raise-hand feature creates a list of speakers based on the time when your hand was raised, and we will call on you in that order. Please note that if anyone makes noise that disrupts this meeting, we may mute that person. If that happens, you will need to raise your hand to have your microphone turned back on if you would like to speak.

Today we have a court reporter transcribing all the statements made and any questions asked. I therefore must ask that only one person speak at a time. Also, please identify yourself before you speak. When you speak for the first time please say and spell your name slowly for the record. That's important for me and for the court reporter. If you do not identify yourself, either the court reporter or I may interrupt you to ask that you do so to ensure that we have a complete and accurate record of today's Committee Conference.

If you run into any technical difficulties
with Zoom, please contact the Public Advisor’s office or Zoom’s Help Center. Contact information for both is listed on page six of the Notice of today’s Committee Conference. At this time, I'll ask, are there any questions? And please use the raise-hand feature if you have any questions.

Okay, seeing none.

Next, to the purpose of today’s Committee Conference is to provide the public with an overview of the process the Energy Commission is using to review the application for a Small Power Plant Exemption for this STACK Trade Zone Boulevard Technology Park SVY Backup Generating Facility to provide an overview of opportunities for public participation to hear about the project proposed by the Applicant, to review the current status of this proceeding, and to address any outstanding issues. And finally, to allow the Committee to develop a schedule for this proceeding.

To that purpose, first, I will give a brief overview of the application that is the subject of this proceeding. Next, I will describe a Small Power Plant Exemption, known as an SPPE for short. And then I will outline some of the rules applicable to this proceeding.

After I give that overview, the Energy Commission's Public Advisor will — Office, will discuss
opportunities for public participation in this proceeding. Following that, we will hear from the Applicants about its application for an SPPE. Next the Energy Commission Staff will present on its Issues Identification Report, Status Report, and proposed schedule. Following Staff’s presentation, as stated in today's agenda, the Committee and the Parties may discuss the schedule and other topics regarding the application.

There will then be an opportunity for public comment toward the end of this Committee Conference. The Committee has also given notice that it may hold a closed session. We will decide whether that will be necessary after we've heard from everyone. After that, we will adjourn this Committee Conference.

So now turning to the application at issue in this proceeding. On December 10th, 2021, STACK Infrastructure, which I will refer to as the Applicant, filed an application with the California Energy Commission requesting a Small Power Plant Exemption for the STACK SVY backup generating facility. I will refer to this application simply as the application.

The application proposes to build and operate a data center in San Jose, California. The data center will consist of two three-story buildings totaling
approximately 522,000 square feet, which would provide
secure and environmentally controlled structures to
house computer servers. The Applicant also proposed to
build and operate a backup generating facility that
would ensure reliable backup electricity to the data
center in the event of a loss of electrical service from
the local utility, Pacific Gas and Electric Company,
commonly known as PG&E.

The backup generating facility would consist
of 36 three-megawatt diesel-fired backup generators, and
two one-megawatt diesel-fired backup generators arranged
in two generation yards, each designed to serve one of
the two data center buildings. The most common
operation of the backup generators would occur during
routine testing and maintenance.

The backup generators will not be
interconnected to the electrical transmission system,
and therefore no electricity could be delivered off
site. The backup generating facility will supply power
only to the data center. The maximum electrical demand
of the data center would be 90 megawatts.

At the same project site, the Applicant also
proposes to build and operate an approximately 137,000
square foot advanced manufacturing building for light
industrial and ancillary support uses, and a multi-story
parking garage, on-site substation, and other related project features.

I will now describe the SPPE process. The California Energy Commission was created by the passage of the Warren Alquist State Energy Resources Conservation and Development Act, commonly referred to as the Warren Alquist Act, law that may be found in the California Public Resources Code. This law gives the Energy Commission exclusive authority to consider and ultimately approve or deny applications for the construction and operation of thermal power plants that will generate 50 megawatts or more of electricity. This includes backup generating facilities.

An exemption from the Energy Commission's exclusive authority is available under the Warren Alquist Act, which allows builders of thermal power plants that will generate less than 100 megawatts to apply to the Energy Commission for an exemption from its exclusive jurisdiction, if the proposed project meets certain criteria.

This exemption is known as a Small Power Plant Exemption, or as I mentioned, an SPPE for short. To grant an SPPE, the Warren Alquist Act states that the Energy Commission must make three separate and distinct determinations.
First, that the proposed power plant has a generating capacity of no more than 100 megawatts. Second, that no substantial adverse impact on the environment will result from the construction or operation of the power plant. And third, that no substantial adverse impact on energy resources will result from the construction or operation of the power plant.

In addition to meeting these Warren Alquist Act requirements, the Energy Commission must also analyze an SPPE application under the Environmental Quality Act, California Environmental Quality Act known as CEQA. The Energy Commission is the CEQA lead agency and considers the whole of an action.

For this application, the whole of an action means not just the backup generating facility, but also the entire data center complex that the backup generating facility would support, and also includes the advanced manufacturing building, the parking garage, and other product features such as the onsite substation and landscaping. This whole of an action is collectively called the project, which again is the backup generating facility, the data center, the advanced manufacturing building, parking garage, and other product features.

It is important to note that if the Energy
Commission decides to grant the Small Power Plant Exemption, that decision would not constitute approval to build or operate the project. Instead, upon being granted an exemption from the Energy Commission's licensing process, the project owner would then need to seek any necessary permits and licenses from other local agencies. Which, for the STACK project, includes without limitation, the City of San Jose, and the Bay Area Air Quality Management District.

The SPPE process begins with the filing of an application. The application for the STACK’s backup generating facility was originally filed in the docket for this proceeding on December 10th, 2021. Energy Commission Staff has filed requests for information from the Applicant. We refer to Staff’s requests for information as data requests, or discovery.

Staff uses this information to prepare an environmental document, which will include the information required by both CEQA and the Warren Alquist Act. And which will be used by the Committee and then the full Energy Commission to decide whether to approve or deny the application for an SPPE exemption.

The Energy Commission will review Staff’s environmental analysis. During its review, the Energy Commission uses an adjudicative process. The Energy Commission
Committee ordinarily conducts an evidentiary hearing, which is similar to a trial. At the evidentiary hearing, the Committee would receive evidence from the parties and any comments from the public about whether to grant or deny the SPPE application.

After the evidentiary hearing, the Committee will prepare a proposed decision. The proposed decision will include the Committee's analysis of the project under both the Warren Alquist Act and CEQA. The Committee's proposed decision is then considered by the full Energy Commission at a public business meeting. The Energy Commission will ultimately decide whether to adopt, modify or reject the Committee's proposed decision.

At all SPPE proceedings, there are at least two parties. First, the Applicant requesting the exemption. And second, the Energy Commission Staff. Organizations and members of the public may become parties as well by petitioning to intervene. The Public Advisor’s office will describe that opportunity as well as other ways to comment on the proposed project in just a few minutes.

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

One way to ensure a fair process is through the ex parte rule, which states that parties to a proceeding and interested persons outside of the Energy Commission, which is to say the general public, are prohibited from communicating with the presiding officers about anything that may be in controversy or in dispute. And last, notice is given that allows an opportunity for all the other parties to participate in that communication, or the communication is shared in writing with the public and the parties.

The preferred way to submit a written comment or communication is by filing it in the docket for this proceeding. Prohibited communications include voicemail messages, text messages, emails, letters, telephone calls, and in person discussions, essentially any form of communication. In this proceeding the presiding officers are the members of this committee, both Commissioner McAllister and Commissioner Vaccaro, as well as the other three members of the Energy Commission.
Presiding officers also include Deborah Dyer and myself as the Hearing Officers. Ex parte communications are also prohibited with individuals assisting these presiding officers, which for these proceedings includes anyone serving as advisor to the Commissioners and any attorney or other expert assisting the Committee or Commissioners with this proceeding.

Now moving on, today's Committee Conference is one of several public events that will extend over the next several months. And do we have a presentation display from the Public Advisor’s office? Okay, can we have that on screen please?

At these events, members of the public can participate, provide comments about the project. And I now invite the Public Advisors Office to present on how it can assist members of the public, participate in events regarding the application. And after that, we'll move on to the Applicant’s presentation of the project.

MS. MURIMI: Thank you. Hello, everyone. My name is Dorothy Murimi. I work for the Office of the Public Advisor, Energy Equity and Tribal Affairs. I'm here today to help inform the public about how to navigate and participate in this Small Power Plant Exemption proceeding called STACK.
The CEC values public participation and wants to hear from an array of stakeholders with different perspectives, because having a robust record helps the Committee make a thoroughly informed decision. Sometimes state processes can be confusing, but the Office of the Public Advisor, Energy Equity and Tribal Affairs, is here to provide guidance. One of the key takeaways from this presentation is that the Public Advisor is here to function as a bridge between the public to help ensure any stakeholder or member of the public can participate meaningfully in this and all other CEC proceedings. Please reach out with any questions for guidance. Our email is PublicAdvisor@energy.ca.gov, or call 916-957-7910. We respond both—to both emails and calls within 24 hours.

There are two takeaways to participate in SPPE proceedings. Pardon. As a member of the public—in informal, as a member of the public, like you would at any CEC event. And the other way is formal as an intervener. I’ll start by explaining the informal approach. These—the informal approach. The events in this proceeding may be fully virtual, or fully in person, or hybrid. Most of the time we’ll aim to
provide a hybrid format to increase accessibility.

In the event of — in the — in every event of the STACK proceeding, such as today's Committee Conference, time will be carved out specifically for the public to comment, and that is your opportunity to speak on the issues related to this proceeding. If you're unable to join an event, the Public Advisor can provide your comments on your behalf. You would need to email or call in your comments prior to the start of the event. Finally, you may also submit written comments through our docket system to be included in the record.

Next slide.

The formal approach to participate in SPPE proceedings is to become an intervener. An intervener is a person or group that is a party to the proceeding. Like any other party to the proceeding, an intervener may present evidence and witnesses, object to other party’s evidence, cross examine other witnesses, and file motions.

To become an intervener you must file a petition to intervene. No specific form has to be filed. Just the information, your contact info, and interest to participate, which we would submit to the docket.

You do not need to be an attorney nor have
legal representation. We emphasize that even if you are — even if you're not sure whether you want to become an intervenor, or even if you do not end up participating at all in the proceeding, it is best to go ahead and file so that you don't miss key deadlines and opportunities to engage.

Next slide.

Whether you decide to engage in the proceeding as a member of the public or an intervenor, we highly recommend you go to the STACK project webpage to obtain the most current information about the proceeding.

Here's what the webpage looks like. The red arrow points to the link where anyone could submit an electronic comment. The blue arrow points to the e-filing link which is the preferred pathway for staff and parties to the proceeding to submit material.

And the first green arrow points to the docket log link. The docket log is a repository for documents filed by all parties to the proceeding and for public comments. Basically, it's where you'll find all materials submitted for this proceeding.

The second green arrow at the bottom is a section where you will sign up for the STACK subscription, formerly known as Listserv. This will be a lifeline to the proceeding. Additionally, this
webpage also contains the contact information for staff who can answer more questions about the STACK proceeding and contains the Public Advisors office contact information. If you need assistance with any of the processes, please reach out to public — to the Office of the Public Advisor, Energy Equity and Tribal Affairs.

Next slide.

Signing up for the preceding subscription or Listserv is a voluntary procedure. We highly recommend it because it is the most efficient way to receive the most current information about the proceedings. This includes alerts about what is happening in the proceeding, and notifications about material that has been docketed. Signing up for the — for that subscription is a quick process.

First you will go to the project webpage noted here. Then you'll scroll down to the web page. There, you will find a box that looks like this one titled, “Subscribe to STACK Trade Zone Park.” Enter your email address and then click Subscribe. You'll see a message saying you have successfully subscribed to CEC STACK Trade Zone Park, from our California Natural Resources Agency. Click, “Finish.”

Next, you'll see our privacy policy. Review that and click the box and close out. You'll also
receive an email showing you’ve subscribed to CEC STACK Trade Zone Park. If you do this successfully, you'll receive via email the latest material and notifications about the STACK preceding.

Next slide.

Today is the first Committee Conference for this proceeding and a schedule with specific deadlines for the rest of the proceeding is forthcoming. You'll be able to locate these materials on our webpages. You'll receive email notifications and alerts when you sign up for the subscription.

We want to emphasize a few significant opportunities you'll have to participate. First, is the publication of the Staff’s environmental assessment document. CEQA allows for a public review and comment period on Staff’s environmental assessment document. This is a period during which Staff will prepare a proposed mitigated negative—a mitigated negative declaration, or an environmental impact report, based upon the assessment of potential environmental impacts outlined in the Staff initial study.

Staff will respond to comments and questions in the proposed decision if necessary. If necessary, a workshop will be held to address any unresolved issues. Next, a pre-hearing conference and evidentiary hearing
are other opportunities.

Subsequent to the environmental assessment is a pre-hearing conference, followed by an evidentiary hearing. The pre-hearing conference is a public forum where the Committee will assess the party's readiness for an evidentiary hearing and public comment will be taken. The evidentiary hearing is an administrative adjunctory proceeding to receive evidence into the formal hearing record from the parties. Members of the public may present comments at the evidentiary hearing that become part of the hearing record.

And the Commission decision and — at the business meeting. Towards the end of the proceeding, the Commission will decide on whether to approve or deny the proposed decision during a regularly scheduled CEC business meeting. Public comment will also be accepted and considered prior to the vote of the Commissioner.

Next slide.

This is the contact information for the Public Advisor. The best way to get a hold of us is via email at PublicAdvisor@energy.ca.gov, or give us a call at 916-957-7910. Our website link is here. You may mail items to the Public Advisor office at 9— at 715 P Street. Our mailstop is mailstop number 12. And that's for the California Energy Commission.
To conclude I'd like to note that by the end of this week, we'll post this presentation through our online docket system for public access. Thank you, and back to Hearing Officer Lee.

MR. LEE: Yes, thank you. Commissioner Vaccaro?

COMMISSIONER VACCARO: This is Commissioner Vaccaro, for the record. Dorothy, I just wanted to thank you and acknowledge your presentation. That was really good information. And also, just express the appreciation for the work that the Public Advisor’s, or your office, does to assist the public in participating in our proceedings.

There's just one point of clarification I wanted to make because I might have misunderstood something. There was a lot of rich information in your presentation, and it relates to would-be intervenors.

And I just wanted to underscore that while there is no specific Energy Commission form that an intervener needs to complete, we do have very specific content requirements that must be met that are set forth in our regulations. And I know that your office is very good about working with intervenors so that they understand what those requirements are, so that they can submit a petition that meets all of the regulatory
So, thank you for allowing me to just make that point of clarification. And again, thank you for the presentation, Dorothy.

MR. LEE: Yes, thank you. I would now invite the Applicant to present an overview of the SPPE application and after that we'll hear from staff.


Can we move to the next slide please?

This is an image of STACK’s footprint currently, domestically and abroad, with the intention of demonstrating our pipeline, our continual growth capacity, and our excitement about this project to anchor another campus of ours in Silicon Valley.

Next slide please.

This is a site overview for orientation.

We've offered a imagery of the proposed project in blue on the right side of your screen, highlighting the data centers as well as the advanced manufacturing building. The on-site substation is grayed out there, and the existing improvements that are shown to the east of the
proposed project are in relation to our existing campus.

Next slide please.

Here's a visual representation of the existing conditions on site. This is really intended to highlight the blighted nature of one of the buildings we're intending to redevelop here as part of this project.

Next slide, please.

Here's some renderings of our proposed project. We attempted to give views of all of the view corridors available from the public right of ways.

Next slide, please.

Overview of our project. The—Hearing Officer Lee really provided a great introduction here. This is a redevelopment of a 9.78-acre site. As mentioned, we'll be bringing online two three-story data centers. One three-story advanced manufacturing building, an on-site substation, as well as a multi-story parking garage.

The existing improvements are located at 2400 Ringwood Drive, and 1849 Fortune drive in San Jose, California. The project boundaries include Trade Zone Boulevard to the north, Ringwood Road to the west, our existing facility, SVY-01 one to the east, and Fortune Drive to the south. As I previously mentioned, this
project does include the redevelopment of a blighted manufacturing building and associated parking, as well as a single-story office building and the associated parking there.

On the right-hand side of your screen, you'll see our proposed improvements for the data centers. We have about a total of 16 megawatts of capacity coming online warehoused in 527,000 square feet of new development. As well as our advanced manufacturing building, which is about 135,000 square feet right now.

We do have an onsite substation and the backup generation facility. The backup generation facility will include 36 three-megawatt backup generators, two one-megawatt backup house generators that are located within the project equipment yards. The next slide will show you that. The backup generation facilities are intended only to be operated for maintenance, testing and utility outages with PG&E.

The primary objective of this backup generation facility is to ensure that the servers warehoused within the data center development continue to operate in the event of a power outage. And our primary fuel source will be renewable diesel fuels as practicable.

Next slide please.
This is an overview of the site plan. You can see in between the two data center buildings, which are labeled SVY-05 and SVY-06, is where the backup generation facility will be warehoused.

Next slide please.

Some of the project benefits that we wanted to talk about with the group today is our use of air-cooled chillers and a low GWP refrigerant usage here. The project also offers multimodal access points utilizing the BART system, some bike paths that we're developing as part of the project, as well as pedestrian walkways to access the site. As previously mentioned, the intention here is to use renewable diesel fuel as practicable. Our generators are tier-four rated.

We are redeveloping a blighted site. This project will qualify for LEED Silver certification. We have an advanced manufacturing that's intended to meet some of the employment and job creation initiatives in place with the city of San Jose, and STACK does intend to deploy our renewable positions and objectives on this project.

Next slide, please.

STACK’s One Purpose Program is our approach to sustainability, and it encompasses everything we do for people planet to progress. On the renewable front,
we're shifting to 100 percent renewables across our portfolio. This is something that we're proud of and we're pleased to represent. In relation to water efficiency, we value water as a resource. So, we utilize air cooled chillers and our basis of design offers a 1.3 PUE and leverages air for cooling instead of water.

Next slide please.

And our appendix, just offering some elevations of the project here. If you can go to the next slide.

This is—these are the renderings that you previously saw. These are converted into formal elevations here of the advanced manufacturing building. This is looking head-on to the site from Trade Zone.

Next slide please.

This offers a view of the first data center building, SVY-05. This is SVY-06. Sorry, you can go to the next slide. SVY-06 is shown here. This is a view from Fortune drive.

And then next slide, please.

These are renderings of our parking garage facility that will be viewable from Trade Zone as well. Our intention here is just to show you that our goal is to develop a best-in-class type product for this project.
here.

And that is all I have.

MR. LEE: Thank you. Would either Commissioner Vaccaro or Commissioner McAllister like to make a comment?

COMMISSIONER VACCARO: Yeah, thank you Hearing Officer Lee, this is Commissioner Vaccaro for the record. Thanks so much for that, for that presentation. It looks like the breadth of the lead agency environmental review is broader than typical with this project. But really appreciate getting a sense and seeing the renderings and sort of the full scope of what we're going to be considering from a CEQA perspective.

I do have a question though. If you could please elaborate on what you mean when you say that the project will use renewable diesel as practicable? What happens if not practicable, then what will be used? So, if you could just sort of you know explain that to us a little bit. Really appreciate it.

MR. GALATI: If I could, I'd like to field that question. Is that okay, Commissioner?

COMMISSIONER VACCARO: Oh, yes, please, Mr. Galati. Please do.

MR. GALATI: Thank you. What we've been finding in the market is there may be, during an
emergency, a supply problem associated with renewable diesel. So, as we hope to never have to operate during an emergency, we hope that doesn't come up. We will and intend to use renewable diesel in our tanks for our testing and maintenance as others have as well. We think we probably can manage any potential supply chain problem during that time because we can schedule deliveries and we know our consumption.

But if there were a 24, or 48-hour emergency, it is possible that the competition for renewable diesel is certainly—at this time may not be as readily available to us. So, we want to maintain the ability to use diesel fuel in such a case. And that would be CARB-2 diesel. What we've done is we've evaluated all the emissions based on CARB-2 diesel so that we can ensure that should we use that fuel, that we're not resulting in any significant impacts.

We are responding to a series of data requests that have also turned into—also responding to some comments by the city, in which we're revising the project descriptions slightly. Not much from what you've seen here, but our drawings are slightly changed. And so, in that, we're proposing a design measure that is very similar time design measures—the mitigation measures that you've approved in other projects for
renewable diesel as the primary fuel, and CARB-2 diesel in the case that that fuel is not available.

COMMISSIONER VACCARO: Again, Commissioner Vaccaro for the record. Thank you for that Mr. Galati. That was a thoughtful and helpful response. Appreciate it.

MR. LEE: Can we please display the Staff’s PowerPoint on the screen? In the July 14th Notice of today’s Committee Conference, we directed Staff to file an Issues Identification Report, Status Report, and proposed schedule. Staff kindly filed that document in the docket for this proceeding on July 20th, 2022.

The Notice also ordered the Applicant to file a response to Staff’s Issues Identification and Status Report and proposed schedule. The Applicant timely filed his response on June 27th, 2022. We thank staff and — July 27th, 2022. We thank staff and Applicant for their timely submissions. Now Energy Commission Staff will present its Issues Identification Report, Status Report and proposed schedule.

MR. KNIGHT: Thank you hearing officer Lee. This is Eric Knight on behalf of Staff. Excuse me. So, the Applicant filed their application on December 10th, 2021. That was an incomplete application. Then in a series of filings between March 8th and April 11th, the...
Applicant submitted their application. So, at that point, I think it was in May, that the Committee was assigned and Staff jumped into this proceeding full force with a series of data requests.

So, on May 16th, we filed our first set of data requests. Applicant has responded to most of those questions on June 7th. And then a subsequent filing on July 27th. Staff filed a second set of data requests on July 10th. And we expect the Applicant’s responses to those data requests on August 10th.

So, we'd like to thank the Applicant for their responsiveness to our requests to date, and we're looking forward to the further data responses on the 10th. We actually have a meeting scheduled for this Friday with the Applicants to go over some of our data requests to clarify them.

So, we'd also like to thank the Applicant for their commitment. As you just heard from Mr. Galati, the proposed design measure to use renewable diesel to the great extent feasible, and also their commitment to reducing GHG, greenhouse gas emissions excuse me, from the datacenter’s electricity use.

So, staff is presently preparing the environmental assessment document. At this point just like in all the more recent SPPE proceedings, we're
preparing a draft environmental impact report under CEQA, which I'll refer to as a draft EIR going forward here. So currently, staff doesn't see any issues in many of the environmental topic areas we'll see in the draft EIR. Oh, thank you for advancing the next slide.

But there's, on this slide here, we've noted the areas where—not to say that there will be major issues, but just that discovery is not complete. So, staff is not in a position to say there won't be, you know, a significant impact that cannot be mitigated at this juncture. But when we're through discovery, we're hoping to resolve any issues.

So, right now, it's in the areas of air quality. So, they were reviewing—I believe the revised modeling and health risk analysis was docketed just recently and staff is revealing that. There's outstanding information regarding biological resources in terms of nitrogen deposition modeling, and that's one of the topic areas we'll be discussing on Friday.

There is a need for a revised cultural resources report. And then some information regarding land use is of interest to the local government. And we need a vehicle miles traveled analysis, VMT analysis. Any required mitigation to bring the project vehicle miles traveled below the target threshold set by the
local agency.

And what's not on this list, and probably should have been on here, is utilities and service systems. There was a set of data requests about water use. And so those are pen— those responses are pending as well.

And then the topic areas of environmental justice, mandatory findings of significance, they're dependent on pretty much all the other topic areas in the draft EIR so those can't be completed as yet.

Next slide, please.

So, Staff’s schedule pretty much just identifies what we've done to date, because looking forward is very difficult with discovery being still, you know, being— not being finished. So, staff has done all the required Noticing as required by our — CEC’s siting regulations and the California Environmental Quality Act.

As noted before we issued a series of data requests. There's potential for additional data requests depending on the responses to those questions so far. So, what we would like to see in our proposal, and this has been something that other Committees have adopted, is to set sort of a performance-based timeline for a draft EIR. And that that be published within 60
days of Staff receiving complete answers to all of its data requests. And we would notify the Committee in a status report of when that 60-day clock would start.

I'll note that, you know, the Applicant, in their response to our Issues ID report, noted that they'd like to see 30 days. You know, some of the topic areas that are the last to be completed are the most complicated areas, controversial areas, such as air quality, and then they feed into other sections.

So, Staff thinks it's reasonable to set that deadline at 60 days. And we, of course, would strive to issue it sooner than that if possible. You know, if the areas get done earlier, we wouldn't hold it for 60 days, we would publish sooner, but we'd like to have that 60 days.

The other area where we've set a performance timeline would be for the preparing the final environmental impact report. So, we would like to have 30 days before the end of the public comment period on the draft EIR.

Again, we would strive to publish sooner. But although the comments so far have not been extensive, we've all experienced comments coming in late. And if those comments are extensive, it takes time to ensure that we've appropriately responded to all the comments
and make appropriate revisions to the draft EIR sections. And then there's a bunch of ripple effects throughout the document too, that we'll have to take care of. So, we'd like to have that time, that 30 days, to ensure that the document is complete and accurate.

And I think that completes my presentation.

MR. LEE: Thank you. Mr. Galati, does Applicant have any response to Staff’s presentation, including regarding the scheduling issues?


I understand Staff’s reluctance to agree to 30 days for a draft EIR. And maybe I'm seeing the glass half full, and they're seeing the glass half empty. We've done quite a few of these projects. And I'm not just—not to say that they don't have unique issues, but they're relatively constrained to a couple of technical areas. I'm happy to hear staff say that they'll try to meet that—to meet and beat the 60 day clock. One of the things that I'd like to focus on less on that timeline and more on the 15 days for response to comments.

One of the things that I have found that works...
very well during the AFC process, that we kind of lost track of here in the Small Power Plant Exemption application process. We could have a workshop between the draft EIR and the final DIR, in which I think will tease comments on the draft EIR out quicker than the last day, allowing staff to respond to those comments that are raised earlier.

I think we're missing that, maybe because of COVID, but we're missing the roll up your sleeves and answer questions and get things resolved. That we do—that we then end up trying to have to do that during evidentiary period. So, I would amend my request to say, maybe the Committee could ask us to do a workshop during the 45-day comment period on the draft EIR, and then have the final EIR comments due 15 days after the end of the comment period.

As always, if Staff—if a huge comment letter came in on the last day, we certainly would not object to Staff asking for more time. But we wouldn't like to have that time built into the process. I don't know about you. If I'm given a deadline and it's out, even though I intend to try to do it quicker, it seems like I get close to that deadline before I actually produce my own work.

So, I'd like—just like the Committee to
consider that on this proposed schedule, as well as the other items that I've had about encouraging intervenors to participate early. Oh, it would certainly be great if an intervener came to a workshop and raised their issues and we could all discuss it. As we've done with a lot of projects on the power plant side, we've developed mitigation, we have developed some design changes.

We've done quite a bit to accommodate reasonable requests from the public if we know about them. It's very, very hard if we don't know what those are, and we're trying to deal with them in evidentiary hearing. It's just not the right place. So that's my presentation. I understand where Mr. Knight is coming from and respect him. But I would ask the Committee to consider my comments. Thank you.

MR. LEE: Yes, this is Ralph Lee. Thank you. And I wanted to point out that the two other requests that Mr. Galati is speaking of, is the Applicant requested the potential intervenors petition 10 days before the close of public comment period on the file to petition to intervene at least 10 days before the close of public comment period on the draft EIR.

And that the Committee require the intervenors, if any, to file comments on the draft EIR
as a prerequisite to presenting further oral and written testimony on the hearings. And that that'd be considered their opening testimony. Does Staff have any response to what Mr. Galati stated or those other two points?

MR. KNIGHT: I think staff would be more than happy to hold a workshop during the public comment period. I think that's a good suggestion by Mr. Galati. The other two points that were raised in the status— and their response to the Status Report, Issue ID report. Don't really have an opinion on those topics. I think I defer to the Committee's judgment on that.

MR. LEE: Okay, thank you.

The Committee has a comment and a question that I'll ask, unless either Commissioner wants to ask anything now?

Yeah, go ahead.

COMMISSIONER MCALLISTER: This is Commissioner McAllister. So, I just want to first thank everyone for very clear, precise, concise presentations. The STACK team applicant staff, and the Public Advisor as well. And thanks, thanks to all of you.

Also want to thank those who have already submitted comments. Those were helpful. We had the Native American Heritage Commission and the Santa Clara
Valley Water District, as well as the Department of Toxic Substances Control, as well as a member of the public, Claire Warshaw (PHONETIC). So, thanks to all of them for submitting on the docket.

So, let's see. There are a couple of other questions that I had just for clarification. There's this rezoning need for the, for the land and I guess I want to—I didn't quite sort of get the reasoning behind that, the need for it. And maybe that's a little bit, you know, technocratic specific to San Jose. But I'd just kind of like to know a little bit more about that and whether, you know, there's any timing constraint associated with that.

And then I wanted to also just point out that there's a— and this probably has to do with transportation and air quality and a few other, few other issue areas. But there is a church to the northwest of a site and a school to the southeast of the site. And just wanted to sort of invite the Applicant to comment on sort of how those, how those facts kind of influence the scope of the project.

MR. GALATI: Thank you, Commissioner McAllister. Scott Galati, representing the Applicant. I guess I'd start with the first— the second question first. I will have to get back to you on that. I know
that our air quality analysis and noise analysis picked the closest sensitive receptors, which I believe are closer than those. And all of our evaluations on potential health impacts were done at a closer receptor and found to be within the thresholds for the Bay Area Air Quality Management District CEQA guidelines. But I will file something right away, answering that question with someone who's much more expert than me on this topic area.

With respect to the zoning, it is not as complicated as I'm going to make it sound. We comply with the zoning, which is industrial park. There is a general plan overlay for a transportation employment center, and a couple of the requirements of that overlay we do not meet, which primarily is more parking.

And so, the way the city asked us to deal with this was to request a PD permit, a PD rezoning permit to take the zoning out of industrial park, which we comply with all of the requirements with industrial park, and make it PD and include all of the things we comply with on the TVC overlay, but specify that this area could be designed and built with the reduced parking that we've required.

So, it still would be a transit employment center because we have the advanced manufacturing
building. And the entire site was worked out and in collaboration with the city of San Jose over the last couple of years. But that is the way that they asked us to do it. And so, this is one of those issues where the only thing that we do not comply with is a overlay in the general plan, which I don't believe—which would be the excess parking—which I don't believe would be a significant impact in and of itself, because reduced parking would be reduced impact.

So, I don't believe that the zoning has to take place before the Commission can finalize its decision. I do believe that the CEQA analysis needs to point it out. And I believe that it will be taken into account when the city undertakes our project, they'll be undertaking not only approving the special use permit, but the actual PD zoning change. Did I make that absolutely clear as mud?

COMMISSIONER MCALLISTER: Clear as mud, exactly. No, I appreciate that context. And the point that I'm taking away is that the city requested it, that there's no reason to believe that it won't actually be something that they'll approve expeditiously. But certainly it ought to be described in the CEQA analysis, and preferably backed up by the city of San Jose directly.
MR. GALATI: Correct, Commissioner. Your staff has asked a quite a bit of questions about that. And including asking us to show how we are going to comply with all of those requirements. We're working on that. We have revised our drawings to show those notes, and we're making a table for them and we hope to be able to file that on Monday in our revised project description. And then obviously, we will then work closely to get the city of San Jose to be more definitive that we will comply with their codes.

COMMISSIONER MCALLISTER: Okay, great. Thanks very much. And also, I just wanted to give some, some kudos really to the, to the team for scoping out some of the environmental aspects of this and presenting those. And to certainly the biodiesel, or the renewable diesel piece, and any issues there. Renewable diesel is a little bit different from regular diesel. It does tend to stratify and have some issues. So hopefully those can be, you know, when it's stored for long periods, so hopefully those can be addressed.

But the low GWP Refrigerant, certainly interested in that piece and I understand you're working on that. I'm making a filing on that. And the air-cooled aspect for the chillers. I think that's also very important. So, thanks for all those
characteristics among others.

MR. GALATI: And our largest water use will be reclaimed water for landscape.

MR. LEE: Thank you. Did Staff have anything to add?

MR. KNIGHT: I just wanted to say, Commissioner McAllister, Kenny, we are working very closely with the city. And we're actually sharing draft—administrative drafts of the sections of the EIR and getting their feedback and comments on them. So, in particular land use, when it's written, we'll share with them. And so, we're in constant communication with the city.

COMMISSIONER MCALLISTER: Great, thanks a lot.

MR. LEE: Thank you. And I wanted to make a comment regarding the Applicant’s revised noise analysis. The Committee doesn't have any questions for the parties at this time, but notes that the analysis states that the individual operation of a few of the generators would result in noise levels that are above San Jose’s 60‐decibel noise threshold.

The Applicant proposed to limit scheduled maintenance on those generators to only between 5pm and 7pm on weekdays. The Committee, as I mentioned, doesn't have any questions about that at this time, but the
Committee is interested to see Staff’s analysis on whether that would be a potentially significant impact. And if so, how that would be mitigated.

Next, the Committee believes that Staff’s environmental document, when it’s prepared, should include a water supply assessment. Because the Santa Clara Valley Water District requested one in its comment filed July 21st, 2022. Which states in the comment one— and I'll just quote that for the record, states that it:

“Impacts related to water use and an analysis of water supply should be conducted as part of the environmental impact report.”

And the Committee wanted to ask if the parties have any reason the Committee should not require a water supply assessment? Does the Applicant have any comments on that?

MR. GALATI: Yes, the water code does not require it. There is a confusion in the Small Power Plant Exemption Application in which the water—to do the environmental impacts, there was a model run based on square footages of large commercial buildings. Not the type of use that we're planning. That model is called CALI-MOD (PHONETIC). It doesn't have a ability to do some identification of a data center and how much
a data center really uses.

So, it treats our square footage like we have a lot of people in that building. And so, it over predicted the water use. That slipped by in the water section as a determination of how much water we were using, which was significant and it—and that number was above the normal threshold that the water districts would use for determining a water supply assessment.

We have revised that. I included it in my status report that, you know, in my reply, how little water we're using. And other projects have not had to do a water supply assessment. We spoke to the city, and the city who contracts that water from Valley Water to deliver to us, they will be the retailer. They do not als—they also do not believe that a water supply assessment is necessary due to the very minimal water that we're using. We will make that more clear in our response to data requests.

MR. LEE: Thank you, Mr. Galati. One mo—one moment, please.

(Pause)

This is Ralph Lee, again. Mr. Galati, are you still there?

MR. GALATI: Yes, I am.

MR. LEE: One of my—one question about that
response is— I did read. I reviewed your response about the minimal— the water usage of the project. But I wondered if a water supply assessment might additionally be required based on it being an industrial facility and its square footage under CEQA guidelines, Section 15155(a)(1)(e).

I wondered if that was an additional basis for potentially requiring a water supply assessment in this proceeding? And I don't necessarily need a response to that now, but I wanted to throw that out there. And maybe I'll hear your response, or if while you're thinking I could ask the staff to respond.

MR. GALATI: Yeah, I can— I can respond to you. I believe that that is highly dependent upon the use, and how the uses are characterized. I don't believe that the— if you looked at the square footages, you would have 600— over 650,000 of actual industrial use. There's some office use that is in the data centers, and there are some office use that is in the advanced manufacturing building. And if we looked and predicted what the actual industrial use would be, I would argue that those are the server rooms, and it would be very little in the advanced manufacturing building that would constitute industrial use.
But I would like to respond to that, after I take a closer look at that and talk to our design team. And what we'll try to do is, we're doing our best to respond to the data request set due by the 10th of August. And there is a question directly on point here with respect to the water supply assessment. And we'll provide that, our opinion more detailed out so that you can follow it, rather than, rather than my assertions at the moment.

MR. LEE: Thank you. Would our staff like to add anything?

MR. KNIGHT: I was trying to get an answer in the chat here, but not successful right now. I think we, you know, we wrote the data request because based on the amount of water that was shown to be being used in the application, it's suggested that water supplies assessment is necessary. But it sounds like maybe that's not the case.

But I don't know if it would—the Committee would like Staff to file something in the record after receipt of the Applicants responses to the questions? And then maybe after Staff’s own independent consultation, internal discussions, we could file something that would let the Committee know what we believe, if that's an issue that maybe the Committee
would like it to be, you know, water supply assessment be conducted anyway? You know, or for other reasons. And we'd like to know that sooner than later, I guess. So, it that makes sense.

MR. LEE: Yes, thank you.

MR. BABULA: This is Jared Babula, Staff Counsel. I just would add that in these projects, we have always looked at whether a water supply assessment is required and it gets a little tricky because there's different metrics to consider. So, an example would be 500 homes. The amount of water used in 500 homes as one metric. So, you could calculate that and then say, well, are they using this equivalent amount?

And there's a number of issues with square footage. And sometimes, as Mr. Galati pointed out, there's some unique aspects to data centers which make addressing the need for a water supply assessment not as straightforward.

And so, I think definitely Staff will look at the information that they— we get from the Applicant, as well as contacting the water entity, and the county, and the city, and so forth as necessary to get it hashed out. And certainly we’ll take a deep dive on that issue, as we do in all these cases regarding water issues.
MR. LEE: Thank you. As usual, the Committee with be issuing an order and a schedule following this proceeding, and we can address that issue in that document. And that was all the comments and questions that the Committee has for now. So, we’ll take that information under submission.

Commissioner McAllister, or Commissioner Vaccaro, do either of you have any additional questions for the parties at this time?

Okay. That concludes our discussion with the parties, we will now take public comment. I would like to start by inviting any representatives from public agencies to comment first, or tribal governments. And then, we can move on to the general public. There will be no limit if an agency or tribal government would like to speak.

For everyone else, we would ask that you limit your comment to three minutes. We have the Public Advisor’s office here with us today. Is the Public Advisor’s office able to assist with public comment?

MS. MURIMI: Yes, we are.

MR. LEE: Okay, thank you. Then I’ll turn it over to the Public Advisor’s office to conduct public comment.

MS. MURIMI: Thank you, Hearing Officer Lee.
So, this is the period for any person wishing to make comment. Again, each person has up to three minutes to comment. And comments are limited to one representative per organization. Public agencies or tribal governments are not restricted to three minutes. We may reduce the comment time depending on the number of commenters. Use the raised-hand icon, looks like a high-five or an open palm, at the bottom of your screen or device, if you are interested in making public comment.

If you are on the phone, press star-nine to raise your hand, and star-six to unmute. After you are called on, please re-state and spell your first and last name. Do not use the speaker phone feature, it will make it difficult to hear you.

We’ll start with agencies or tribal governments. Give that a moment.

(Pause)

Seeing none, we will move to all other individuals wishing to make a comment. Again, use the raise-hand feature, looks like an open palm or a high five at the bottom of your screen or device. And for those calling in, press star-nine to indicate that you would like to make a comment, and star-six to unmute on your end.

Seeing no comment in the room, or on Zoom.
That concludes public comment for this period of time. Back to you, Hearing Officer Lee.

MR. LEE: Yes, thank you. That concludes public comment. Do either Commissioner McAllister or Commissioner Vaccaro desire to hold a closed session?

COMMISSIONER VACCARO: No.

COMMISSIONER MCALLISTER: I do not see the need at this time.

MR. LEE: Okay. Then with that, I will return the conduct of this proceeding back to Commissioner McAllister to adjourn.

COMMISSIONER MCALLISTER: I want to just thank everyone for participating. And, with that, we will adjourn. Thank you.

(Whereupon the meeting was adjourned at 3:09 P.M.)
CERTIFICATE OF REPORTER

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, a certified electronic court reporter 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 15th day of August, 2022.

ELISE HICKS, IAPRT
CERT**2176
CERTIFICATE OF TRANSCRIBER

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.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

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MARTHA L. NELSON, CERT**367

August 15, 2022