

DOCKETED

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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

Application for Small Power:)
Plant Exemption for the:)
Laurelwood Data Center) Docket No. 19-SPPE-01

STATUS CONFERENCE

WARREN-ALQUIST STATE ENERGY BUILDING
ART ROSENFELD HEARING ROOM, FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 23, 2019

1:30 P.M.

Reported by:
Peter Petty

APPEARANCES

COMMISSIONER

Karen Douglas, Presiding Member

Janea Scott, Associate Member

ADVISERS

Kourtney Vaccaro, Adviser to Commissioner Douglas

Rhetta deMesa, Adviser to Commissioner Scott

Linda Barrera, Adviser to Commissioner Scott

Kristy Chew, Technical Adviser

HEARING OFFICER

Susan Cochran, California Energy Commission

STAFF

Lisa Worrall, Project Manager

Kerry Willis, Staff Counsel

Nick Oliver, Staff Counsel

Matt Layton, Supervising Engineer

Chester Hong

PUBLIC ADVISOR

Rosemary Avalos

APPLICANT

Jeff Harris, Esquire, Ellison, Schneider, Harris &
Donlan, LLC

Brian Probst, Edgecore

Jerry Salamy, Jacobs Engineering
APPEARANCES

INTERVENORS

Robert Sarvey (via WebEx)

Yair Chaver, Esquire (via WebEx), CURE

LOCAL GOVERNMENTS

Xuna Cai (via WebEx), Bay Area Air Quality Management
District

Nimisha Agrawal (via WebEx), City of Santa Clara

1 MR. HARRIS: Good afternoon. It's Jeff
2 Harris on behalf of the Applicant.

3 MR. PROBST: Brian Probst with Edgecore
4 Data Centers.

5 MR. SALAMY: Jerry Salamy with the
6 Applicant, Jacobs Engineering.

7 COMMISSIONER DOUGLAS: All right. Thank
8 you. And anyone else?

9 Staff?

10 MS. WORRALL: Staff. This is Lisa
11 Worrall. I'm the new Project Manager for the
12 Laurelwood Data Center. And with me, I have Mr.
13 Matt Layton, and he's the Supervising Engineering
14 Staff.

15 MS. WILLIS: Good afternoon. This is
16 Kerry Willis and I'm representing Staff.

17 MR. OLIVER: Nick Oliver, Staff Counsel.

18 COMMISSIONER DOUGLAS: All right. Thank
19 you very much.

20 Now let me see if our Intervenors are on
21 the phone.

22 Robert Sarvey, are you on the line?

23 HEARING OFFICER COCHRAN: Chester, would
24 you make sure that everybody is un-muted so that
25 they can answer?

1 MR. SARVEY: Yes, I'm on the line.

2 COMMISSIONER DOUGLAS: All right. Good
3 afternoon, Mr. Sarvey.

4 What about California Unions for Reliable
5 Energy?

6 (Background Conversation on WebEx)

7 COMMISSIONER DOUGLAS: All right, that
8 sounds like background conversation.

9 HEARING OFFICER COCHRAN: Yeah.

10 COMMISSIONER DOUGLAS: That does not
11 sound like anyone from CURE.

12 HEARING OFFICER COCHRAN: Chester, would
13 you go ahead and mute everyone please? Can you -
14 - Chester, can you scroll down on the participant
15 list? Because I had seen Mr. Chaver's name but
16 now I'm not seeing him.

17 COMMISSIONER DOUGLAS: There he is.

18 HEARING OFFICER COCHRAN: Oh, there he
19 is.

20 Would you un-mute him specifically
21 please? Thank you.

22 COMMISSIONER DOUGLAS: All right, CURE,
23 Mr. Chaver, are you on the line? All right.

24 He might have stepped away.

25 HEARING OFFICER COCHRAN: Okay.

1 COMMISSIONER DOUGLAS: Are there any
2 public agencies in the room or on the phone,
3 state, federal, local, Native American tribes,
4 any public agencies? On the phone?

5 MR. CHAVER: This is Yair Chaver.

6 COMMISSIONER DOUGLAS: Sorry. We just
7 un-muted you. Go ahead.

8 HEARING OFFICER COCHRAN: Go ahead.

9 MR. CHAVER: This is Yair Chaver. I'm
10 sorry, I had also muted my own phone --

11 HEARING OFFICER COCHRAN: Oh.

12 MR. CHAVER: -- so I apologize, but I am
13 here.

14 HEARING OFFICER COCHRAN: Thank you.

15 MR. CHAVER: Thank you.

16 COMMISSIONER DOUGLAS: Go ahead.

17 MR. CAI: Xuna calling from the Bay Area
18 Air Quality.

19 HEARING OFFICER COCHRAN: I'm sorry.
20 Could you repeat your name please and spell it?

21 MS. AGRAWAL: This is Nimisha Agrawal,
22 N-I-M-I-S-H-A, Agrawal, A-G-R-A-W-A-L. And I am
23 from the City of Santa Clara.

24 HEARING OFFICER COCHRAN: Thank you. I
25 thought I heard someone from Bay Area Air Quality

1 Management; is that correct?

2 MR. CAI: Yes. And this is Xuna Cai. I
3 am an Engineer in the Air District. And with me
4 is Dennis Jang and he's my supervisor in the
5 Engineering Division as well.

6 HEARING OFFICER COCHRAN: Okay. Thank
7 you.

8 Sorry.

9 COMMISSIONER DOUGLAS: Okay. Thank you
10 very much for being here.

11 So with that, I will turn over the
12 conduct of the rest of the meeting to Hearing
13 Officer Cochran.

14 HEARING OFFICER COCHRAN: Thank you very
15 much. And thank you all for joining us this
16 afternoon.

17 One request I would make is that we are
18 going to leave you un-muted. In other words, you
19 are live. If we hear a lot of noise, though,
20 here in Sacramento, we're going to have mute you
21 all, in which case you're going to either need to
22 use raise-your-hand or send a message in order
23 for us to un-mute you so that you can comment
24 when that time comes. But for now, we'll leave
25 you un-muted.

1 If you do create a lot of background or
2 you feel that you're going to, you can mute
3 yourself, like Mr. Chaver did, but please make
4 sure that you un-mute yourself if you wish to
5 talk.

6 So notice of today's Committee conference
7 was provided on July 9th, 2019. In the notice
8 the Committee directed the Staff and Applicant to
9 file status reports and made it optional for the
10 Intervenors to do so. We received status reports
11 from Staff, Applicant, and California Unions for
12 Reliable Energy, which I'm going to refer to as
13 CURE for the rest of these proceedings today. We
14 thank you for your timely filings.

15 As set forth in the notice, we will be
16 discussing the status of the proceeding in light
17 of developments since the Committee conference in
18 May.

19 So the first major development in this case
20 since then is that on June 13 and June 21,
21 Applicant filed updated project descriptions.

22 For purposes of today's discussion, I'm
23 assuming that the updated project description
24 filed June 21 is the operative project
25 description; is that correct?

1 MR. HARRIS: Yeah, that is correct. I
2 would like to give a little more context at the
3 appropriate time though.

4 HEARING OFFICER COCHRAN: Well, it's
5 funny you should say that because my first
6 question to you, Mr. Harris, was could you please
7 describe the changes between the original
8 application and the updated project description?
9 And also, if you could, let us know if you
10 foresee any further project description changes?

11 MR. HARRIS: In a word, minor. They are
12 very minor changes. Let me walk you through the
13 chronology here.

14 And since I'm really good with subtle, I
15 mean, one of my concerns is that all the
16 Committee really sees is what comes across the
17 docket, and it's been a lot, but it's been a lot
18 about, in my view, very minor things. And so let
19 me explain where we ended up here today and what
20 those minor things are. So I'll quite saying
21 minor at this point, so -- and move us forward.

22 So on the 13th, we did file a revised
23 project description. There was a -- and this is
24 alluded to in our status conference -- a policy
25 decision made between your staff and the City of

1 Santa Clara to include demolition in the project
2 description. I personally very strongly believe
3 that didn't need to happen. I think that the
4 City had the right to proceed with the demolition
5 permit outside your process. But again, a policy
6 decision was made there to -- based on the fact
7 that there was a pending action at the City to
8 move demolition into your process.

9 So I don't agree with that as a matter of
10 law but I accept it as an advocate. And I
11 understand where it comes from. It comes from a
12 good place. It comes from a place to try to
13 protect your process. So while I'm not happy
14 with that minor change for demolition did in
15 terms of adding additional time and additional
16 project description, again, I accept it. Great.
17 Good move. It's protecting the record here, so
18 I'm over it, even though Samantha thinks I'm not.
19 She's Ms. Neumyer, my partner. Ms. Neumyer is
20 sick today, so she sends her best.

21 So one of the things that happened there
22 was a change to add in the demolition, and I
23 think we got swept up in that policy decision.

24 The other thing is on us though.

25 MS. AGRAWAL: If I may interrupt? This

1 is Nimisha, City of Santa Clara.

2 HEARING OFFICER COCHRAN: If you could
3 just hold your comments for a moment, I will come
4 back to you.

5 MS. AGRAWAL: Okay. Sure.

6 MR. HARRIS: So the other thing that
7 happened is definitely on us. And what has
8 happened is that, commercially, we've been
9 advancing the project quite well. We have at
10 least one customer, who I will not identify,
11 who's very interested in seeing this project
12 online quickly. And in discussions with them,
13 they wanted to see some changes in the project
14 that resulted in the building moving from like
15 here to approximately here, he indicated, with
16 his cell phone, a very slight change in the
17 orientation of the building. It's not going to
18 have any changes in the actual environmental
19 effects but we have to prove that to you. We
20 have to remodel. Because, as you all know,
21 things like building locations effect downwash.
22 So that's definitely on us.

23 The air quality stuff has been on us. We
24 filed that, I think on the 8th.

25 Jerry, is that -- Mr. Salamy will check.

1 So July 8th, so that information is in
2 the record as well.

3 So collectively, these two things,
4 demolition, which, again, I refer to as a policy
5 decision but I think I'm going to hear from the
6 City, and the change in the orientation of the
7 building resulted in the first iteration of the
8 revised project description about five weeks ago
9 on July 13th.

10 Then the second iteration was really a
11 response to staff's desire to have a clear
12 record. They said, we only want to refer to one
13 document, so will you redo the project
14 description and incorporate everything into a
15 single document? And so the document on the 20th
16 is simply an incorporation of all of those prior
17 changes into a single TN number so that the
18 lawyers can cite in their briefs. And that was
19 really recommended by Mr. Payne and I think it
20 was the right decision, so we've got that
21 document there.

22 Other than that, we have been mostly
23 responding to data requests from the staff.
24 Moving forward, I guess I want to point a couple
25 things.

1 There have been a couple data requests
2 that, pulling back the curtain, frankly, we
3 thought really weren't relevant, but we just sort
4 of did the schedule math. How long would it take
5 us to oppose some of those questions versus how
6 long would it take us to answer them and
7 answering didn't hurt us?

8 So we have, in every instance here, taken
9 the case that we're going to answer the
10 questions. We did not object to Staff's motions
11 for leave. We appreciate them making the motions
12 but we have not objected to either one of those.
13 The first one, we answered before -- we answered
14 the responses substantively before our objection
15 would have been filed.

16 So -- and the second one is in the works
17 to be done, and I'm going to over-commit Jerry,
18 hopefully this week, which is already coming up
19 quickly, or early next at the latest.

20 So -- and again, rather than taking issue
21 with the motion for leave, we decided we're just
22 going to answer those questions and not have a
23 battle about what's relevant and what's not. I
24 don't think this project is going to knock
25 airplanes out of the sky, okay? I just don't

1 think that's going to happen. We will prove that
2 to you in Jerry's filing next week.

3 So please do a good job, Jerry, and don't
4 show anything different moving forward.

5 So these are the things that have been
6 happening in the case. In our view, the sum
7 totality of those things really effects only a
8 few sections of the staff's analysis. Air
9 quality is obviously implicated by the change in
10 the building. That then rolls into public
11 health. For the majority of the disciplines, all
12 the things I've talked about now, they're
13 unaffected by these things. So cultural
14 resources still wants to know how far we're going
15 to dig down, no matter where we're digging.
16 Biological resources is still going to assume
17 that there's no biological value left on the
18 entire site, no matter where the building is.
19 Those kind of other disciplines unaffected by the
20 change are going to be able to proceed.

21 And so our view is that we've done some
22 things that have resulted in Staff having to ask
23 for additional information. We've also answered
24 things that we thought, you know, were on the
25 line, but we're happy to answer them. And it's

1 important to us to keep schedule.

2 One thing that I will note in terms of
3 schedule that results from all of this is that we
4 will -- we'll be delayed in the construction of
5 this project. We, but for the decision to
6 include demolition in your process, would have
7 had delivered to us a clean site ready to build
8 when we get your approval. Now when we get your
9 approval the first thing that's going to happen
10 is that demolition. So we already have had a
11 schedule impact. And as I've mentioned, we have
12 at least one customer who is very interested in
13 moving forward. And so, you know, holding the
14 schedule is very important to us.

15 It's a 135-day process that we're
16 probably in day 90-plus already. We understand
17 how unrealistic 135 days is. We have an interest
18 in making sure that your staff has enough time to
19 do a good job, to build a record that's
20 defensible. But at the other end of the balance
21 we really, really need the schedule to be on
22 everyone's mind moving forward.

23 And so -- okay. Okay.

24 Air quality and public health were filed
25 on the 27th of June, according to Mr. Salamy, so

1 he's correcting me still; I was going to say
2 again, but still.

3 So anyway, that's sort of the state of
4 play from our perspective. We don't think these
5 things are large changes, they're not large
6 changes, they're relatively minor, affect only a
7 few sections. And we'd like to see whatever
8 rigor can be applied to getting us a decision so
9 that we can take that eager customer and get
10 them, you know, into a data center. We all have
11 cell phones and other kinds of social media
12 accounts. Everything that happens on the
13 internet of things is stored on a data center in
14 reality somewhere and we'd like to make this one
15 a reality as soon as possible to advance this.
16 And I think it's everybody's interest that we do
17 that, so --

18 HEARING OFFICER COCHRAN: Okay. I had a
19 rather robust discussion of schedule later in my
20 outline, so we'll get to schedule in a few
21 minutes.

22 MR. HARRIS: Sure.

23 HEARING OFFICER COCHRAN: But first, I
24 wanted to call on Ms. Agrawal from the City of
25 Santa Clara. Thank you for your patience. You

1 wish to discuss something with us.

2 MS. AGRAWAL: Thank you. So I just
3 wanted to clarify that, for the City, the
4 demolition permit has been moved forward. And
5 this permit, I mean, I'm not sure if it works
6 different for the CEC, but for the City the
7 demolition is not included on this permit. So
8 for us the project is only for the construction
9 of the data center, and the demolition is
10 separate and has already been moved forward.
11 Demolition that has been approved is only to the
12 slab, so I just wanted to make that
13 clarification.

14 HEARING OFFICER COCHRAN: Thank you so
15 much.

16 So now I'll turn to Staff. Did you have
17 anything, any additional comments that you wanted
18 to make, on the revised project description or
19 any of the other topics that Mr. Harris touched
20 on?

21 MR. LAYTON: Yes. This is --

22 HEARING OFFICER COCHRAN: Mr. Layton.

23 MR. LAYTON: This is Matt Layton from the
24 Energy Commission.

25 The water concerns are still there. On

1 visiting the site, there is a pump-and-treat for
2 a contamination underneath the site. And so that
3 pump-and-treat is ongoing and will continue
4 during the construction of this new project. We
5 are concerned about, as foundations go in,
6 there's going to be dewatering activities which
7 would be overlapped with the existing dewatering
8 pump-and-treat going on at the site. So we
9 needed to have those things combined and we
10 needed clarity about who was going to be
11 responsible for what. The existing owner,
12 obviously, is responsible going forward for the
13 pump-and-treat, not this owner here.

14 So the project changes are more
15 significant than Mr. Harris would be, I think,
16 has suggested.

17 We have gotten some clarity from the
18 Applicant on these issues and we're satisfied.
19 But I think, again, to suggest that it's minor
20 is, perhaps, misleading.

21 HEARING OFFICER COCHRAN: Thank you.

22 Mr. Oliver and Ms. Willis, did you have
23 anything you wish to add?

24 MR. OLIVER: We didn't have anything else
25 to add to that.

1 HEARING OFFICER COCHRAN: Okay. Thank
2 you.

3 Mr. Sarvey, did you have anything that
4 you wish to discuss on the revised project
5 description or any of the topics that
6 Mr. Harris --

7 MR. SARVEY: Well --

8 HEARING OFFICER COCHRAN: -- just spoke
9 on?

10 MR. SARVEY: -- the July 20th submission
11 included a change in the water use for the
12 project, and that's the first time I picked it
13 up, maybe I missed it in some of the earlier
14 documents, but that seems like a pretty
15 significant change. And I think that has
16 environmental impacts that need to be assessed,
17 as well, so that's one of the major concerns that
18 I have.

19 And the description of the new water
20 system is like one paragraph. There's nothing
21 there. I have no idea what they're proposing
22 but -- unless I'm missing something, and then you
23 can direct me to that. But other than that,
24 that's about the only issue I see outstanding on
25 the -- on the two submissions that they made.

1 HEARING OFFICER COCHRAN: Okay. Thank
2 you.

3 Mr. Chaver, did you have any comments
4 that you wish to make?

5 MR. CHAVER: Yes. Thank you. We are
6 also, as we noted in our status report, we are
7 also evaluating potential impacts, and we are
8 also in the process of identifying whether all
9 these changes in product description and new
10 analyses that have been coming forward might, you
11 know, need requests for new information, even at
12 this date.

13 HEARING OFFICER COCHRAN: Okay. Thank
14 you.

15 MR. CHAVER: Thank you.

16 HEARING OFFICER COCHRAN: So let's turn
17 then to Staff's discovery motions.

18 Following the Committee conference the
19 Committee issued a scheduling order that included
20 a cutoff for discovery, what we call data
21 requests, of May 6, 2019. Staff has now filed
22 two motions to be allowed to file additional
23 discovery, one on July 8 and a second on July 16.
24 Please note that the agenda for today's meeting
25 includes discussion on Staff's July 8th motion

1 only. It does not include consideration of the
2 second motion filed on July 16. And we do note
3 that Mr. Harris' comments today, as well as the
4 response in its Status Report number 2, addressed
5 both the July 8 and the July 16 motion, but I
6 want to focus on July 8.

7 The July 8 motion for leave to submit
8 additional data requests focused on the issues of
9 hazardous materials and water quality related to
10 the change to the air conditioning system that
11 was using a new wet pad. The motion indicates
12 that this information is necessary in light of
13 the updated project description.

14 So now that the Applicant has filed
15 responses, and I have a date of July 16 for that
16 having been done, is Staff satisfied with the
17 responses? Have these responses rendered the
18 July 8 motion moot? In other words, you no
19 longer need us to give you leave to present these
20 additional requests?

21 MR. LAYTON: This is Matt Layton from the
22 Energy Commission.

23 I believe the answer is, yes.

24 HEARING OFFICER COCHRAN: Excellent. Do
25 you foresee the need to ask additional data

1 requests? I know sometimes you'll get an answer
2 and that prompts additional information
3 requirements.

4 MR. LAYTON: I -- yes. Some of the
5 responses to date have been lacking and so I hope
6 that changes. But, again, I have a long list of
7 air quality issues that we've had going back and
8 forth and, and again, what was may not carry
9 forward or go forward again. But again, we've
10 really struggled with this applicant on getting
11 answers to our questions, getting answers that
12 are correct, having not to follow up.

13 Again, the filing that came in on July
14 8th -- or, actually, the Applicant combined all
15 the responses in Response 1B, I believe, and
16 which was very convenient, but they forgot to
17 revise the construction emissions, so we asked
18 for that and we just go that July 8th. Again, we
19 keep having to iterate with them on every issue.

20 So I imagine, yes, we will have more data
21 requests because we keep seeming to find things
22 that are missing.

23 HEARING OFFICER COCHRAN: Fair enough.

24 MR. HARRIS: Could I? That's news to us.
25 We feel like our answers have been pretty

1 thorough. You and I can debate mine are, too,
2 later, Matt, so... I like Matt.

3 So -- but having said that, if there are
4 things that require clarification, I don't see
5 that there's any reason why we can't pick up the
6 phone and talk about them. And then if there's
7 something that comes out of that, docket what
8 comes out that.

9 So, you know, we're going to push
10 schedule very hard, but we have an interest in
11 having a very complete record as well. So, you
12 know, I would encourage you to do what you always
13 do, talk to Jerry so you don't have to talk to
14 me, and you'll get real answers if you talk to
15 Jerry and you don't talk to me, and see if we can
16 get any data gaps closed.

17 But, you know, I already feel like this
18 is part of the iterative process here. You know,
19 Matt talked about questions about the water pump-
20 and-treat. Those were very good questions from
21 Staff, and our project is better for having to
22 address the answers to those. So I think the
23 process is working well. I appreciate the
24 staff's questions on those issues.

25 On the questions of water usage that Mr.

1 Sarvey flagged, I want to note for the Committee
2 that the change there as it reads, they're going
3 to use 96 percent less water, 96 percent less
4 than we were using before. So if that causes us
5 problems, I don't understand how that is, so --

6 HEARING OFFICER COCHRAN: Would any of
7 the other parties care to make any statements
8 regarding the July 8 motion?

9 MR. SARVEY: Well, this is Robert Sarvey.

10 I'd just like to agree with the CEC
11 Staff, that some of these responses, particularly
12 in response to the GHG requirements and plans of
13 the City of Santa Clara, that they're really
14 inadequate and it needs to do -- Applicant needs
15 to do a better job if they really want to speed
16 this thing along.

17 And as far as the water use, I appreciate
18 the fact that you're using less water, but you
19 know there's some other important impacts that go
20 along with the method that you're using, so those
21 need to be discussed.

22 Thank you.

23 HEARING OFFICER COCHRAN: Thank you.

24 Anyone else? Okay.

25 So the third topic that I wanted to bring

1 up today --

2 MR. LAYTON: Hearing Officer?

3 HEARING OFFICER COCHRAN: I'm sorry?

4 MR. LAYTON: Sorry. The -- as much as I
5 appreciate Mr. Harris doing technical analysis,
6 the water use is significant. However, that
7 results in a significant change in the plume
8 coming off the top of the roof. Every one of
9 these coolers is going to reject 69 megawatts,
10 approximately, of critical I.T. load heat off the
11 roof. That's a significant plume. That should
12 be analyzed. And again, water use reduction is
13 great, plume is different. We need to analyze
14 it. We're still waiting for those responses.

15 So that is one of the outstanding issues.
16 We don't, again, know what we will get, if we
17 will need to ask more questions. And we are very
18 comfortable talking with the Applicant. There
19 are other parties involved, so we would like to
20 go to the docket, if possible, hence why we
21 proposed, I guess the legal term, whatever the
22 staff, whatever legal, you know, called those
23 things, I was supportive because we wanted to put
24 it in the docket.

25 HEARING OFFICER COCHRAN: Okay.

1 Anything else? Anyone else?

2 MR. HARRIS: On that issue, you didn't
3 ask about the second leave, Staff leave, but --

4 HEARING OFFICER COCHRAN: It's not on the
5 agenda.

6 MR. HARRIS: Okay. I was just -- I will
7 indicate one more time that we're not going to
8 object to that one either then, so -- and I'll do
9 it -- I'll do it in writing. We did it this time
10 in our data responses. So do you want us to do a
11 separate filing or can we do it in the data
12 responses again?

13 HEARING OFFICER COCHRAN: A response to
14 the motion or -- I'm sorry, I don't follow.

15 MR. HARRIS: We indicated in our -- what
16 we filed on July 8th. On July 16th, in our
17 responses to the first leave, we indicated in
18 that response that we weren't going to object.
19 Can we do the same thing again for the second
20 one?

21 HEARING OFFICER COCHRAN: Yes.

22 MR. HARRIS: Okay. Thank you.

23 HEARING OFFICER COCHRAN: Okay.

24 So now what I'd like to talk about is an
25 item that was brought to our attention in Staff's

1 Status Report number 2, and that's the new policy
2 by the Bay Area Air Quality Management District,
3 which I'm going to call BAAQMD, and it is a new
4 policy relating to emergency backup generators.
5 And so I have four questions, topics, broad
6 things to talk about.

7 What I would like to is to hear from the
8 parties a summary of the new policy. What is the
9 effect of the new policy on the analysis of this
10 SPPE, if any? Does Staff have enough information
11 to model or analyze emissions under the new
12 BAAQMD policy, if such is required? And finally,
13 if Staff does not have the amount of information
14 it needs, what additional information is needed,
15 how would it be acquired, and how long would it
16 take to obtain the necessary information and
17 complete the analysis?

18 Easy for me to say.

19 MR. HARRIS: Yeah. I'm going to phone a
20 friend on this one. I'm going to ask Jerry to
21 answer most of your questions about the
22 substantive issues.

23 I do want to point two things out.

24 Number one, this is a Staff policy, it's
25 not a regulation. And as of last time I checked,

1 that policy wasn't even signed yet, so it's not
2 even effective today.

3 Having said that, we're not afraid of the
4 policy. I think Jerry ought to explain -- oh, now
5 it is signed, of course.

6 So -- but having said that, Jerry, can
7 you give your quick overview of -- a summary of
8 what this is and how it affects the project from
9 the Applicant's perspective?

10 MR. SALAMY: So, hi, my name is Jerry
11 Salamy with Jacobs Engineering for the Applicant.

12 The District's emergency backup generator
13 policy applies a 100-hour requirement for
14 estimating potential to emit for a project with
15 backup generators. For comparison to applicable
16 LORS at the district and federal level.

17 So what this means is that for any
18 project, you have to assume the generators
19 operate for 100 hours for emergency purposes, and
20 then for a certain number of hours for testing
21 and maintenance. Now, that is exclusively
22 required for the regulatory analysis for the
23 project, meaning comparing the project's
24 applicability to Title 5, the prevention of
25 significant deterioration, regulations, toxic air

1 contaminants, hazardous air pollutants, those
2 various regulations.

3 The District then decided that, as part
4 of this policy, they weren't going to require
5 projects to use that 100-hour requirement for
6 mitigating the project, i.e. going out and buying
7 emission offset credits or offsets. They, in the
8 policy, have identified that you can use your
9 testing and maintenance hours and emissions to
10 determine the level of mitigation required for
11 their regulations.

12 So in that case the project would be
13 subject to offsetting based on the combination of
14 the 100 hours' worth of emergency operation plus
15 the hours associated with testing and
16 maintenance. But -- and that would decide
17 whether you are above or below the 35-ton
18 threshold in Bay Area Reg 2, Rule 2 that
19 determines what emissions need to be mitigated
20 and at what level.

21 So for a project like the Laurelwood
22 project, that would mean that our emissions from
23 a potential to emit would be above the 35-ton
24 threshold which precludes the project from being
25 able to use the District's small facility bank.

1 That is an emission credit bank that the District
2 maintains to mitigate those smaller projects that
3 have a less than 35 ton potential to emit.

4 So in the case of the Laurelwood project,
5 we're above that 35-ton threshold. We now then
6 are obligated to go out and buy emission
7 reduction credits off of the market, the emission
8 reduction credit market.

9 The other potential impact this could
10 have, depending on how those 100 hours of
11 emergency operation are applied, would be to also
12 subject the project to Title 5 permitting, which
13 is the other big difference for the Laurelwood
14 project.

15 In our particular case, because the
16 project is limited to a 99-megawatt limit, we
17 would be estimating the 100 hours of emergency
18 operation based on 99 megawatts of generation.
19 If we are to scale back our testing and
20 maintenance emissions such that we don't trigger
21 the 100-ton Title 5 threshold, that doesn't
22 really affect the project then.

23 So everything we've done to date from a
24 regulatory analysis standpoint still holds. We
25 would have to submit a synthetic minor

1 application but that would be the minor
2 difference between pre and post policy for the
3 District.

4 HEARING OFFICER COCHRAN: Thank you.
5 Staff?

6 MR. LAYTON: We agree with Mr. Salamy's
7 summary. The small facility bank is like priority
8 reserve down in South Coast. It's what the
9 District offers to small businesses, small
10 permits that, perhaps, can't compete in the open
11 market for ERCs. They want to keep that facility
12 bank available for those types of customers and
13 so they're trying to exclude backup generation or
14 server farms from going into that bank.

15 So the 100 hours is applied just to
16 estimate whether you would qualify. But the
17 District has indicated that they would not
18 require or issue a permit saying that they -- the
19 data facility would be permitted for 100 hours of
20 emergency operation.

21 So it -- we think it's -- it's a
22 different hurdle for the Applicant to go through.
23 Mr. Salamy has indicated that there is a robust
24 market for ERCs because of the shutdown of the
25 GWF Petroleum coke burners in Contra Costa

1 County, so there's a lot of NOx on the market, so
2 they should be able to buy.

3 What we would look for going forward is
4 more -- we'd like to know about the ERCs, which
5 ones they are picking. Obviously, there are
6 probably negotiations, so maybe we can't be too
7 conclusionary on which ERCs they are looking at.
8 But that would be the kind of question we would
9 follow up with the Applicant so we can explain
10 what the mitigation might be provided to the
11 public and other parties.

12 HEARING OFFICER COCHRAN: Thank you.

13 Turning now to the Intervenors, are there
14 any comments from either Mr. Sarvey or from Mr.
15 Chaver?

16 MR. SARVEY: Robert Sarvey.

17 I generally agree with Jeremy's [sic]
18 assessment of what he said there. I've been
19 talking to the District for quite a while on this
20 issue and that seems to be a pretty good summary
21 of what they've just passed.

22 HEARING OFFICER COCHRAN: All right.

23 Mr. Chaver?

24 MR. CHAVER: Yeah. This is Yair Chaver.

25 No, no comments at this point on this

1 issue.

2 HEARING OFFICER COCHRAN: Thank you.

3 I know that we had representatives from
4 Bay Area Air Quality Management District. Did
5 they want to speak to this issue?

6 MR. CAI: Yes. We generally agree with
7 all the statements that have been made.

8 HEARING OFFICER COCHRAN: Thank you.

9 So I'm not sure from Staff that I got
10 answers--direct answers to my questions of do you
11 have enough information to analyze or model the
12 emissions and the required mitigation measures?
13 And if not, what additional information you
14 require and how you see getting that additional
15 information?

16 MR. LAYTON: Was the information you were
17 asking, was it relative to the policy or just the
18 project?

19 HEARING OFFICER COCHRAN: The policy.

20 MR. LAYTON: Policy.

21 HEARING OFFICER COCHRAN: The policy's
22 impact on the project.

23 MR. LAYTON: Again, the policy's impact
24 on the project will be that the Applicant will go
25 out and procure offsets on the open market. We

1 wouldn't model those offsets. The permitted
2 emissions will not be different than they were
3 before the policy was put in place. The 100
4 hours of emergency operation is just to calculate
5 a potential to emit to find out if you can
6 qualify to use the small bank or not. And if you
7 use the small bank, obviously, I think it's a
8 financial benefit to the Applicant because they
9 can get credits easier than on the open market.

10 HEARING OFFICER COCHRAN: I see. Thank
11 you very much.

12 So now let's talk about what's on
13 everyone's mind, which is schedule.

14 Mr. Hong, if you could pull up that
15 document? Yes.

16 So what you see before you is the
17 schedule as adopted in the May Committee
18 scheduling order, and then notations from the
19 Applicant's proposal.

20 I note that I believe that Staff has now
21 filed a document or prepared a document that has
22 additional suggested dates; is that correct?

23 MS. WORRALL: Sorry. I thought you were
24 talking with respect to what is showing on the
25 screen.

1 HEARING OFFICER COCHRAN: I was asking
2 Staff if they had additional dates? Because the
3 staff's report said you had -- you didn't have
4 enough information to provide scheduling
5 information.

6 MS. WORRALL: Right.

7 MS. WORRALL: Right. We do have some
8 additional information. However, it is
9 contingent on Staff's receipt of a complete
10 response to the latest data request, the motion
11 for leave that was submitted on July 16 with
12 respect to thermal plumes, and provided the
13 responses complete, and Staff doesn't have any
14 further questions. And, ideally, receiving that
15 information by July 26th, then Staff has a
16 proposed date, and that would be for August 16th.

17 I just want to also explain, Staff is
18 trying to be openminded about the process and
19 consistent with CEQA, as well, and the SPPE
20 process. And so we've come up with a proposed
21 process that may actually benefit the overall
22 process of this project and the hearings. And
23 essentially, what would happen is Staff would
24 file, on August 16th, would file a draft initial
25 study. And in that initial study we would

1 highlight the areas of agreement, point out
2 topics that need for the discussion and
3 resolution that we can then workshop, and also
4 propose mitigation measures, if necessary.

5 What would then happen next is we would
6 hold a public workshop in which we can resolve,
7 hopefully resolve the issues that, basically, are
8 associated with air quality. And some of these
9 issues were brought up in the McLaren hearing
10 process. There were some jurisdictional
11 concerns, and then also emergency operations.
12 And so Staff is hoping that we can have a public
13 workshop with the Applicant and others to work to
14 kind of come to an understanding and discuss
15 these concerns and, you know, in a public venue.

16 And then we would also discuss any
17 potential mitigation that we might have. And
18 right now we're looking at air quality,
19 biological resources, and cultural resources.
20 And we would need to get the Applicant's buy-off
21 on these mitigation measures as required by CEQA.
22 And we'd also, at that time, solicit scoping
23 comments from the public and Intervenors and any
24 parties in the matter.

25 This process is -- I know it's a

1 different process than what we're proposed before
2 than what's been followed in previous
3 proceedings. We're hoping that by discussing
4 this, putting out a scoping document, if you
5 will, with a draft initial study with Staff's
6 picture of where they're at as far as where they
7 can conclude on the level of impact and then
8 areas that need further kind of discussion, we
9 are hoping that it will serve the scoping
10 document and that it will also allow, in the
11 workshop meeting, to get these concerns addressed
12 and worked out before we get to the hearing, so
13 that we're not having to have this all up in
14 question, you know, when you get to the hearing.
15 So we're trying to work this out before we get to
16 the hearing.

17 Ad then it will, basically, it will
18 streamline the process, the overall project
19 process, and also focus the hearing on any areas
20 that may still -- may come up or any questions
21 Intervenors, the Applicant, Staff, interested
22 parties might have that have come up since the
23 workshop.

24 And once the workshop has been completed
25 and we get the information, then Staff would file

1 -- complete their analysis and docket that. And
2 then that would serve, we anticipate, would serve
3 as Staff's opening testimony.

4 And then from there the -- we wouldn't
5 file an initial study with the state
6 clearinghouse. Rather, what we're proposing is
7 the PMPD, the Presiding Member's Proposed
8 Decision, would be appended with any kind of
9 supporting documentation and environmental
10 analysis and that would be sent to the state
11 clearinghouse. And then the 30-day comment
12 period for that can begin which would be
13 concurrent with a PMPD 30-day current period --
14 comment period, I should say.

15 And that's pretty much it.

16 Can someone put up -- I have a slide
17 presenting out the dates more clearly, a .pdf.
18 Yes, there is it.

19 So in there we have the, predicated on a
20 complete response from the Applicant on July 26
21 to the second motion to leave -- motion for leave
22 related to thermal plumes. And Staff doesn't
23 have any questions that result in change of
24 Applicant analysis or any kind of additional
25 delays.

1 And then docketing the draft initial
2 study on the 16th, having a workshop, ideally,
3 the week -- somewhere in the week of 26th through
4 30th, and then docketing the complete analysis as
5 our opening testimony, and that's just based on
6 the rest of your schedule.

7 HEARING OFFICER COCHRAN: Okay. Thank
8 you for that.

9 Does anyone have any comments on that
10 proposal?

11 MR. HARRIS: The obvious one is it would
12 have been nice to see this before right now.

13 Setting that aside, it's a whole new
14 process. It's something completely different
15 than you've done in the past. I am not aware of
16 a state clearinghouse requirement related to
17 filing of a PMPD in an initial study mitigated
18 neg dec, so I'm not even sure it's CEQA
19 compliant.

20 So I definitely need -- I took a picture
21 of this, by the way, in case anybody thought I
22 was being cute. I wanted to make -- I wanted to
23 be able to look at the dates later.

24 I am concerned about a couple things.
25 I'm also concerned about the idea of additional

1 conditions. I heard that in there. The McLaren
2 case ended up with a single condition exemption
3 which was if you get over 100 megawatts, come
4 back and see us. We're similarly situated and
5 we're definitely expecting similar treatment in
6 that connection. So there needs to be some
7 clarity there as to what conditions of exemption
8 might look like.

9 So, you know, I'll -- I don't -- I guess
10 I want to reserve the right to look at this, but
11 my initial reaction is it's not CEQA compliant
12 and it's longer, and it probably involves
13 workshops and things that maybe should have been
14 done in June.

15 So, you know, we'll go back and look at
16 it with as open a mind as I possibly can have,
17 given what I just said and react additionally.

18 But right now I'm most concerned about
19 the conditions of exemption and how that makes us
20 different than McLaren, so --

21 HEARING OFFICER COCHRAN: Thank you, Mr.
22 Harris.

23 First of all, Staff, would you please
24 make sure that you docket this item as soon as
25 possible so that everyone has the benefit of it?

1 So I am now going to turn to our -- the
2 Intervenor, who are also affected by the
3 schedule, and see if they have any comments about
4 any of either Staff's proposal or Mr. Harris'
5 comments?

6 Mr. Sarvey, would you like to go first?

7 MR. SARVEY: Yes, I do, and I think it's
8 a logical way to proceed and I think it will save
9 us time, so I agree with it.

10 HEARING OFFICER COCHRAN: I'm sorry, you
11 were cut off a little bit. So are you saying
12 that you agree with Staff's proposal?

13 MR. SARVEY: I agree with Staff's
14 proposal. I think it's a good proposal. I think
15 it makes a lot of sense. And to me, it's a lot
16 more orderly to have a PMPD attached to your
17 mitigated negative dec. It makes a whole lot
18 more sense because you're going to apply all the
19 negative dec and then make changes in a PMPD,
20 how's that going to work? I never understood
21 that process anyway.

22 HEARING OFFICER COCHRAN: Okay. Thank
23 you.

24 Mr. Chaver?

25 MR. CHAVER: We also agree with Staff's

1 recommendation and suggestions at this point.

2 HEARING OFFICER COCHRAN: All right.

3 Anything else on schedule?

4 Mr. Layton?

5 MR. LAYTON: Excuse me. This is Matt
6 Layton.

7 Silicon Valley Power had been asked
8 for -- we've asked them to prepare testimony. It
9 has been delayed in getting out of their shop to
10 our shop. We would like to have that testimony
11 and publish it, parts of it, in our initial study
12 and/or discuss it at the workshop.

13 So that is one of the things that is
14 also, besides the data responses to the last data
15 request, that particular piece of testimony is
16 not available yet. It was promised last week,
17 it's promised this week, and maybe next week.

18 HEARING OFFICER COCHRAN: Thank you for
19 that information.

20 MR. HARRIS: Can I ask what that
21 testimony might be? It's the first I'm hearing
22 about any testimony from SVP.

23 MR. LAYTON: We've asked them to describe
24 their system that serves data centers like
25 Laurelwood. We've asked them to describe outages

1 that they've had on the double-loop system.
2 There are some data centers that are on single
3 feed. We've asked them to describe that, how
4 those occur.

5 I think the Committee has indicated in
6 past proceedings, they're very interested in
7 understanding what is going to run when, so we're
8 trying to provide that information. I think it
9 will go to describing the project and its
10 environmental impacts.

11 MR. HARRIS: Okay. Well, in the interest
12 of transparency, could we have the questions that
13 you've asked them. Can we have the answer when
14 they're provided?

15 MR. LAYTON: Yes. Absolutely.

16 MR. HARRIS: Both questions; yes?

17 MR. LAYTON: Both questions?

18 MR. HARRIS: Yeah. You provided the
19 questions.

20 MR. LAYTON: We've asked more than
21 both -- two questions, but, yes, you can have all
22 the questions that we asked them to include in
23 their analysis or their testimony. We haven't --
24 we don't know what it's going to be. And then
25 when anything gets filed we will, obviously, put

1 it in the docket. This was not meant to be
2 behind the scenes.

3 MR. HARRIS: I never suggested it was but
4 that's okay. Yeah.

5 So questions, you'll give us questions
6 and answers? I'm sorry to convolute my question
7 to your answer.

8 MR. LAYTON: Yes. We will send you the
9 questions we sent to SVP.

10 MR. HARRIS: Yeah.

11 MR. LAYTON: We have not gotten a reply
12 yet. We cannot send you that yet.

13 MR. HARRIS: Okay. Thank you.

14 HEARING OFFICER COCHRAN: All right,
15 then, to the parties, is there anything else that
16 we have not touched on that you think should
17 properly have been touched on in this status
18 report -- status conference, excuse me? Going
19 once?

20 MR. HARRIS: Sure. I'm never going to
21 miss an opportunity.

22 On the ERC question, Mr. Salamy flagged
23 that for me, what we'd be expecting there would
24 be a condition that says go out and get our ERCs,
25 you know, Bay Area -- from the Bay Area's bank.

1 I don't know -- I don't think we need to know
2 where the ERCs are from. I think the obligation
3 is to have them before we start and not to
4 identify certificate numbers, for example, at
5 this stage. So that's a little bit different than
6 what we expected. And I put that in the same
7 category as the idea of a bunch of additional
8 conditions of exemption, so --

9 MR. LAYTON: This is Matt Layton.

10 Listening to what Jerry just said, yes,
11 we would expect you to go get a permit from the
12 District. We're not planning to put a condition
13 of exemption suggesting which ERCs to get. But
14 again, we were trying to just provide a
15 discussion for the parties about what the
16 mitigation would be, what it would like if the
17 information is available. Obviously, these are
18 negotiations with the ERC holders that may not be
19 ripe for, I guess, daylighting in this particular
20 piece of testimony.

21 HEARING OFFICER COCHRAN: Any of the
22 other parties, is there something that we haven't
23 touched on that you think we needed to touch on,
24 either Mr. Sarvey or Mr. Chaver?

25 MR. SARVEY: No. I'm satisfied we've

1 touched on everything. Thank you.

2 This is Bob Sarvey.

3 HEARING OFFICER COCHRAN: Thank you, Mr.
4 Sarvey.

5 Mr. Chaver?

6 MR. CHAVER: I can't think of anything
7 right now.

8 Thank you.

9 HEARING OFFICER COCHRAN: Thank you so
10 much.

11 MR. HARRIS: Hearing Officer?

12 HEARING OFFICER COCHRAN: I'm sorry, who?
13 One more, Mr. Harris?

14 MR. HARRIS: Yeah, an offer.

15 It sounds like Staff feels like a
16 workshop would be helpful. And we would be
17 amendable to having a workshop as quickly as you
18 can notice one, as soon as possible, and more
19 than one. We think those are productive. And we
20 understand the emphasis on transparency and
21 having everybody be able to attend those
22 workshops.

23 So I would be very pleased to have a
24 generalized workshop, you know, with a general
25 outline of issues, and then let people come and

1 ask their questions, everybody ask their
2 questions. I think it would help move the
3 process along. And we would be glad to do that
4 on your ten-day notice or however soon you can do
5 it, so I want to make that offer.

6 MS. WORRALL: That sounds like a good
7 plan. However, we can't have a workshop until
8 we've gotten all of the information from you
9 regarding the project and any data responses.

10 Also, I wanted to note that we are
11 planning on having the workshop up here in
12 Sacramento at the Commission.

13 MR. HARRIS: Okay. I'm just, I'm looking
14 at Jerry again on Friday, so -- on having all the
15 information. So -- and I know you've got at
16 least a ten-day noticing requirement, so we might
17 be able to give you some assurance you're going
18 to get something in time so people can look at it
19 before that ten days' run, so we'll work with you
20 on that for sure.

21 MS. WORRALL: Okay. Thanks, Mr. Harris.

22 HEARING OFFICER COCHRAN: All right.

23 Then anything else for the good of the
24 order?

25 So we now turn to public comment. I see

1 that Ms. Avalos from the Public Adviser's Office
2 is here.

3 Did we get any blue cards?

4 Does anybody in the audience here in
5 Sacramento wish to come up and speak? If so,
6 please come to the podium. Don't all rush at
7 once. I'm not seeing anybody here in Sacramento
8 who would like to speak.

9 Is there anybody online who would like to
10 address the Committee? You have all been un-
11 muted, unless you've muted yourself. All right.

12 Seeing no public comment, we will now --
13 the Committee will now go into closed session.
14 We will adjourn to closed session in accordance
15 with California Government Code section 11126,
16 subdivision(c)(3) which allows a state body,
17 including a delegated committee, to hold a closed
18 session to deliberate on a decision to be reached
19 in a proceeding the state body was required by
20 law to conduct.

21 So with that, we are in closed session.

22 (The Committee adjourned into closed session
23 at 2:27 p.m.)

24 (The Committee returned from closed session at
25 3:30 p.m.)

1 HEARING OFFICER COCHRAN: This is Susan
2 Cochran on the Laurelwood matter. We have
3 returned from closed session and there is no
4 reportable action.

5 COMMISSIONER DOUGLAS: All right. This
6 is Commissioner Douglas; we are adjourned.

7 (The meeting adjourned at 3:35 p.m.)

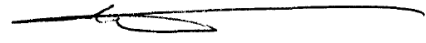
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IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of August, 2019.




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