

**DOCKETED**

<b>Docket Number:</b>	19-SPPE-01
<b>Project Title:</b>	Laurelwood Data Center (MECP I Santa Clara I, LLC)
<b>TN #:</b>	229874
<b>Document Title:</b>	Order on Motion by Intervenor Robert Sarvey re Schedule and Site Visit
<b>Description:</b>	Order on Motion of Robert Sarvey to Adopt CEC Staff's Proposed Schedule and Conduct a Site Visit and Informational Hearing
<b>Filer:</b>	Susan Cochran
<b>Organization:</b>	Energy Commission Hearing Office
<b>Submitter Role:</b>	Committee
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**State of California  
State Energy Resources Conservation and  
Development Commission  
1516 Ninth Street, Sacramento, CA 95814  
1-800-822-6228 – www.energy.ca.gov**

**APPLICATION FOR SMALL POWER PLANT  
EXEMPTION FOR THE:**

**LAURELWOOD DATA CENTER**

**Docket No. 19-SPPE-01**

**ORDER ON MOTION OF ROBERT SARVEY TO ADOPT CEC  
STAFF'S PROPOSED SCHEDULE AND CONDUCT A SITE VISIT  
AND INFORMATIONAL HEARING**

**Introduction**

On March 5, 2019, MECP1 Santa Clara 1, LLC (Applicant) submitted an application to the California Energy Commission (CEC) for a small power plant exemption (hereafter, the application is referred to as the "SPPE")<sup>1</sup> for the Laurelwood Data Center in Santa Clara, California.

On April 10, 2019, the CEC appointed a committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea A. Scott, Vice Chair and Associate Member (the Committee) to preside over this proceeding.<sup>2</sup>

The CEC has the exclusive authority to consider, and ultimately approve or deny, applications for the construction and operation of thermal power plants that will generate 50 megawatts (MW) or more of electricity.<sup>3</sup> An SPPE is subject to an expedited process designed to potentially exempt thermal power plants that will generate between 50 MW and 100 MW from the CEC's certification jurisdiction.<sup>4</sup> To grant an SPPE, the CEC must determine the generating capacity of the proposed facility and analyze whether the construction or operation of the project would result in substantial adverse impacts on the environment or energy resources.<sup>5</sup> In reviewing an SPPE, the CEC acts as the "lead agency" under the California Environmental Quality Act (CEQA).<sup>6</sup>

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<sup>1</sup> All of the documents comprising the SPPE application can be found at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-01>.

<sup>2</sup> TN 227638.

<sup>3</sup> Pub. Resources Code, §§ 25120, 25500.

<sup>4</sup> Pub. Resources Code, § 25541; Cal. Code Regs., tit. 20, §§ 1934 et seq.

<sup>5</sup> Pub. Resources Code, §§ 25500, 25541.

<sup>6</sup> Pub. Resources Code, § 25519, subd. (c).

## Summary of Proceedings

The Applicant intends to build 56 3-MW diesel-fired generators to provide emergency electrical generation in support of approximately 640,000 square feet of data center and related facilities, such as office space, elevators, restrooms, and storage.<sup>7</sup> The Applicant has calculated that the maximum electrical load of these facilities will be 99 MW.<sup>8</sup>

On July 23, 2019, the Committee conducted a Status Conference (July 23 Conference).<sup>9</sup> During the July 23 Conference, CEC staff (Staff) proposed a process and procedure for conducting the CEQA review of an SPPE that varied from the manner by which the CEC has traditionally reviewed an SPPE. On July 23, and in a subsequent filing, Staff specifically proposed to release a draft Staff initial study and hold a public workshop “to solicit comments, resolve or narrow issues of disagreement between the parties, and agree on mitigation for potentially significant effects....”<sup>10</sup> Next, Staff would file a final Staff initial study that would serve as its testimony for the evidentiary hearing. The Committee’s proposed decision<sup>11</sup> would function as the Initial Study and be circulated through the State Clearinghouse.<sup>12</sup> The Applicant questioned whether Staff’s proposed approach would be consistent with CEQA.<sup>13</sup>

The Committee issued “Orders after July 23, 2019, Status Conference and Revised Scheduling Order” (Revised Scheduling Order). The Committee stated it was not persuaded to deviate from past practice and process for CEQA compliance and ordered Staff to file a single, integrated document containing its environmental analysis on the SPPE and submit the appropriate notice to the State Clearinghouse to commence the public review and comment process by August 28, 2019.<sup>14</sup>

On August 16, 2019, Staff gave public notice of a “Mitigation Measures Workshop for Laurelwood Data Center” to be held on August 26, 2019.<sup>15</sup> Staff has reported that the public workshop was held and that consensus was reached by the parties on mitigation measures for biological resources, cultural resources, and tribal cultural resources.<sup>16</sup>

Staff published its Initial Study and Proposed Mitigated Negative Declaration (IS/MND) on August 28, 2019, as required by the Revised Scheduling Order.<sup>17</sup> The IS/MND was circulated through the State Clearinghouse, and the comment period will end on October 3, 2019.<sup>18</sup>

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<sup>7</sup> TN 227273-1, pp. 1-1, 2-1.

<sup>8</sup> *Id.* at pp. 1-1, 2-1 – 2-2.

<sup>9</sup> TN 229345. The transcript of the July 23 Conference is cited as “July 23 Transcript page:line - page:line.

<sup>10</sup> TN 229285.

<sup>11</sup> Cal. Code Regs., tit. 20, § 1945, subd. (a).

<sup>12</sup> TN 229285; July 23 Transcript 37:9 – 41:8.

<sup>13</sup> July 23 Transcript 41:13 – 42:21.

<sup>14</sup> TN 229475.

<sup>15</sup> TN 229473.

<sup>16</sup> TN 229806.

<sup>17</sup> TN 229584.

<sup>18</sup> TN 229806.

On the same day that the IS/MND was published as required by the Revised Scheduling Order, intervenor Robert Sarvey filed a “Motion to Adopt Staff Schedule and Conduct Site Visit and Informational Hearing” (August 28 Motion).<sup>19</sup> Sarvey references several prior SPPE proceedings, occurring between 2001 and 2006, where a site visit and informational hearing (SVIH) was held so that the public and the parties could participate in the development of the CEQA document for those cases. Sarvey argues that the CEC has not engaged in customary procedures for public participation. Sarvey also points to the existence of an environmental justice community near the proposed project site and asserts that the CEC has not followed any of EPA’s recommendations defined in “Guidance on Considering Environmental Justice During the Development of Regulatory Action” (EPA Guidance). Sarvey also contends that, despite the Applicant questioning whether the Staff proposal was CEQA compliant, these prior proceedings indicate otherwise.

The Applicant opposed the August 28 Motion<sup>20</sup> and argued that it lacked any citation to relevant, controlling legal authorities, and instead was based on Sarvey’s belief of what past practices were. The Applicant pointed out that, while prior to January 1, 2016, the CEC’s regulations required an SVIH for SPPE proceedings, no such requirement currently exists.<sup>21</sup> The Applicant also described several instances in which both the Committee and Staff have invited public participation, have provided instruction on how to participate, and have given information on how the CEC’s Public Advisor’s office is available to foster public involvement.

### **Order on August 28 Motion**

The Committee denies the portion of the August 28 Motion regarding the adoption of the new CEQA process proposed by Staff during the July 28 Conference, as moot. The IS/MND has been published and is currently available for public review through the State Clearinghouse.

The August 28 Motion also requests that the Committee hold an SVIH. The Committee appreciates and shares Sarvey’s view that public engagement is important, particularly when proposed projects are in communities with an identified environmental justice population.<sup>22</sup> Public engagement is a hallmark of CEC proceedings, and the record of this proceeding discloses that there has been considerable outreach to the community,

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<sup>19</sup> TN 229581.

<sup>20</sup> TN 229711. Neither Staff nor Intervenor California Unions for Reliable Energy responded to the August 28 Motion.

<sup>21</sup> *Id.* at pp. 1-2, citing CEC Docket No. 15-OIR-02 and California Code of Regulations, title 20, section 1709.7.

<sup>22</sup> The Committee is aware of the EPA Guidance referenced by Sarvey. However, this guidance is directed to the EPA’s “rule-writers” and decision-makers as they develop regulatory actions. It does not apply to this CEC quasi-adjudicative SPPE proceeding. See <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>, pp. 1 -2.

including newspaper publication of the notice of receipt of the SPPE;<sup>23</sup> letters to Native American tribes inviting them to consult on the SPPE;<sup>24</sup> and a request for agency participation.<sup>25</sup> Further, the Hearing Officer, on the Committee's behalf, has mailed the notices of its conferences to adjacent property owners and local responsible and trustee agencies.<sup>26</sup> In addition, all Committee and Staff events in this proceeding have been publicly noticed and open to in-person and remote public participation, including Staff's above-discussed August 26, 2019 workshop held before publication of Staff's IS/MND.<sup>27</sup>

Additionally, the Committee recognizes the value of an SVIH and, while one is not required by law for an SPPE,<sup>28</sup> it can be beneficial, especially when outreach and public engagement activities and assessments of the surrounding populations reveal that an SVIH is desired by the community or otherwise warranted. Nonetheless, the Committee denies the request for an SVIH as untimely. An SVIH takes place at the outset of a proceeding and serves to inform the community about a proposed project and explain the CEC review process well before Staff publishes its environmental document. In this case, the IS/MND has published, and the proceeding is swiftly headed toward evidentiary hearing.

We thus DENY the August 28 Motion.

### **Public Advisor and Other Commission Contacts**

The CEC's Public Advisor's Office provides the public with assistance in participating in CEC proceedings. If you would like information on how to participate in this proceeding, please contact Noemi Gallardo, Public Advisor, at [PublicAdvisor@energy.ca.gov](mailto:PublicAdvisor@energy.ca.gov) or (916) 654-4489, or toll free at (800) 822-6228.

If you have a disability and need assistance to participate in any upcoming Committee events, contact Yolanda Rushin at least five days prior to the event at [Yolanda.Rushin@energy.ca.gov](mailto:Yolanda.Rushin@energy.ca.gov) or (916) 654-4310.

Questions of a procedural nature should be directed to Susan Cochran, Hearing Officer, at [Susan.Cochran@energy.ca.gov](mailto:Susan.Cochran@energy.ca.gov) or (916) 654-3965.

Technical questions concerning the Petition should be addressed to Lisa Worrall, Project Manager, at [Lisa.Worrall@energy.ca.gov](mailto:Lisa.Worrall@energy.ca.gov) or at (916) 654-4545.

Media inquiries should be sent to the Media and Public Communications Office at [Mediaoffice@energy.ca.gov](mailto:Mediaoffice@energy.ca.gov) or at (916) 654-4989.

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<sup>23</sup> TNs 227574, 227575, 227576.

<sup>24</sup> TN 227446.

<sup>25</sup> TN 227339.

<sup>26</sup> TNs 227871, 228923, 228946.

<sup>27</sup> <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-01>.

<sup>28</sup> Contrast this with the regulatory requirement for informational hearings and site visits in notice of intent and application for certification proceedings. (Cal. Code Regs., tit. 20, § 1709.7.)

Information regarding the status of the project, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the CEC's web page at <https://ww2.energy.ca.gov/sitingcases/laurelwood/>.

Dated: September 27, 2019, at Sacramento, California

***ORIGINAL SIGNED BY:***

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Karen Douglas  
Commissioner and Presiding Member  
Laurelwood Data Center SPPE  
Committee

***ORIGINAL SIGNED BY:***

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Janea A. Scott  
Vice Chair and Associate Member  
Laurelwood Data Center SPPE  
Committee