

DOCKETED

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Project Title:	Laurelwood Data Center (MECP I Santa Clara I, LLC)
TN #:	230146
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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:)	
)	
Application for Small Power Plant)	Docket No. 19-SPPE-01
Exemption for the:)	
)	
<u>Laurelwood Data Center</u>)	

**MECP1 SANTA CLARA 1, LLC'S
PARTIAL OPPOSITION TO MOTION TO COMPEL STAFF TO RECOGNIZE AND
RESPOND TO INTERVENOR SARVEY'S COMMENTS AND TESTIMONY ON THE
IS/MND AND EXTEND THE DEADLINE FOR REBUTTAL TESTIMONY**

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October 11, 2019

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Pursuant to Section 1211.5 of the Commission’s regulations, MECP1 Santa Clara 1, LLC (the “Applicant”) files this opposition to the *Motion to Compel Staff to Recognize and Respond to Intervenor Sarvey’s Comments and Testimony on the IS/MND and extend the deadline for rebuttal testimony* (the “Motion”) docketed by Robert Sarvey (the “Intervenor”) on October 10, 2019.¹

The Motion requests that the Committee: (1) “direct staff to recognize” the *Testimony of Robert Sarvey on the Initial Study/MND for the Laurelwood Data Center* (“*Testimony*”) docketed by the Intervenor² as public comment, rather than testimony; (2) direct CEC Staff to respond to the *Testimony* as public comment; and (3) extend the deadline for rebuttal testimony until seven days after CEC Staff responds to *Testimony*.³

First, the Applicant does not object to the Intervenor’s first request. Given that the *Testimony* is largely comprised of unsupported legal arguments and lay opinions, the Applicant agrees that it is best treated as public comment.

¹ TN#: 230110.

² TN#: 229959.

³ Motion, p. 2.

Second, given that CEC Staff has already indicated that it will be responding to the Intervenor's *Testimony* in its rebuttal testimony, there is no need to direct CEC Staff to provide a response. The Applicant notes that the California Environmental Quality Act's requirement that the lead agency provide responses to public comment will be satisfied by Staff's response, and there is no prejudice to the public if Staff provides an additional response to public comment along with any Rebuttal Testimony it intends to file. Further, if the Committee grants the Intervenor's request to treat the *Testimony* as public comment, then the Applicant notes that the only "Opening Testimony" in this proceeding is that of the Staff⁴ and the Applicant⁵, and the record should be clear that the Intervenor did not file Opening Testimony as directed by the Committee's *Scheduling Order*.

Third, the Applicant objects to the Intervenor's request to extend the deadline for all rebuttal testimony for an additional seven days, which will only further delay this proceeding. As a party to the proceeding, the Intervenor is obligated to meet all procedural milestones in a timely manner. To the extent that the Intervenor has testimony in response to the Opening Testimony filed by CEC Staff and Applicant, such rebuttal should be filed on October 15th, as required by the Committee's Scheduling Order. There is no provision in the Scheduling Order for additional public comment to address CEC Staff's responses to public comment. If the Committee is inclined to grant the Intervenor leave to provide a response to CEC Staff's response to public comment, the Applicant recommends that the Intervenor be given only until October 18th to submit a limited response.

CONCLUSION

In summary, the Intervenor cannot have it both ways. The document cannot be, at once, both public comment and testimony. If the document is to be considered public comment, then it cannot

⁴ TN#: 229584.

⁵ TN#: 230042.

also be considered timely filed opening testimony. Whether the document is considered public comment or opening testimony, there is no reason to extend the deadline for submission of rebuttal testimony, as all parties are required to meet the scheduled milestones in this proceeding. To the extent that the Committee finds that the Intervenor should be allowed to respond to CEC Staff's response to public comments, such extension should be limited to the specific issue, and due on October 18th, at the latest. The Committee should not reward Mr. Sarvey's tactics with additional delay in this proceeding.

Given that Rebuttal Testimony is due on October 15th, the Applicant respectfully requests that the Committee issue a ruling, by email if necessary, confirming the proper designation of the *Testimony* by October 14th.

October 11, 2019

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