

DOCKETED

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January 21, 2020

Commissioner Karen Douglas, Presiding Member
Vice Chair Janea Scott, Associate Member
Susan Cochran, Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: Delayed Proposed Decision: Laurelwood Data Center, 19-SPPE-01

Dear Commissioner Douglas, Vice Chair Scott, and Hearing Officer Cochran:

The Commission's Regulations provide, in pertinent part, that in a Small Power Plant Exemption ("SPPE") proceeding, "The final decision shall be issued by the commission within 135 days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues."¹ The SPPE for the Laurelwood Data Center ("Laurelwood") was filed on March 5, 2019 – three hundred and twenty-two (322) days ago.

The November 17, 2019 Scheduling Order in this proceeding set the December 11, 2019 Business Meeting as the date for possible approval of the Laurelwood SPPE²; however, the agenda for that Business Meeting was published omitting Laurelwood, without forewarning and without any explanation. Laurelwood was then placed on the agenda for the January 22, 2020 Business Meeting; however, at 4:42 p.m. on a Friday of a Holiday weekend, the Laurelwood SPPE was pulled off the Business Meeting agenda, with only a vague reference to the matter being heard at "another meeting."³ It has now been seventy-seven (77) days since the November 1, 2019 Evidentiary Hearings concluded, more than half the time allotted to the entire proceeding under the Commission's Regulations.

We acknowledge that the Commission's regulations provide for additional time when deemed necessary to permit full and fair examination of the issues. Nothing has been "deemed" as such. There has been no explanation for the delays. This is particularly vexing where, as in this case, there are no known issues remaining. The staff's MND is a superior piece of work, completed on August 28, 2019.⁴ Evidentiary Hearings were completed in a single day, November 1, 2019. The Staff, the Applicant, and the Intervenors all waived briefing, and the Committee sought no additional information or briefing since the close of Evidentiary Hearings.

¹ 20 CCR 1945(b); emphasis added.

² TN #: 230267.

³ TN #: 231589.

⁴ TN #: 229584.

The Hearing Officer's Memorandum of January 17, 2020, makes no claims that additional time is necessary to permit additional examination of the issues and makes no promises as to the timing of the release of the Committee Proposed Decision or the meeting at which it would be considered. In fact, it hedges:

The Committee will reschedule consideration of the Committee Proposed Decision to another meeting. Notice of the date and time of the Business Meeting when this item will be considered will accompany the notice of availability of the Committee Proposed Decision.⁵


If "another meeting" is the regularly scheduled February 20, 2020 Business Meeting, this date will be Day 352 into this Exemption proceeding. If this matter continues to slip to the March 11, 2020 Business Meeting, this one hundred thirty five-day process will extend past a full year to Day 371 (a year and 5 days). In light of the 135 days provided for conclusion of this proceeding in the Commission's Regulations, any further delay would represent a wholly inequitable outcome for the Applicant.

It is time for action and for commitment by the Committee to fairly and openly communicate with the Applicant and the public regarding its intentions and commitments. To bring this proceeding to a close, the Applicant respectfully submits that the Committee has the authority to take two specific actions. First, release the Proposed Decision without further delay. Second, schedule a Special Business Meeting to approve the Exemption.

The equities clearly dictate that the Commission should not continue to delay. The silence and lack of any discernable progress since the close of Evidentiary Hearings on November 1st have been compounded by regularly seeing work products in other SPPE proceedings that were filed 115 days, 160 days, 255 days and 265 days⁶ after Applicant's filing on March 5, 2019. The completion of the Laurelwood Data Center SPPE should be the top priority, if not the exclusive focus of the decisionmakers; the Proposed Decision should be published expeditiously, and a Special Business Meeting noticed as soon as possible.

Thank you for your prompt and undivided attention to this important matter.

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By  _____

Jeffery D. Harris
Attorneys for the Applicant

⁵ TN #: 231589; emphasis added.

⁶ 19-SPPE-02, 19-SPPE-03; 19-SPPE-4, and 19-SPPE-5, respectively.