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APPEARANCES

Commissioners

David Hochschild, Chair (Absent)
Janea Scott, Vice Chair
Karen Douglas
Andrew McAllister (Absent)
Patricia Monahan

Staff Present: (* Via WebEx)

Drew Bohan, Executive Director
Noemi Gallardo, Public Advisor
Darcie Houck, Chief Counsel
Cody Goldthrite, Secretariat

Agenda Item

Susan Cochran	1
Kerry Willis	1
Nick Oliver	1

Others Present (* Via WebEx)

Interested Parties (Cont.)

Jeffrey D. Harris, Ellison Schneider Harris & Donlan LLP on behalf of Laurelwood Data Center	1
Jerry Salamy, CH2M/Jacobs	1
*Matt Muell, Laurelwood Data Center, LDC	1
*Robert Sarvey, Helping Hand Tools	1

Public Comment (* Via WebEx)

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a. Pursuant to Government Code Section 11126(e), the Energy Commission may adjourn to closed session with its legal counsel to discuss any of the following matters to which the Energy Commission is a party:	
i. <i>In the Matter of U.S. Department of Energy (High Level Waste Repository) (Atomic Safety Licensing Board, CAB-04, 63-001-HLW); State of California v. United States Department of Energy (9th Cir. Docket No. 09-71014)</i>	

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- ii. *Communities for a Better Environment and Center for Biological Diversity v. Energy Resources Conservation and Development Commission, and California State Controller*, (Alameda County Superior Court, Case No. RG13681262)
- iii. *State Energy Resources Conservation and Development Commission v. Electricore, Inc. and ZeroTruck* (Sacramento County Superior Court (34-2016-00204586)
- iv. *Natural Resources Defense Council, Inc., et al. v. United States Department of Energy* (Federal District Court, Northern District of California, (17-cv03404)
- v. *City of Los Angeles, acting by and through, its Department of Water and Power v. Energy Commission* (Los Angeles Superior Court, Case No. BS171477).
- vi. *Helping Hand Tools v. California Energy Commission, and Vantage Data Centers LLC* (Sacramento Superior Court, Case No. 34-2018-80003026).
- vii. *In re: PG&E Corporation and In re: Pacific Gas and Electric Company* (United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 19-30088)
- viii. *State Energy Resources Conservation and Development Commission v. HyGen Industries, Inc.* (Sacramento County Superior Court, Case No. 34-2019-00252543)
- ix. *National Electrical Manufacturers Association, et al. v. CEC, et al.* (U.S. Eastern District Court of California Case No. 2:19-cv-02504)

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x. *Olson-Ecologic Testing Laboratories, LLC v. CEC.*
(Orange County Superior Court Case
No. 30-2019-01115513).

b. Pursuant to Government Code section 11126(e),
the Energy Commission may also discuss any judicial
or administrative proceeding that was formally initiated
after this agenda was published; or determine whether
facts and circumstances exist that warrant the initiation
of litigation, or that constitute a significant exposure
to litigation against the Commission, which might include.

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1 FEBRUARY 4, 2020

10:05 a.m.

2 VICE CHAIR SCOTT: Okay, good morning everyone
3 and welcome to our business meeting. We will start the
4 business meeting with the Pledge of Allegiance.

5 (Whereupon the Pledge of Allegiance is recited)

6 VICE CHAIR SCOTT: All right, good morning
7 everyone and thank you for your patience with us as we got
8 everything ready to go. I would like to note that Chair
9 Hochschild and Commissioner McAllister are not here today,
10 so I will be presiding over today's business meeting.

11 Let's start with Item 1, which is the small power
12 plant exemption for the Laurelwood Data Center and we will
13 begin by hearing from Hearing Officer Susan Cochran,
14 please.

15 HEARING OFFICER COCHRAN: Thank you and good
16 morning. I'm Susan Cochran with the Chief Counsel's Office
17 and I'm very pleased to be standing before you today to
18 present the Committee Proposed Decision for the small power
19 plant exemption for the Laurelwood Data Center facility.

20 The project being discussed this morning is the
21 application for a small power plant exemption for the
22 proposed Laurelwood data project in Santa Clara,
23 California. MECPl Santa Clara 1, LLP is the Applicant and I
24 will refer to them as the Applicant for the remainder of my
25 presentation. The proposed project consists of the

1 demolition of existing improvements at the project site,
2 and construction and operation of a data center, backup
3 generators and a substation for Silicon Valley Power, the
4 local utility.

5 The data center is a two-story -- is two multi-
6 story buildings with approximately 533,000 square feet.
7 The Applicant proposes to build 56, 3 megawatt standby
8 diesel generators to provide power to the data center in
9 the event that power from SVP is disrupted. I will
10 generally refer to these as the backup generators.

11 The CEC appointed a Committee consisting of
12 Commissioner Douglas as Presiding Member and Vice Chair
13 Scott as Associate Member, to conduct proceedings on the
14 application. The Committee issued its Proposed Decision on
15 January 24, 2020, which recommends granting the requested
16 exemption.

17 This morning the Committee issued an errata. I
18 have placed copies of the errata on the dais and a few
19 copies at the back of the room. It is also available in
20 the docket for this proceeding.

21 Section 25541 of the Public Resources Code sets
22 out the three things that the CEC must find in order to
23 grant a small power plant exemption. First, that the
24 proposed facility will generate no more 100 megawatts.
25 Second, that the proposed facility will not have a

1 significant adverse effect on the environment; and finally
2 that the proposed facility will not have a significant
3 adverse effect on energy resources.

4 In the event that the Commission grants the small
5 power plant exemption, the decision does not approve the
6 project, the data center, the backup generators and the
7 substation. Instead, once granted a small power plant
8 exemption requires the project proponent to obtain further
9 permits and licenses from other agencies. In this case
10 most notably the City of Santa Clara and the Bay Area Air
11 Quality Management District. Those agencies will also
12 conduct any other necessary environmental analysis as
13 responsible agencies,

14 As I said above, the first question under the
15 Warren-Alquist Act is with what the generating capacity of
16 the proposed project is. One of the contested issues in
17 this proceeding is the generating capacity. Neither the
18 Warren-Alquist Act nor CEC regulations directly address the
19 manner of calculating generating capacity for a small power
20 plant exemption.

21 Intervenor Robert Sarvey moved that the
22 application be dismissed. His argument was that grant
23 generating capacity is calculated pursuant to Section 2003
24 of the CEC's Regulations. The Proposed Decision found that
25 this facility, where the power generated will be used

1 exclusively for the Laurelwood Data Center and will not be
2 distributed offsite, that capacity should be calculated by
3 reference to the demand of the servers housed in the data
4 center, and the cooling and lighting load for the
5 buildings. This local load was calculated to be
6 approximately 99 megawatts for the two buildings of the
7 data center.

8 The Committee has proposed Condition of Exemption
9 PD-1 to ensure that if the configuration of the data center
10 were to change, and that change result in an increase in
11 the building's electricity demand, the Applicant must
12 follow the CEC's regulations for a change in project
13 design, operation or performance and amendments to
14 Commission decisions, currently Section 1769 of Title 20.
15 The Committee also proposed Condition of Exemption PD-2
16 that precludes delivery of any of the electricity to be
17 produced by the backup generators to any off-site
18 distribution system without the express written
19 authorization of the Energy Commission.

20 The second factor under the Warren-Alquist Act is
21 whether the proposed project will have an adverse effect on
22 the environment. While Section 25519 of the Public
23 Resources Code establishes the CEC as the lead agency under
24 the California Environmental Quality Act, CEQA, small power
25 plant exemptions are not governed by the CEC certified

1 regulatory program. The Applicant had included a number of
2 project design features to mitigate or avoid potential
3 environmental effects from the demolition, construction and
4 operation of the data center and the backup generators.

5 Staff prepared an environmental review document,
6 the Initial Study Proposed Mitigated Negative Declaration
7 or ISPMND that proposed additional mitigation measures for
8 biological resources and cultural and tribal cultural
9 resources. After receiving comments on the ISPMND, staff
10 also prepared an errata to its ISPMND. Because the project
11 decision imposes mitigation measures CEQA requires that the
12 CEC adopt a mitigation monitoring or reporting program,
13 MMRP. The Proposed Decision includes the MMRP as Appendix
14 B.

15 CEQA also provides that the CEC may delegate
16 reporting or responsibilities to another public agency that
17 accepts the delegation. The City of Santa Clara has agreed
18 to monitor Applicant's performance of the mitigation
19 measures that the Committee has recommended in the Proposed
20 Decision.

21 The Committee considered the ISPMND and its
22 errata during the adjudicatory process. The Committee
23 imposed the mitigation measures for biological, cultural
24 and tribal cultural resources included in the ISPMND. The
25 Committee then prepared an integrated document of the

1 ISPMND in its errata. That document is referred to as the
2 Initial Study Mitigated Negative Dec and is included as
3 Appendix A to the Proposed Decision.

4 With the imposition and implementation of the
5 mitigation measures, and on the basis of Appendix A, the
6 Proposed Decision includes findings of fact and conclusions
7 of law regarding the adequacy of our environmental review
8 for both CEQA and the Warren-Alquist Act. We specifically
9 find that the project will not have adverse impact on the
10 environment. The Proposed Decision answers the third
11 question, impact on energy resources, and finds that it
12 will not have an adverse impact on energy resources.

13 We have had meaningful and substantive
14 participation from the parties including Applicant staff
15 and Intervenor Robert Sarvey. The Energy Commission
16 received public comments from interested individuals and
17 agencies on the ISPMND, including Caltrans District 4, the
18 San Jose Airport Department, Robert Sarvey. The Bay Area
19 Air Quality Management District and the City of Santa Clara
20 have also participated in several of the Committee
21 conferences and at the evidentiary hearing.

22 The comments received on staff's ISPMND have been
23 addressed in the Proposed Decision. Comments on the
24 Proposed Decision were received from CEC staff. I have
25 prepared, and this Committee has prepared an errata that

1 was filed this morning that makes many of their requested
2 edits. You also have copies of that on the dais with you.

3 Yesterday afternoon Mr. Sarvey, our Intervenor,
4 filed comments on the Proposed Decision. Mr. Sarvey's
5 comments did not propose any specific edits to the text of
6 the Proposed Decision, so the errata does not reflect his
7 comments. Some of his comments were already addressed in
8 the Proposed Decision. We recognize that Mr. Sarvey may
9 disagree with the conclusions reached, but the committee
10 did give thoughtful consideration to his comments and
11 arguments in preparing the Proposed Decision.

12 Some of Mr. Sarvey's comments however yesterday
13 were issues being raised for the first time. I believe
14 that Sarvey is available on the phone and can and should
15 speak for himself on those topics. After he completes his
16 comments I'm sure that staff, the Applicant and/or I can be
17 ready to address questions that you may have about his
18 comments.

19 I therefore request that you adopt the proposed
20 order that's also on the dais that has been amended to
21 reflect the issuance date of the errata, and the
22 transaction number where it can be found in the docket.
23 The proposed order as amended, would authorize and grant
24 the small power plant exemption.

25 I'm available to respond to any questions that

1 may arise.

2 VICE CHAIR SCOTT: Thank you, Ms. Cochran.

3 So let's now hear from the Applicant, and if
4 you'd please introduce yourself before you start talking.

5 MR. HARRIS: Yes, good morning. It's Jeff Harris
6 on behalf of the Applicant Laurelwood Data Center. To my
7 right is Jerry Salamy with Jacobs Engineering, who is the
8 big brain on the project, so if you have any questions I'll
9 be deferring. On the phone is Matt Muell from LDC. Travel
10 and weather issues in Denver today, so Matt is safely at
11 home and I'm sure greatly enjoying this disembodied voice.
12 But he's also available to answer any questions you might
13 have and there other folks available as well, if it should
14 become necessary.

15 I guess I just want to start by thanking you.
16 You don't usually meet today. Commissioner Monahan, please
17 thank you for making sure we had a quorum today. I think
18 it's important. You know, I am not good with subtle and
19 you've heard me on the pace of this proceeding. It could
20 have been done faster for sure, but it is a quality
21 product. I thought the staff's MND was a particularly good
22 document. I see a lot of CEQA documents and it's a very
23 well-written and well-documented document. The Proposed
24 Decision, I think does a good job of addressing concerns
25 that were raised and answered. There is substantial

1 evidence in the record to support the Commission's decision
2 to move forward to approve this project, so we thank you
3 for that.

4 We have really kind of refrained from making any
5 substantive comments on the Proposed Decision. It's I
6 think very good. There's some things we probably would
7 have potentially made minor tweaks to, but they would not
8 have been substantive. And sort of the direction that
9 we've all had is to make sure that we keep things on
10 schedule. And so there was nothing that rose to the level
11 of concern in that respect.

12 We reviewed the staff's comments on the PD. I
13 think they're along the same lines. There are things they
14 probably didn't have to say, but they certainly are correct
15 in what they did say. So we don't have any problems with
16 the staff's comments on those things. And we've looked at
17 the errata, which also reflects I think, the record in this
18 proceeding as well.

19 So a very solid record, as I said it took us too
20 long to get here, but we're here, thank God. And we're not
21 waiting for a calculation of votes or anything like that
22 like Iowa, so that's all good.

23 So thank you for your time today. We do have
24 some responses to Mr. Sarvey's late filing, but I'm going
25 to go ahead and hold those in reserve until after he makes

1 his affirmative case. I don't want to do a better job of
2 making his arguments than he might, so I'm going to reserve
3 discussion of those things until later.

4 So with that I think we'll go ahead and answer
5 any questions you might have and make ourselves generally
6 available. And again thank you for the special business
7 meeting. I know that's not easy with your calendars, so
8 that's very much appreciated. And it matters, so thank
9 you.

10 VICE CHAIR SCOTT: Thank you, Mr. Harris.

11 Let me now turn to staff, and if you would please
12 introduce yourself as well.

13 Good morning, my name is Kerry Willis. I'm
14 Assistant Chief Counsel representing staff in this matter.
15 And with me is Nick Oliver who will address the Committee's
16 comments.

17 MR. OLIVER: Good morning, Commissioners. I'm
18 Nick Oliver, Staff Counsel. Staff would like to thank the
19 Committee for their work, both on the Proposed Decision and
20 also the errata that were filed today, which considered and
21 addressed nearly all of staff's comments on the Proposed
22 Decision.

23 Staff supports the adoption of the Proposed
24 Decision as amended, and we have a number of staff
25 available today both in person and on WebEx to answer any

1 questions related to the Proposed Decision or to staff and
2 Intervenor Sarvey's comments that have been filed on the
3 Proposed Decision. Thank you.

4 VICE CHAIR SCOTT: Okay. Thank you, Ms. Willis
5 and Mr. Oliver.

6 Let's now turn to comments from the Intervenor,
7 Mr. Sarvey, please.

8 MR. SARVEY: Good morning, Commissioners.

9 VICE CHAIR SCOTT: Good morning.

10 MR. SARVEY: Thank you for this opportunity to
11 address you on the Proposed Decision. I don't intend to
12 repeat most of the comments I made yesterday as they speak
13 for themselves. There wasn't any new issues presented,
14 there were mostly issues I raised but the PD doesn't
15 address. If you have any specific questions about my
16 comments I'm happy to answer them today.

17 During 2019, the Energy Commission received six
18 small power plant applications for data centers. They also
19 approved the 100 megawatt McLaren Data Center. According
20 to the Energy Commission environmental documents, the seven
21 data centers comprised 650 megawatts of peak demand in the
22 SVP service area. This eclipses Silicon Valley Power's
23 peak demand for 2018 of 526 megawatts.

24 The seven data centers not including the newly
25 announced Memorex Data Center, which there's no information

1 posted at this time, will consume up to 4,568,000 megawatt
2 hours of electricity. Which is more than the entire
3 consumption of the Silicon Valley Service System, which in
4 2018 was 3,566,000 megawatt hours.

5 The seven data centers that you are considering,
6 not including the newly announced Memorex Data Center will
7 indirectly admit will up to 860,000 metric tons of CO2 a
8 year, which is almost 50 percent of the current GHG
9 emissions in Santa Clara.

10 There's also 49 operating data centers in Santa
11 Clara right now. So I would ask that the Commission
12 consider the whole of these actions and not just focus on
13 one specific data center. You are going to be evaluating
14 seven data centers here over the next year and their
15 impacts are tremendous. Before you approve the data
16 center, the Commission should look at the entirety of its
17 actions.

18 I shudder to think when PG&E shuts off Santa
19 Clara's power what 650 megawatts of diesel generators,
20 including the existing data centers' generators will do to
21 Santa Clara's air quality.

22 I also want to address one statement in the
23 Proposed Decision that should be corrected. The PD states
24 on page 11 that the uncontested evidence shows that the
25 backup generators constitute a thermal power plant with a

1 generating capacity in excess of 50 megawatts and none are,
2 use turbine generators. This makes Section 2003
3 inapplicable.

4 The Commission has applied Section 2003 to the
5 calculation of generating capacity for power plants that
6 utilize IC engines many times before. Now, I realize most
7 of you Commissioners weren't around for these proceedings,
8 so let me recount to you what's happened in the past.

9 In the East Shore Energy Center proceeding that
10 was 06-AFC-06, the Commission used Section 2003 to
11 determine that the proposed facility would be a nominal
12 115.5 megawatt simple cycle power plant consisting of 14
13 Wartsila engines.

14 In the Quail Brush proceeding, 11-AFC-03, the
15 Commission utilized Section 2003 when determining that the
16 project's 11 internal combustion engines totaled 100
17 megawatts of capacity. In the Humboldt Generating Station
18 Proceeding, 06-AFC-07, the Commission determined that the
19 Humboldt Project would consist of 10 dual fuel Wartsila
20 16.3 megawatt reciprocating engines for a total capacity of
21 163 megawatts.

22 Clearly the Commission has utilized Section 2003
23 to evaluate the generating capacity of IC engines before.
24 And this is the first time Section 2003 was not used to
25 determine the generating capacity of any project other than

1 the McLaren Data Center. And previously the Santa Clara
2 Data Center was subject to Section 2003.

3 One other issue I think that the decision ignores
4 is why does this project need 165 megawatts of diesel
5 engines to support 100 megawatts a load? All of your other
6 seven data center applications utilize approximately 120
7 megawatts of diesel generators to support 100 megawatts.
8 The testing of the extra 40 megawatts, just the testing of
9 the 40 megawatts of generators, leads to approximately 6
10 tons per year of NOx, 800 metric tons per year of CO2
11 equivalent, and about 600 pounds of diesel particulate
12 matter. The decision fails to address this issue, could we
13 please address it now? Thank you.

14 VICE CHAIR SCOTT: Thank you, Mr. Sarvey.

15 Let me turn back to Hearing officer Cochran to
16 see whether she has any responses.

17 HEARING OFFICER COCHRAN: I think that on the
18 more technical aspects, especially the generating capacity
19 numbers that that might be better answered by Applicant or
20 staff on the air quality.

21 In terms of how we have used Section 2003 in the
22 decision, while it was not fully applicable we did use it
23 as guidance in both McLaren and in this decision. However,
24 each of those was based on the specific facts. And I have
25 no knowledge of East Shore, Quail Brush or Humboldt that

1 Mr. Sarvey discussed. Perhaps others with a longer
2 institutional memory than I have can provide that.

3 And again though on the first point which was the
4 amount of the number of data centers coming in, and the
5 existing number of data centers. The analysis in the
6 Proposed Decision follows the guidelines from BAAQMD for
7 the determination of thresholds of significance for
8 criteria air pollutants, GHG and toxic air contaminants.
9 And so that also includes the analysis of the cumulative
10 impacts.

11 So I believe that the Proposed Decision does
12 answer that, but if there are more expert folks than I, I
13 defer to them.

14 VICE CHAIR SCOTT: Thank you, Ms. Cochran
15 Let's turn to the Applicant, please.

16 MR. HARRIS: Thank you for the opportunity
17 respond.

18 I guess at the highest level we need to take a
19 look at substantial evidence. And Mr. Sarvey's arguing is
20 that he has put some evidence to the contrary and into the
21 record. That's correct. But the question is has he met
22 his burden of providing substantial evidence in which the
23 Commission can make a decision? And that's absolutely not
24 the case. He has not provided substantial evidence.

25 The Committee and the Commission have carefully

1 weighed his evidence. He has been heard. Being heard
2 doesn't mean you necessarily absolutely have an absolute
3 right to have your opinion win the day. It's on the weight
4 of the evidence. And so there is substantial evidence to
5 support this decision. I think that's the critical legal
6 issue.

7 On Section 2003 it is not applicable. It is for
8 turbine generators. So you didn't apply a regulation on
9 hygiene for workers at a poultry plant either; that's
10 equally inapplicable. So pointing to an in-applicable
11 (phonetic) regulation does not create a legal issue. 2003
12 has a very specific purpose. The Commission's regulations
13 deal with those large centralized thermal power plants, so
14 that's not the case here. I think you've done that
15 correctly.

16 And in terms of the new data centers that are
17 coming in, CEQA contemplates that the world doesn't stop
18 when an application is filed. And in this case that's
19 exactly what has happened. The extent that information was
20 available during the time of permitting of this process has
21 been taken into consideration, and is reflected in your
22 record. Things that have happened subsequent to that like
23 an announced project that there's no information on, CEQA
24 contemplates that the world moves forward. And that
25 project, that project will take into consideration this

1 project in its baseline. So to suggest some kind of hole
2 in the CEQA record, because the world hasn't stopped is
3 simply incorrect.

4 So on both those points I think Mr. Sarvey is
5 incorrect. I will give him credit for being correct that
6 he characterized most of his arguments as being restatement
7 of his prior arguments. The majority of the 70-page filing
8 yesterday was attachments of things you've seen before, an
9 argument you've heard before. So there's literally nothing
10 new in those arguments and no basis for the Commission to
11 change your decision. Again, there's substantial evidence
12 and simply re-litigating those issues does not change the
13 fact that the record is there.

14 Second, there are a couple of new arguments and
15 new documents in what Mr. Sarvey filed yesterday. And I
16 think it's your constitutional duty to ignore those things,
17 because they have been brought in late when they could have
18 been produced early. It's pretty much that simple. I have
19 famously used the term "sandbagging" in the past. And I
20 probably regret that, but yes, your process contemplates
21 that if I can bring you information I do that during the
22 proceeding. I don't bring it to you the day before you're
23 about to make your decision.

24 If something could have been produced in the
25 exercise of due diligence during the hearings and was not,

1 for this Commission to consider that information would be
2 to basically deprive an applicant of due process. And so
3 you're right not to consider late-filed things that were
4 available, but not put into your record.

5 So I am not afraid of any of those arguments and
6 if you want me to answer any of them directly, I'm pleased
7 to do so. But they really have no place in your decision
8 today. And this Commission has been very good about
9 preventing sandbagging. Preventing people from coming in
10 at the last minute and saying, "You know, stop everything.
11 I've got a new argument or a new piece of information." So
12 I hope you'll continue that tradition, because I think
13 that's what due process dictates.

14 Finally, there are some legal arguments in what
15 was filed yesterday. Some of them are rehash, some of them
16 are new. But to the extent they were relevant they were
17 brought forward to the Commission during the proceeding.
18 And to the extent that they're not relevant, you don't need
19 to consider those things.

20 I guess I would note as well that Mr. Sarvey
21 waived briefing on this matter. Transcript, page 145,
22 lines 8 through 11, if you need the reference. So to
23 suggest that there was some new briefing that needed to
24 happen, I think is contrary to what happened at the close
25 of evidentiary hearing.

1 So all those things being said, I think the
2 Commission should do what it's on a course to do right now,
3 which is to move forward with this project. And move
4 forward with this approval, recognizing that the things
5 that have been brought to you at the last minute don't
6 change the substantial evidence in your record.

7 Give me a moment, please?

8 (Off mic colloquy.)

9 MR. HARRIS: Okay. I think that's probably
10 enough of a diatribe for now. I'm available to answer any
11 questions you might have.

12 You know, I will note that the project design has
13 a certain number of generators. That's intended to allow
14 for certainty. The Internet is 24/7 nine nine nines
15 (phonetic) of reliability and different customers have
16 different needs as well, so those configurations and that
17 discussion of the amount of generators, that's all also
18 within your record as well. So to suggest that there's
19 some kind of standard or limit that this project is
20 inconsistent with is just simply incorrect. In an apples-
21 to-apples comparison, this is a state-of-the-art data
22 center that's going to be able to keep the Internet going
23 and keep California on the cutting edge of really Silicon
24 Valley activity.

25 And with that I think I'll go ahead and end my

1 comments, so thank you.

2 VICE CHAIR SCOTT: Okay. Thank you, Mr. Harris.
3 Let's turn to staff, please.

4 MR. OLIVER: Staff would echo much of what Mr.
5 Harris has said on the legal end. I think that ultimately
6 the 2003 issue is just about what the definition of
7 generating capacity is here. It's a term in the Warren-
8 Alquist Act that had been defined by regulations in 2003
9 for turbine generators. This is a data center that does
10 not utilize that technology. And so what matters legally
11 is whether the approach utilized by the Committee in the
12 Proposed Decision is reasonable. Is it supported by
13 substantial evidence? Staff believes that it is both of
14 those things, so nothing Mr. Sarvey has said really changes
15 that as far as I can tell.

16 The technical matters that he has raised I'm not
17 at all qualified to discuss. We do have staff, Mr. Layton
18 or other staff, may be able to answer any specific
19 questions that he might have raised for the Commissioners.

20 And we also wanted to add we've been notified by
21 our staff we wanted to propose one change to the errata. I
22 don't know if now would be a good time for that or if we
23 should hold off on that?

24 VICE CHAIR SCOTT: Yes, please. We'll get that
25 now.

1 MR. OLIVER: Okay, so on number 16, it's on the
2 final page 5, staff had proposed that the footnote for
3 Guidelines 15124 be changed to Guidelines 15063(d). It
4 currently says (b), which we believe to be the wrong
5 subdivision for that.

6 VICE CHAIR SCOTT: Okay, excellent. So the
7 update for on page 5, number 16, footnote 246 would say
8 instead, "Guidelines Section 15063(d)?"

9 MR. OLIVER: That's correct.

10 VICE CHAIR SCOTT: Okay. Thank you.

11 Any other comments, Mr. Oliver?

12 MR. OLIVER: No more for me.

13 VICE CHAIR SCOTT: Okay. Thank you.

14 Let me turn back to Intervenor Sarvey please, if
15 there's anything else you'd like to say?

16 MR. SARVEY: No, I don't have anything else to
17 add. I hope you had an opportunity to receive my comments
18 and I rest on those. Thank you.

19 VICE CHAIR SCOTT: Thank you, Mr. Sarvey.

20 All right, let me check and see whether or not we
21 are -- I'm sorry.

22 (Off mic colloquy.)

23 VICE CHAIR SCOTT: Correction, does anyone else
24 have a comment on the proposed change to the errata, the
25 proposed update to the errata, Applicant or Intervenor

1 Sarvey?

2 MR. HARRIS: I just was checking the reference
3 that Mr. Oliver put forth. And I concur that it is sub
4 (d), so I luckily had it here. I don't have the memorized,
5 so thank you. And I have no other comments, so.

6 VICE CHAIR SCOTT: Okay. Thank you, Mr. Harris.
7 Mr. Sarvey?

8 (No audible response.)

9 VICE CHAIR SCOTT: Okay, hearing none now let me
10 turn to see whether there is any public comment. I am not
11 seeing any in the room. If there's anyone in the room who
12 would like to make a public comment, please now is the
13 time.

14 (No audible response.)

15 VICE CHAIR SCOTT: All right, seeing nobody
16 dashing towards our microphone let me check whether there
17 are any public comments on our WebEx or the phone.

18 Okay, I'm getting a head shake, so no. Let me
19 now then turn to transition to the Commissioner discussion.
20 Commissioner Douglas, please.

21 COMMISSIONER DOUGLAS: All right. Well, thank
22 you, Commissioner Scott and I do have some comments to
23 offer. As the Presiding Member assigned to this
24 proceeding, and to other data center proceedings, but
25 limiting my comments here really to this proceeding.

1 So the approval of the Committee Proposed
2 Decision would establish that the Commission has found
3 based on substantial evidence in the record that the
4 standby backup generators may be exempted from the
5 Commission's exclusive permitting jurisdiction over thermal
6 energy facilities with a generating capacity of 50
7 megawatts or more.

8 And specifically, and the Hearing Officer went
9 over these findings, but the Warren-Alquist Act allows for
10 this exemption to be issued when the following findings can
11 be made. The facility will have a generating capacity of
12 more than 50 and up to 100 megawatts, and the decision, the

13 Proposed Decision deals with that question I
14 think very clearly. No substantial impact on the
15 environment would result from the construction or operation
16 of the facility, and again the decision deals with this
17 clearly.

18 And where the Committee felt it was appropriate
19 we put, you know, I'll call them conditions in place.
20 They're not mitigations, but they are conditions that just
21 ensure and give the Commission the full confidence that the
22 project description that was given to us is what will be
23 carried forward.

24 And finally that there will be no substantial
25 impact on energy resources from the construction or

1 operation of the facility.

2 As you've already heard, the granting of this
3 exemption does not in itself allow the construction and
4 operation of a proposed facility. Because even with an
5 exemption, an Applicant is then required to go through the
6 local permitting process for approval.

7 This data center and the emergency backup
8 generators was subject of a robust, transparent and open
9 public process. The Committee benefited greatly from the
10 thorough environmental analysis conducted by staff, and
11 from the participation of local agencies, and productive
12 participation from Intervenor Robert Sarvey.

13 And each of our findings is supported by
14 substantial evidence in the record, so I urge my fellow
15 Commissioners to approve and adopt the Committee Proposed
16 Decision and errata. I'm happy to the extent there are
17 questions, there is discussion. I'm certainly happy to
18 engage in that. And I think I'll take this moment though
19 to thank Hearing Officer Susan Cochran, all of the parties,
20 CEC Technical Adviser Kristy Chew, and my advisers, and
21 Vice Chair Scott's office for their efforts on this
22 proceeding.

23 We take these matters seriously and we spend real
24 time with the record in all of these cases.

25 VICE CHAIR SCOTT: Well, thank you so much,

1 Commissioner Douglas. I want to echo many of the comments
2 that you made and also thank our Intervenor for his
3 participation in the proceeding. As you noted, we
4 carefully considered the input from all the parties
5 including information and comments from the Applicant, the
6 staff, the Intervenor, written comments we received from
7 California Department of Transportation, City of San Jose
8 Airport Department, and others.

9 One thing I did want to highlight, because there
10 were some questions about the Energy Commission's outreach.
11 And I am the Public Member on the Energy Commission, was
12 just to highlight a bit of the way that we worked to meet
13 and exceed our regulations to inform the public about this
14 SPPE application.

15 On or around March 14th, the staff mailed out a
16 notice of receipt of the Laurelwood Data Center SPPE
17 application. And that mailing list includes property
18 owners, occupants of adjacent properties, responsible and
19 trustee agencies, Native American tribes, environmental
20 justice organizations, other interested parties. On or
21 around March 26, we also sent letters to six Native
22 American tribal representatives as part of our CEQA tribal
23 consultation process.

24 Around April 2nd through about the 8th or so of
25 2019 we published the Notice of Receipt of the SPPE

1 application in the "San Jose Mercury News" and in the
2 "World Journal" in both English and Chinese.

3 Our Initial Study Proposed Mitigated Negative
4 Declaration, which contained staff's environmental analysis
5 of the project was submitted to the State Clearinghouse for
6 distribution on August 28th of 2019.

7 Public comment on the ISPMND ended on October 3rd
8 and we received comments from many folks, which we also
9 carefully considered.

10 The notices for all of the Committee's events
11 including our Committee conferences on May 8th and July
12 23rd of 2019, the Notice of the Prehearing Conference and
13 Evidentiary Hearing were mailed to the same mailing list
14 used by staff for the notice of receipt of the SPPE. So
15 that neighboring properties and responsible and trustee
16 agencies were aware of our consideration of the SPPE. And
17 Notice of Availability of the Committee Proposed Decision
18 was also mailed to that mailing list, as well as being
19 docketed and sent to our listserv for this proceeding.

20 I want to echo the thanks that you had for staff,
21 and Applicant Intervenor for their thoughtful engagement on
22 this process. Their participation and input has made this
23 very robust and it's resulted in a thorough consideration
24 of all of the issues that were presented to us in the SPPE.
25 And I also want to say thank you to our Hearing Officer for

1 her good work, and to you and your team for your great work
2 on this and also to my advisers, and to Kristy Chew, the
3 Hearing Adviser.

4 So those are my thoughts in this space. And
5 Commissioner Monahan, do you have any comments or
6 questions?

7 COMMISSIONER MONAHAN: Yes, I just have one
8 question and I think Commissioner Douglas is the right one
9 to answer it. So the issue that was raised around
10 cumulative impacts, can you distinguish between the role of
11 the Bay Area Air Quality Management District and our role
12 in approving the SPPE? Well, especially specifically
13 around this issue of cumulative impacts.

14 COMMISSIONER DOUGLAS: Right. I mean and I may
15 bounce this to Applicant and staff to speak to as well, but
16 just to say briefly we do a CEQA analysis and we address
17 direct impacts and we address cumulative impacts. And so
18 we analyze it and then when it moves forward to local
19 agencies for their decision, they analyze it as well.

20 In this instance we used thresholds of
21 significance developed by the Bay Area Air Quality
22 Management District to analyze some of the key issues
23 including cumulative impacts.

24 I see the Hearing Officer has come forward.

25 HEARING OFFICER COCHRAN: I would just say that

1 this is -- there's an extensive discussion of this included
2 in the decision. And essentially the way that the BAAQMD,
3 sorry the Bay Area Air Quality Management District
4 thresholds work is that the thresholds, because these tend
5 to be a cumulative impact regardless that if an individual
6 project meets or exceeds the threshold it is then also a
7 cumulative impact. I think I'm saying that right. I'm
8 getting a nod from Mr. Salamy who is the technical expert
9 for the Applicant.

10 So when staff did its analysis, and those are
11 included as Tables 2, 3 and 4 in the Proposed Decision it
12 shows that the project does not exceed the thresholds of
13 significance except potentially for one where they will be
14 buying emission offset credits. Does that answer your
15 question, Commissioner Monahan?

16 COMMISSIONER MONAHAN: Yes, thank you.

17 VICE CHAIR SCOTT: Other comments or questions?
18 Okay, well with then may I have a motion on Item 1?

19 COMMISSIONER DOUGLAS: Yes, and I'm going to make
20 sure I get this right. (Laughter.) In fact, I'm just
21 going to ask for help to get this right.

22 HEARING OFFICE COCHRAN: I think the motion
23 should be to adopt the Proposed Decision as amended. And
24 that includes the amendment to the errata to reflect
25 subdivision (d) instead of (b) in the footnote. I believe

1 that's the motion.

2 COMMISSIONER DOUGLAS: And there's an Adoption
3 Order?

4 HEARING OFFICE COCHRAN: Yes.

5 COMMISSIONER DOUGLAS: Okay, so I move to adopt
6 the Proposed Decision with the errata as amended, as has
7 been discussed, and the Adoption Order.

8 HEARING OFFICE COCHRAN: Correct. And the
9 Adoption Order reflects the errata date of today and the
10 TN-231933.

11 COMMISSIONER DOUGLAS: All right, so moved.

12 COMMISSIONER MONAHAN: I second.

13 VICE CHAIR SCOTT: All those in favor?

14 (Ayes.)

15 VICE CHAIR SCOTT: The motion carries 3-0. Thank
16 you very much everyone.

17 Let's now move on to Item 2, Lead Commissioner or
18 Presiding Member Reports, and I will start with
19 Commissioner Monahan.

20 COMMISSIONER MONAHAN: Yes, so as you both know
21 this is a big year for different analytical reports coming
22 out of the CEC related to transportation. So we've been
23 working with the FTD team, the Fuels and Transportation
24 Division team around timelines and products for both --
25 well for three reports. But specifically the Vehicle Grid

1 Integration Report and the 2127 Charging Analysis Through
2 2030 Report.

3 As I've mentioned to you in the past, but just to
4 reiterate we're really trying to focus on we want for both
5 of these analyses and with the IEPR, we want to have very
6 digestible documents that anybody with -- you don't have to
7 have like a sophisticated understanding of transportation
8 to be able to read those documents and understand them.
9 And those will be backed up with significant technical
10 record and technical documents that are really not for the
11 average person. I would say most people are going to just
12 read the summary and then those who are really steeped are
13 going to do the deep dive. So working you know with staff
14 in collaboration to really figure out how do we present
15 documents that the average person couldn't understand while
16 we still maintain that deep technical record.

17 So it's a work in progress. I think we're all
18 committed to doing this well and starting with good
19 outlines to make that process move smoothly.

20 VICE CHAIR SCOTT: It's that that time of year
21 where the wrapping up of the 2019 IEPR overlaps with the
22 getting going of the 2020 IEPR, so it's exciting to hear
23 having the great outlines. And I think that adjustable
24 pieces will be really nice and give power and voice to the
25 work and the analytics that we carry out here at the

1 Commission. It's really great work and so having it in a
2 way that people can digest it and understand it, I think is
3 incredibly important. So I'm glad that you're working on
4 that for us next year or this year.

5 Let me turn to Commissioner Douglas, any reports?

6 COMMISSIONER DOUGLAS: I will give a brief
7 report, and I really think that in our next Business
8 meeting when the Chair is back, he'll no doubt have more to
9 say about this. But I did have the opportunity to
10 participate in a meeting that is an Energy Partnership
11 Summit. It's part of a series of meetings the Energy
12 Commission has had with the Department of the Navy. We
13 were joined by the President of the PUC and by Steve
14 Berberich from the Independent System Operator.

15 And we had a very robust discussion with the Navy
16 and the Marines about California's energy goals, their
17 energy goals, and anticipated facility needs, and other
18 kind of goals in California as they carry out their
19 mission. And so it was a really positive discussion. it
20 was I was very happy to have been there for any number of
21 reasons. But I think that when the Chair is back we'll
22 probably give a more full report on that, so that's my only
23 report today.

24 VICE CHAIR SCOTT: Great, I will just note as I
25 mentioned briefly just a second ago, the 2019 IEPR is

1 wrapping up. The final is posted to our web page and will
2 be for our consideration in our later in February Business
3 meetings, so I commend that document to you all. Please do
4 take them some time to read through the draft.

5 And then I also wanted to note that just
6 yesterday Commissioner Newsom [sic] issued a proclamation
7 declaring this month Black History Month, so please do take
8 a minute to jump on -- oh I'm sorry, did I say
9 Commissioner? I meant Governor Newsom, I'm sorry, my
10 apologies. Governor Newsom issued a proclamation declaring
11 Black History Month just yesterday, so I commend that to
12 you all as well. Take a take a look at his proclamation
13 and those are my brief updates for now. As well I'll save
14 the rest for our February Business meeting.

15 So with that let me turn to Item Number 3, the
16 Executive Director's Report, please.

17 MR. BOHAN: Nothing to report, thank you.

18 VICE CHAIR SCOTT: All right, with that let's
19 turn to Item 4, the Public Advisor's Report, please.

20 MS. GALLARDO: Nothing to report.

21 VICE CHAIR SCOTT: She is telling me there is
22 nothing to report.

23 So with that let me turn to Item 5, Public
24 Comment. I do not see public comment in the room. Do we
25 have any public comment on the phone or WebEx? Okay, I'm

1 getting a no there as well.

2 So let me turn to Item 6, the Chief Counsel's
3 Report.

4 MS. HOUCK: Nothing to report.

5 VICE CHAIR SCOTT: Okay. And with that then we
6 are adjourned. Thank you, everybody.

7 (The Business Meeting adjourned at 10:54 a.m.)

8 --oOo--

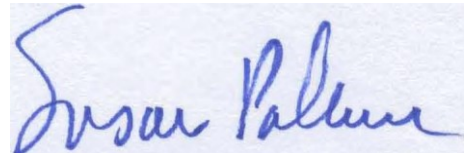
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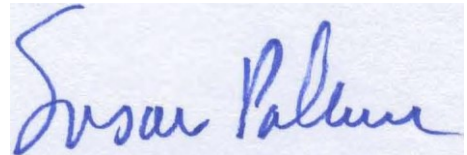
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And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

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Susan Palmer
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