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**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of:

SAN JOSE CITY DATA CENTER

Docket No. 19-SPPE-04

**PETITION OF CALIFORNIA UNIONS FOR RELIABLE ENERGY  
TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO  
CURE DATA REQUEST, SET ONE, #24**

August 17, 2020

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**PETITION OF CALIFORNIA UNIONS FOR RELIABLE ENERGY TO  
COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO  
CURE DATA REQUEST, SET ONE, #24**

Pursuant to sections 1716 and 1941 of Title 20 of the California Code of Regulations, California Unions for Reliable Energy (“CURE”) files this Petition to Compel Production of Information in Response to CURE Data Request, Set One, #24 (“Petition”) for the San Jose City Data Center, Docket No. 19-SPPE-04 (“Project”).

**I. INTRODUCTION AND BACKGROUND**

Section 1716(b) of the Commission’s regulations gives any party the right to request from the applicant any information that is reasonably available and relevant to the application proceedings or reasonably necessary to make any decision on the application.<sup>1</sup> The Commission’s discovery procedures require the applicant to provide a response to a data request if “the information sought appears to be reasonably available, relevant, or necessary for [the Commission] to reach any decision in [the] proceeding.”<sup>2</sup> If the applicant refuses to provide the requested information, the requesting party “may petition the committee for an order directing the responding party to supply such information.”<sup>3</sup>

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<sup>1</sup> Cal. Code Regs., tit. 20, § 1716(b).

<sup>2</sup> Committee Ruling re: CVRP Petition to Compel Production of Documents, Docket No. 99-AFC-3 (Nov. 21, 2000), p.1.

<sup>3</sup> *Id.* at § 1716(g).

On May 28, 2020, CURE filed a motion for leave to file data requests for the Project pursuant to section 1716(b). (Exhibit 1, “CURE’s Data Requests.”) The Commission granted CURE’s motion on June 29, 2020. On July 21, 2020, Microsoft Corporation filed objections to CURE’s data requests. (Exhibit 2, “Microsoft’s Objections.”) CURE respectfully submits this petition pursuant to section 1716(g) of the Commission’s regulations to compel the production of information in response to CURE’s data request number 24 because the information is relevant, reasonably available to Microsoft Corporation and largely within the sole control of Microsoft Corporation.<sup>4</sup>

**II. THE REQUESTED INFORMATION IS RELEVANT AND NECESSARY FOR THE COMMISSION’S REVIEW OF THE PROJECT’S AIR QUALITY IMPACTS AND IS REASONABLY AVAILABLE TO THE APPLICANT**

Any party to a Small Power Plant Exemption (“SPPE”) proceeding may “request from the applicant any information reasonably available to the applicant which is relevant to the ... proceedings or reasonably necessary to make any decision on the ... application.”<sup>5</sup> At least three sources define the type of information that is relevant and reasonably necessary to make a decision on Microsoft Corporation’s SPPE. First, the Warren Alquist Act requires that the Commission find that a project must not add capacity in excess of 100 megawatts and that no substantial adverse impact on the

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<sup>4</sup> Cal. Code Regs., tit. 20, § 1716(g).

<sup>5</sup> Cal. Code Regs., tit. 20, § 1716(b).

environment or energy resources will result from the construction or operation of the project.<sup>6</sup> Second, CEQA requires sufficient facts and analysis for the Commission to identify potentially significant environmental impacts and devise feasible mitigation measures for significant adverse direct, indirect, and cumulative impacts of the Project.<sup>7</sup> CEQA also requires environmental documents for the Project to include “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.”<sup>8</sup> Third, the Warren-Alquist Act requires that the Commission determine the Project’s conformity with other laws, ordinances, regulations and standards, and assure that the public’s health and safety will be protected prior to issuing a license.<sup>9</sup> Information related to any of these requirements is unquestionably relevant and necessary for the Commission’s review of Microsoft Corporation’s SPPE.

CURE’s Data Request 24 sought “[a]ll estimates of emissions associated with electricity consumption” for the Project because Microsoft Corporation’s SPPE application failed to include all information necessary to evaluate the accuracy of the Project’s air quality impacts.<sup>10</sup> This information

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<sup>6</sup> Pub. Resources Code § 25541.

<sup>7</sup> Pub. Resources Code §§ 21080(d)-(f), 21081.6, 21082.2; Cal. Code Regs., tit.14, §15151.

<sup>8</sup> *Sierra Club v. Fresno* (December 24, 2018) 6 Cal.5th 502, 515-516 quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405, 253 Cal.Rptr. 426, 764 P.2d 278 (*Laurel Heights I*).

<sup>9</sup> Pub. Resources Code § 25500.

<sup>10</sup> Exhibit 1.

is relevant and necessary for the Commission's analysis of the Project under the Warren Alquist Act and CEQA because the energy demands of the Project may necessitate additional power generation to be brought online. Thus, the Project could result in California retaining fossil fuels plants longer than before, leading to a delay in California's transition to renewable energy and continued criteria pollutant emissions that otherwise would not occur. The Project's potential emissions are certainly relevant to the Commission's analysis of the Project's air quality impacts pursuant to CEQA and the Warren Alquist Act.

Microsoft Corporation objected to CURE's data request number 24 – not because it claims the information sought is not relevant or reasonably necessary for the Commission to analyze the Project's air quality impacts – but because, according to Microsoft Corporation:

[t]his Data Request is burdensome and onerous as the Applicant provided greenhouse gas emission estimates associated with energy use in SPPE, and emission factors for these compounds are readily available. Identifying criteria pollutant emission factors for use in a long-term analysis would be difficult due to the pace at which renewable energy sources are incorporated into the California electrical grid.

Microsoft Corporation's arguments are unsupported and unconvincing for two reasons. First, the Applicant did not provide all data associated with greenhouse gas emissions. While greenhouse gas emissions estimates associated with energy use from the Project were modeled in the Project's application, the Applicant did not include the factors that were used to

estimate these emissions. Neither CURE, the Commission, nor other members of the public can assess the accuracy of the emissions presented in the model and cannot determine whether impacts are actually less than significant. The Applicant must provide the readily available emission factors used to support their estimates.

Second, the Applicant's bald assertion that a criteria pollutant emission model would be burdensome is false. This data should be readily available because the Applicant has already determined the greenhouse gas emissions for energy generation for the lifetime of the Project. Given that there is already an estimation of the sources of power, it should not be difficult to estimate criteria pollutants for those power sources.

Alternatively, the Applicant could select the year 2050 as a reasonable year to assume that the energy grid will be 100 percent renewable and conduct a linear rate of decline to this year, based on readily available emissions factors for the City of San Jose. Neither of these approaches would be burdensome and the data is necessary for CURE, the Commission, and the public to meaningfully analyze the Project's impacts and ensure they are mitigated to a less than significant level.

The information requested by CURE's data request number 24 is relevant and necessary to the Commission's review of the Project under the Warrant Alquist Act and CEQA. Indeed, the Applicant itself has not argued otherwise. CURE respectfully requests that the Commission require

Microsoft Corporation to provide the information responsive to CURE's data request number 24.

Dated: August 17, 2020

Respectfully submitted,



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