

**DOCKETED**

<b>Docket Number:</b>	20-SPPE-02
<b>Project Title:</b>	Lafayette Backup Generating Facility
<b>TN #:</b>	234557
<b>Document Title:</b>	Digital Realty Response to Staff's Issue Identification Report and Proposed Schedule
<b>Description:</b>	N/A
<b>Filer:</b>	Scott Galati
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<b>Submitter Role:</b>	Applicant Representative
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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application For Small Power Plant  
Exemption for the **LAFAYETTE  
BACKUP GENERATING FACILITY**

**DOCKET NO: 20-SPPE-2**

**DIGITAL REALTY RESPONSE TO  
STAFF'S ISSUE IDENTIFICATION  
REPORT AND PROPOSED  
SCHEDULE**

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Digital Realty, in accordance with the Notice of Committee Conference and Related Orders (TN 234498), dated, August 25, 2020, hereby files its response to Staff's Status Report and Proposed Schedule (TN 234526), dated August 28, 2020.

Digital Realty supports Staff's recommendation that the appropriate environmental document for the Lafayette Backup Generating Facility (LBGF) is an Initial Study/Mitigated Negative Declaration (IS/MND). Digital Realty also agrees with Staff's characterization that information is still being gathered through the discovery process to enable Staff to prepare the IS/MND for the LBGF. Digital Realty has filed updated responses to the numerous data requests relating to Air Quality, Public Health, and Greenhouse Gases from Staff Data Request Set 1. Digital Realty recently received Data Request Set 2.

We understand and agree that it is premature for Staff to propose a date whereby the IS/MND can be published. We also understand why Staff estimates it could publish the IS/MND by late November. We appreciate that Staff will endeavor to publish before that date as we believe we will be able to provide Staff the information it needs to do so.

We also agree that after several approved data center backup generating facility projects, the issues have been thoroughly examined. The Committee should simply not repeat the procedure and process it has used to date to thoroughly examine the same issues. To this end, we make the following recommendations which we believe are consistent with Staff's recommendations.

1. To avoid the delays experienced in previous projects, Digital Realty requests that the Committee require any potential Intervenors to file a Petition to Intervene 10 days before the close of the public comment period for the IS/MND. Any potential Intervenor would have had 20 days since publication of the IS/MND to determine whether or not to intervene or to participate as a member of the public.
2. Digital Realty requests that an Intervenor be required to file comments on the IS/MND as a prerequisite to being allowed to present further oral and written testimony and that those comments be treated as Intervenor's Opening Testimony for each respective issue. Digital Realty agrees to file Opening Testimony on the same day. In this way, Staff can provide responses to such comments and/or Opening Testimony, thereby narrowing and reducing the time and issues requiring adjudication in evidentiary hearings. This does not place any undue burden on Intervenors, as they would have had the same amount of time to review the IS/MND and provide comments as any agency or other member of the public. For CEQA, this is the primary way for interested persons to participate, and it is only fair to allow Staff an opportunity to consider and respond to comments. Evidentiary hearings should not be the only place Staff and Digital Realty can respond to such comments. Opening Testimony should be to provide facts that support arguments and not an opportunity to bring up new issues.
3. Digital Realty supports Staff's request for 15 days to provide Response to Comments and Reply Testimony. All parties should file Reply Testimony on the same day.
4. Digital Realty requests that the PreHearing and Evidentiary Hearing be combined. The PreHearing Conference should be used to narrow the issues to be heard at the evidentiary hearing. To that end, Digital Realty requests that rather than repeat testimony and arguments for threshold issues adjudicated in previous cases, the Committee should take administrative notice of portions of

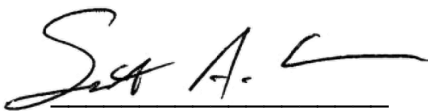
those records and focus oral and written testimony to issues that are unique to the LBGf. A party proffering such new and unique evidence should be required to make an offer of proof at the PreHearing Conference why such evidence should be allowed.

There are two reasons Digital Realty is requesting the above suggestions. The first is to streamline the record and process to bring the proceeding more in line with a SPPE case where the focus is on compliance with California Environmental Quality Act (CEQA) and to prevent further movement towards the proceedings appropriate for an Application For Certification (AFC). The second is that the Committee proposed decisions have taken a lot of time and effort to publish, often taking almost as much time as Staff required to evaluate the project and publish its environmental document. A robust record can be created by taking official notice of the information supplied in the prior projects, especially since they have been repeated multiple times in the prior 5 SPPE Application proceedings. Focusing the proposed decision on items that have not been adequately adjudicated and are unique to the LBGf would allow the Committee to significantly reduce the time to prepare the Proposed Decision, without the risk of harming the evidentiary record.

Digital Realty will continue to work diligently with Staff to provide all the data necessary to prepare its IS/MND and appreciates the Committee's consideration of our schedule-related recommendations.

Dated: September 2, 2020

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott A. Galati", with a horizontal line underneath it.

Scott A. Galati  
Counsel to Digital Realty