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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:

San José City Data Center

Docket No. 19-SPPE-04

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

September 4, 2020

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

Microsoft Corporation (Microsoft or Applicant) hereby files the following Response to the Petition of California Unions for Reliable Energy (CURE) to Compel Production of Information in Response to CURE Data Request, Set One, #24 (Petition), as relevant to the San Jose City Data Center, Docket No. 19-SPPE-04 (Project).

A. Background

CURE filed a Motion for Leave to File Data Requests on May 28, 2020 (Data Requests). On June 29, 2020, Commissioner and Presiding Member Karen Douglas granted the motion. On July 20, 2020, Microsoft filed Objections to CURE’s Data Requests, and thereafter on July 29, 2020, Microsoft filed Substantive Responses to CURE’s Data Requests. CURE filed its Petition on August 17, 2020, seeking to compel Microsoft to produce information in response to Data Request #24. Presiding Member Karen Douglas issued an Order regarding the Petition on Friday, August 28, 2020, stating the Committee’s decision not to hold a hearing on the Petition and inviting all parties to file any additional information relevant to the Committee’s consideration of the Petition by Friday, September 4, 2020.

B. CURE’s Petition to Compel Should Be Denied.

Section 1716 contains the basic framework for information exchanges (i.e., Data Requests and Responses) for licensing proceedings: “Any party may request from an Applicant ...information which is reasonably available to the Applicant which is *relevant to the notice or application proceedings or reasonably necessary to make any decision on the ...application.*” (20 Cal. Code Regs., § 1716(b), emphasis added.) In considering the reasonableness of a Data Request, the Commission evaluates whether the information sought appears to be reasonably available, relevant and reasonably necessary for the Commission to reach a decision in the proceeding.

The Applicant believes that the analyses it has prepared are sufficient for the Energy Commission to make an informed decision about the Application, and for the Application to comply with applicable laws, ordinances, standards and regulations (LORS). An intervener may disagree with analyses and prepare its own calculations or estimates regarding any relevant issue. However, the discovery phase must be differentiated from the evidentiary phase of this proceeding.

CURE's Data Request #24 seeks "All estimates of emissions associated with electricity consumption." In its Objections to this request, the Applicant explained that this request is unnecessary, burdensome, and onerous as: (1) the Applicant provided greenhouse gas emission estimates associated with energy use in its Application (see SPPE Application Table 3.8-3), (2) emission factors for these compounds are readily available, and (3) 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. In response, CURE has raised several unsubstantiated arguments in support of its Petition to compel the Applicant to respond.

1. The Applicant's SPPE Application Contains All Information Necessary to Evaluate the Project's Air Quality Impacts.

First, CURE argues that the SPPE application did not include all information necessary to evaluate the accuracy of the Project's air quality impacts. This is false. The Applicant provided an air quality impact assessment of the Project's foreseeable direct and indirect impacts.

Presenting criteria air pollutants (CAPs) for electrical usage by the Project requires a significant level of speculation regarding Pacific Gas and Electric Company's (PG&E) available generating assets. Current estimates of system-wide PG&E greenhouse gas (GHG) emissions are possible as these data sets are readily available in numerous online reports.¹ However, this same data is not readily available for CAPs. Furthermore, as the State continues decarbonizing

¹ <https://www.sanjoseca.gov/home/showdocument?id=44752>

electrical generation, any estimate based on the most recent data for existing fossil-fueled generating assets would overestimate future air emissions based electrical use.

Additionally, PG&E's existing fossil-fired electrical assets are allowed to operate under their existing air permits, which when issued required mitigation of the air quality impacts associated with their maximum possible operating profile, defined as their Potential to Emit (PTE). This PTE was used to assess the CAP mitigation requirements (in the form of purchasing and surrendering emission reduction credits). In addition, PG&E is required to mitigate GHG emissions through California's Cap and Trade program, which requires GHG offsets based on actual GHG emissions.

CURE also claims that the Applicant's SPPE Application did not include factors that were used to estimate emissions. This specific information was requested in CURE's Data Request #22, to which the Applicant provided substantive responses. CURE has not stated that the Applicant's response to that request was insufficient, and the time to make any such objection has now passed. (20 Cal. Code Regs., § 1716(g).)

2. The Information Sought By CURE Is Not Reasonably Available To the Applicant.

Without any justification, CURE argues that information sought in Request #24 is reasonably available to, and largely within the sole control of, the Applicant. This too, is incorrect. The Applicant and its consultant team are unaware of a set of agency-approved CAP emission factors for PG&E's electrical system. CAP emission factors for PG&E fossil-fired assets are available on a pound of CAP per megawatt-hour (lb/MWh). However, using the fossil-fired CAP emission factors does not present an accurate estimate of the Project's air quality impacts associated with electricity use. Thus, the information sought is not "reasonably available to the Applicant" and therefore CURE's Petition should be denied. (20 Cal. Code Regs., § 1716(b).)

In its attempt to show that its request for the information in Request #24 is not burdensome to the Applicant, CURE states that the Applicant could select year 2050 as a

reasonable year to assume the energy grid will be 100 percent renewable and conduct a linear rate of decline to 2020, based on readily available emissions factors for San Jose. A number of approaches could be used to estimate emissions going forward, including the one proposed by the Intervenor. However, such estimates would require speculation 30 years into the future—resulting in information that is neither necessary nor relevant to this proceeding.

3. The Information Sought by CURE Is Not Relevant to the Proceeding.

CURE attempts to satisfy the relevancy requirement by claiming the information is related to the energy demands of the Project because the Project may necessitate additional power generation, which CURE speculates could require California to retain fossil fuel plants longer than before, leading to a delay in California’s transition to renewable energy. The State “loading order” requires utilities like PG&E to use available renewable generating assets before dispatching fossil-fired generating assets. Furthermore, the Project’s 92 megawatts of electrical demand represents a small percentage of PG&E’s available generating resources. CURE has failed to demonstrate how the information is relevant, let alone necessary, to the proceeding.

C. Conclusion

The Applicant respectfully requests that the Committee deny CURE’s Petition to compel the Applicant to respond to Data Request #24, as the information sought is not reasonably available to the Applicant, is not relevant to the proceedings, and is not reasonably necessary for the Commission to make a decision on the SPPE Application.

Respectfully submitted,

Dated: September 4, 2020

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