

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

<b>DOCKET</b>	
<b>11-SPPE-01</b>	
DATE	FEB 22 2012
RECD.	FEB 23 2012

In the Matter of the: )  
 )  
Application for Small Power Plant )  
Exemption for the Santa Clara )  
SC-1 Data Center Project )  
\_\_\_\_\_ )

Docket No.  
11-SPPE-01

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 22, 2012  
11:00 a.m.

Reported by:  
John Cota  
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Carla Peterman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Eileen Allen, Technical Advisor on Siting

Jim Bartridge, Advisor to Commissioner Peterman

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

CEC STAFF AND CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Robert Worl, Project Manager

Gerry Bemis

Wenjun Qian, PhD

Rick York

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Monica Schwebs  
Bingham McCutchen, LLP

Richard Waddle (via WebEx)  
DuPont Fabros

Nora H. Monette (via WebEx)  
David J. Powers & Associates, Inc.

INTERVENORS

None

ALSO PRESENT

Payal Bhagat (via WebEx)  
City of Santa Clara

I N D E X

	<u>Page</u>
Proceedings	1
Introductions	1
Evidentiary Hearing Process and Procedures Hearing Officer Celli	2
Applicant's Exhibits Received Into Evidence Exhibits 1 - 18	6
Staff's Exhibits Received Into Evidence Exhibits 200 - 210 Exhibits 211 - 212	7 10
Discussion Regarding Need for Briefs	11
Opportunity for Public Comment	12
Closing Remarks	13
Adjournment	13
Reporter's Certificate	14



1 phone Nora Monette, who is the project manager, and Rick  
2 Waddle, who is the director of construction for DuPont  
3 Fabros.

4 PRESIDING MEMBER DOUGLAS: Thank you. And staff,  
5 please.

6 MR. WORL: My name is Robert Worl, project manager  
7 for the project and to my left is Richard Ratliff, staff  
8 counsel. And we have some other members of the team that  
9 put together the analysis with us as well, Rick York, Wenjun  
10 Qian and Gerry Bemis.

11 PRESIDING MEMBER DOUGLAS: Thank you. And I know  
12 that we have Payal Bhagat from the City of Santa Clara on  
13 the line. Is there anyone else from the City of Santa  
14 Clara?

15 MS. BHAGAT: I believe not.

16 PRESIDING MEMBER DOUGLAS: Thank you. Are there  
17 any other federal, state or local agency officials on the  
18 phone or in the room?

19 (No response.)

20 PRESIDING MEMBER DOUGLAS: All right. Our Public  
21 Adviser, Jennifer Jennings is here with us today. And with  
22 that I will turn this over to the hearing officer.

23 HEARING OFFICER CELLI: Thank you, Commissioner  
24 Douglas. Good morning everyone.

25 This evidentiary hearing is a formal adjudicatory

1 proceeding to receive evidence into the formal evidentiary  
2 record from the parties. Only the parties, who in this case  
3 are the applicant and Energy Commission staff only, only the  
4 parties may present evidence for introduction into the  
5 formal evidentiary record, which is the only evidence upon  
6 which the Commission may base its decision under law.

7           Technical rules of evidence are generally  
8 followed. However, any relevant, non-cumulative evidence  
9 may be admitted if it is the sort of evidence upon which  
10 responsible persons are accustomed to rely in the conduct of  
11 serious affairs.

12           Testimony offered by the parties shall be under  
13 oath. Each party has the right to present and cross-examine  
14 witnesses, introduce exhibits and to rebut evidence of  
15 another party.

16           Questions of relevance will be decided by the  
17 Committee.

18           Hearsay evidence may be used to supplant or  
19 explain -- I'm sorry -- may be used to supplement or explain  
20 other evidence but shall not be sufficient in itself to  
21 support a finding.

22           The Committee will rule on motions and objections.

23           The Committee may take official notice on matters  
24 within the Energy Commission's field of competence and of  
25 any fact that may be judicially noticed by the California

1 courts.

2           The official record of this proceeding includes  
3 sworn testimony of the parties' witnesses, the reporter's  
4 transcripts of the evidentiary hearing, the exhibits  
5 received into evidence, briefs, pleadings, orders, notices  
6 and comments submitted by members of the public.

7           The Committee's decision will be based solely on  
8 the evidence in the record to determine whether the project  
9 is entitled to a Small Power Plant Exemption in accordance  
10 with applicable law.

11           Members of the public who are not parties are  
12 welcome and invited to observe the proceedings. There will  
13 be an opportunity for the public to provide comment before  
14 we close the hearing.

15           The public comment period is intended to provide  
16 an opportunity for persons who attend the hearing to address  
17 the Committee. It is not an opportunity to present written,  
18 recorded or documentary materials. However, such materials  
19 may be docketed and submitted to the Energy Commission for  
20 inclusion in the administrative record.

21           Members of the public who wish to speak should  
22 fill out a blue card provided by the Public Adviser,  
23 Jennifer Jennings, who is here. And if you would prefer not  
24 to speak publicly but would like to submit a written comment  
25 the blue card has a space to do so.



1           If you are a member of the public participating  
2 through the WebEx teleconferencing system you will need to  
3 speak up when the Committee calls upon you during the  
4 comment period that would immediately follow the evidentiary  
5 hearing.

6           I have passed out to the parties an Exhibit List  
7 today. There is also copies of the Exhibit List on the  
8 table in the foyer as you come in to the hearing room. The  
9 Exhibit List has been distributed to the parties  
10 electronically and the parties were asked to bring copies  
11 for their use today. We will use this list to organize the  
12 receipt of evidence into the record.

13           According to the prehearing statements of the  
14 parties, all subject areas are uncontested. None of the  
15 parties has filed any objection to submittal of all  
16 testimony by declaration.

17           Today we will proceed as follows: First, the  
18 applicant will move its testimony and exhibits into  
19 evidence. Next, staff will move its testimony and exhibits  
20 into evidence.

21           And with that I would ask that we swear in the  
22 project managers. We have one on the phone and we have one  
23 present.

24           So if you would, please swear in Mr. Worl and then  
25 Nora Monette.

1 Whereupon,

2 ROBERT WORL

3 NORA MONETTE

4 Was called as a witness herein, and after being duly sworn,  
5 was examined and testified as follows:

6 HEARING OFFICER CELLI: Thank you. With that the  
7 project managers are sworn.

8 Applicant, at this time do you wish to move  
9 evidence into the record.

10 MS. SCHWEBS: Yes. And the applicant moves the  
11 entire application with all its appendices into the record.  
12 The declaration for Ms. Monette is part of the Prehearing  
13 Conference Statement.

14 HEARING OFFICER CELLI: We have, for clarification  
15 sake, applicant's exhibits are Exhibits 1 through 18.

16 MS. SCHWEBS: Yes, according to your list, that's  
17 fine.

18 HEARING OFFICER CELLI: And is that the sum total  
19 of the exhibits you wish to move in at this time?

20 MS. SCHWEBS: Yes.

21 HEARING OFFICER CELLI: Any objection by staff of  
22 the admission of Exhibits 1 through 18?

23 MR. RATLIFF: No.

24 HEARING OFFICER CELLI: Okay, 1 through 18 are  
25 admitted and received into evidence.

1 (Applicant's Exhibits 1 through 18  
2 were received into evidence.)

3 HEARING OFFICER CELLI: At this time do you have  
4 any other witnesses or testimony, Ms. Schwebs?

5 MS. SCHWEBS: That's all of our testimony.

6 HEARING OFFICER CELLI: Thank you. Staff, at this  
7 time do you have a motion?

8 MR. RATLIFF: Yes, we move that the Initial Study,  
9 Negative Declaration, Notice of Intent to prepare a Negative  
10 Declaration and the appendices to those documents, which are  
11 Exhibits 200 through 210, be admitted into the record.

12 HEARING OFFICER CELLI: Okay. Is there any  
13 objection by the applicant?

14 MS. SCHWEBS: No objection.

15 HEARING OFFICER CELLI: No objection. Then 200  
16 through 210 are received into evidence.

17 (Staff's Exhibits 200 through 210  
18 were received into evidence.)

19 HEARING OFFICER CELLI: I did receive an email  
20 this morning with a --

21 MS. SCHWEBS: An additional declaration.

22 HEARING OFFICER CELLI: A declaration from Rick  
23 York this morning. Is that already in that list of 200  
24 through 210?

25 MR. WORL: No, it's not.

1 HEARING OFFICER CELLI: Would you want to move  
2 that in as 211?

3 MR. WORL: Yes, we would like to move Rick's  
4 declaration into evidence.

5 HEARING OFFICER CELLI: Any objection?

6 MS. SCHWEBS: No objection.

7 HEARING OFFICER CELLI: Okay, Rick York's  
8 declaration.

9 Any other evidence that needs to be received into  
10 evidence for staff?

11 MR. RATLIFF: We did file a memorandum yesterday,  
12 which is a proposed finding, or proposed findings, and we  
13 would request that that be made an additional exhibit for  
14 staff.

15 HEARING OFFICER CELLI: The next in order would be  
16 212.

17 MR. RATLIFF: Yes. And Ms. Schwebs pointed out  
18 that there may be incorrect references in that filing in  
19 terms of the listing of exhibit numbers that you are using.  
20 So if she wants to correct it at this moment that would be,  
21 this would seem to be the time.

22 MS. SCHWEBS: Yes. Applicant does request that  
23 greater specificity be given to that third bullet in the  
24 list, if you have it before you, Ken. Currently it  
25 indicates that there are Exhibits 1-A through 1-Q, which was

1 the numbering scheme that the applicant used. It's  
2 perfectly fine to change that to 2 through 18, which is what  
3 it should be.

4 But we further request that if you choose to use  
5 these findings that you be a little bit more specific about  
6 the exhibit numbers. In particular some clarity should be  
7 given to the term "addendum" which appears in this bullet  
8 item without any definition of what it is an addendum to.

9 So we would request that you add "addendum to  
10 mitigated negative declaration issued by the City of Santa  
11 Clara" which were issued on those dates that are given in  
12 the third bullet. So I can just hand this to you when we  
13 are done if that would be of any assistance to you. I  
14 realize you may not use these findings anyway but I do  
15 request that we be a little bit more specific.

16 HEARING OFFICER CELLI: Okay. But you don't  
17 object to their admission?

18 MS. SCHWEBS: No. And there is no substantive  
19 objection, this is purely as to form.

20 HEARING OFFICER CELLI: Okay. Well then thank  
21 you, I'll take that into consideration. And with that, if  
22 there is no objection then, what I have in the record is  
23 staff's Exhibits 200 through 212, where 212 is a --  
24 "Suggested Findings" is what we'll call it.

25 Anything further from staff?

1 MR. RATLIFF: No.

2 HEARING OFFICER CELLI: Okay, then 200 through 212  
3 are received into evidence.

4 (Staff's Exhibits 211 and 212  
5 were received into evidence.)

6 HEARING OFFICER CELLI: Anything further from  
7 staff?

8 MR. RATLIFF: No.

9 HEARING OFFICER CELLI: Anything further from  
10 applicant with regard to evidence?

11 MS. SCHWEBS: No.

12 HEARING OFFICER CELLI: Are there any questions  
13 from the Committee? Commissioner Douglas?

14 PRESIDING MEMBER DOUGLAS: No.

15 HEARING OFFICER CELLI: Commissioner Peterman?

16 ASSOCIATE MEMBER PETERMAN: No.

17 HEARING OFFICER CELLI: Eileen Allen has a  
18 question; go ahead.

19 ADVISOR ALLEN: I have a biological resources  
20 question for staff related to the discussion on potential  
21 for nitrogen deposition in the Initial Study Negative  
22 Declaration. Has staff had any communication from the U.S.  
23 Fish and Wildlife Service on this potential issue?

24 MR. RATLIFF: No, not to my knowledge.

25 ADVISOR ALLEN: Okay. I understand that critical

1 habitat for the listed Bay checkerspot butterfly is located  
2 approximately eight miles southeast of the project site and  
3 that a serpentine grassland area which is not considered  
4 critical habitat is located approximately five miles  
5 southeast of the project site on Communications Hill in San  
6 Jose.

7           Staff's AERMOD emission modeling work indicated  
8 that potential nitrogen deposition would fall far short many  
9 miles away of even the non-critical butterfly habitat, which  
10 is approximately five miles from the site. Is my  
11 understanding correct?

12           MR. RATLIFF: Yes.

13           ADVISOR ALLEN: Thank you.

14           HEARING OFFICER CELLI: Thank you. Any further  
15 questions from any of the members of the Committee? Thank  
16 you.

17           At this time I wonder if the parties feel it is  
18 necessary to file a brief and whether you think we need a  
19 briefing schedule? It's your call. Applicant?

20           MS. SCHWEBS: The applicant doesn't think a brief  
21 is necessary.

22           HEARING OFFICER CELLI: Staff?

23           MR. RATLIFF: No, there are no issues in  
24 contention to be briefed and we think the analysis that has  
25 been provided is sufficient and should be sufficient for the

1 Committee to make its decision and its findings.

2 HEARING OFFICER CELLI: Thank you. Then at this  
3 time are there any further matters before we go to public  
4 comment from applicant or staff? Applicant?

5 MS. SCHWEBS: No.

6 HEARING OFFICER CELLI: Staff?

7 MR. RATLIFF: No.

8 HEARING OFFICER CELLI: Thank you. At this time I  
9 am going to open up the record to public comment. We have  
10 on the phone Rick Waddle, who is associated with DuPont  
11 Fabros, Nora Monette who is also associated with the  
12 applicant, is the project manager in fact.

13 We have Payal Bhagat from the City of Santa Clara  
14 and no one else on the telephone. So I am going to take  
15 care of the telephone first and then I will inquire from  
16 Ms. Jennings, our public advisor, whether there is any  
17 public who wish to make a comment here in person.  
18 Ms. Bhagat, did you wish to make a comment?

19 MS. BHAGAT: No, thank you, sir.

20 HEARING OFFICER CELLI: Thank you. And then I am  
21 going to see if we have any members of the public. The  
22 record should reflect we have a pretty sparse group here  
23 today. Ms. Jennings, are there any members of the public  
24 who wish to make a public comment?

25 MS. JENNINGS: No, there are not.



1 HEARING OFFICER CELLI: Okay, there are none  
2 present here today to make a comment even though we gave an  
3 opportunity.

4 I do want to ask the parties whether they have  
5 received any public comment that was not addressed in  
6 staff's Initial Study? In other words, if the comments came  
7 in too late to be included in the staff's Initial Study I  
8 would ask the parties to respond to those comments now. Did  
9 anything, any comments come in after the filing of the  
10 Initial Study, Mr. Worl?

11 MR. WORL: No, we have received no comments.

12 HEARING OFFICER CELLI: Thank you. Then with that  
13 I am going to hand the hearing back to the Presiding Member,  
14 Commissioner Douglas, to conclude.

15 PRESIDING MEMBER DOUGLAS: I would like to thank  
16 all of the parties for working together on this and for  
17 bringing us an evidentiary hearing without contested issues.

18 It is rare but it is also probably not surprising in this  
19 case because of the thorough work and analysis that has gone  
20 into it. So we will move forward with a proposed decision  
21 as expeditiously as possible. We would just like to thank  
22 you for being here. So with that the hearing is adjourned.

23 HEARING OFFICER CELLI: Thank you.

24 (The Evidentiary Hearing adjourned at 11:21 a.m.)

25 --oOo--

## CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of February, 2012.

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JOHN COTA

## CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

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RAMONA COTA, CERT\*\*478

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February 23, 2012