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BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the Matter of:  

Business Meeting  

CALIFORNIA ENERGY COMMISSION
THE WARREN-ALQUIST STATE ENERGY BUILDING
ART ROSENFELD HEARING ROOM - FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

TUESDAY, FEBRUARY 4, 2020
10:00 A.M.

Reported by:
Susan Palmer
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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Proceedings

Items

1. Small Power Plant Exemption for the Laurelwood Data Center (19-SPPE-01).
   a. Possible closed session deliberation on the above described SPPE. [Government Code §11126(c)(3)].

2. Lead Commissioner or Presiding Member Reports

3. Executive Director's Report

4. Public Adviser's Report

5. Public Comment

6. Chief Counsel's Report
   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:
   
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)


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).


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)


6. Chief Counsel's Report (Cont.)

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.

Adjournment

Reporter's Certificate

Transcriber's Certificate
VICE CHAIR SCOTT: Okay, good morning everyone and welcome to our business meeting. We will start the business meeting with the Pledge of Allegiance.

(Whereupon the Pledge of Allegiance is recited)

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

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

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

The project being discussed this morning is the application for a small power plant exemption for the proposed Laurelwood data project in Santa Clara, California. MECP1 Santa Clara 1, LLP is the Applicant and I will refer to them as the Applicant for the remainder of my presentation. The proposed project consists of the
demolition of existing improvements at the project site, 
and construction and operation of a data center, backup 
generators and a substation for Silicon Valley Power, the 
local utility.

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

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

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

Section 25541 of the Public Resources Code sets 
out the three things that the CEC must find in order to 
grant a small power plant exemption. First, that the 
proposed facility will generate no more 100 megawatts. 
Second, that the proposed facility will not have a
significant adverse effect on the environment; and finally that the proposed facility will not have a significant adverse effect on energy resources.

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

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

Intervenor Robert Sarvey moved that the application be dismissed. His argument was that grant generating capacity is calculated pursuant to Section 2003 of the CEC's Regulations. The Proposed Decision found that this facility, where the power generated will be used
exclusively for the Laurelwood Data Center and will not be distributed offsite, that capacity should be calculated by reference to the demand of the servers housed in the data center, and the cooling and lighting load for the buildings. This local load was calculated to be approximately 99 megawatts for the two buildings of the data center.

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

The second factor under the Warren-Alquist Act is whether the proposed project will have an adverse effect on the environment. While Section 25519 of the Public Resources Code establishes the CEC as the lead agency under the California Environmental Quality Act, CEQA, small power plant exemptions are not governed by the CEC certified
regulatory program. The Applicant had included a number of project design features to mitigate or avoid potential environmental effects from the demolition, construction and operation of the data center and the backup generators.

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

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

The Committee considered the ISPMND and its errata during the adjudicatory process. The Committee imposed the mitigation measures for biological, cultural and tribal cultural resources included in the ISPMND. The Committee then prepared an integrated document of the
ISPMDN in its errata. That document is referred to as the
Initial Study Mitigated Negative Dec and is included as
Appendix A to the Proposed Decision.

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

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

The comments received on staff's ISPMDN have been
addressed in the Proposed Decision. Comments on the
Proposed Decision were received from CEC staff. I have
prepared, and this Committee has prepared an errata that
was filed this morning that makes many of their requested edits. You also have copies of that on the dais with you.

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

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

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

I'm available to respond to any questions that
VICE CHAIR SCOTT: Thank you, Ms. Cochran.

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

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

I guess I just want to start by thanking you. You don't usually meet today. Commissioner Monahan, please thank you for making sure we had a quorum today. I think it's important. You know, I am not good with subtle and you've heard me on the pace of this proceeding. It could have been done faster for sure, but it is a quality product. I thought the staff's MND was a particularly good document. I see a lot of CEQA documents and it's a very well-written and well-documented document. The Proposed Decision, I think does a good job of addressing concerns that were raised and answered. There is substantial
evidence in the record to support the Commission's decision
to move forward to approve this project, so we thank you
for that.

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

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

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

So thank you for your time today. We do have
some responses to Mr. Sarvey's late filing, but I'm going
to go ahead and hold those in reserve until after he makes
his affirmative case. I don't want to do a better job of
making his arguments than he might, so I'm going to reserve
discussion of those things until later.

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

VICE CHAIR SCOTT: Thank you, Mr. Harris.

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

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

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

Staff supports the adoption of the Proposed
Decision as amended, and we have a number of staff
available today both in person and on WebEx to answer any
questions related to the Proposed Decision or to staff and
Intervenor Sarvey's comments that have been filed on the
Proposed Decision. Thank you.

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

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

MR. SARVEY: Good morning, Commissioners.

VICE CHAIR SCOTT: Good morning.

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

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

The seven data centers not including the newly
announced Memorex Data Center, which there's no information
posted at this time, will consume up to 4,568,000 megawatt hours of electricity. Which is more than the entire consumption of the Silicon Valley Service System, which in 2018 was 3,566,000 megawatt hours.

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

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

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

I also want to address one statement in the Proposed Decision that should be corrected. The PD states on page 11 that the uncontested evidence shows that the backup generators constitute a thermal power plant with a
generating capacity in excess of 50 megawatts and none are, use turbine generators. This makes Section 2003 inapplicable.

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

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

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

Clearly the Commission has utilized Section 2003 to evaluate the generating capacity of IC engines before. And this is the first time Section 2003 was not used to determine the generating capacity of any project other than
the McLaren Data Center. And previously the Santa Clara Data Center was subject to Section 2003.

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

VICE CHAIR SCOTT: Thank you, Mr. Sarvey.

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

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

In terms of how we have used Section 2003 in the decision, while it was not fully applicable we did use it as guidance in both McLaren and in this decision. However, each of those was based on the specific facts. And I have no knowledge of East Shore, Quail Brush or Humboldt that
Mr. Sarvey discussed. Perhaps others with a longer institutional memory than I have can provide that.

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

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

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

MR. HARRIS: Thank you for the opportunity respond.

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

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

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

And in terms of the new data centers that are coming in, CEQA contemplates that the world doesn't stop when an application is filed. And in this case that's exactly what has happened. The extent that information was available during the time of permitting of this process has been taken into consideration, and is reflected in your record. Things that have happened subsequent to that like an announced project that there's no information on, CEQA contemplates that the world moves forward. And that project, that project will take into consideration this
project in its baseline. So to suggest some kind of hole in the CEQA record, because the world hasn't stopped is simply incorrect.

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

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

If something could have been produced in the exercise of due diligence during the hearings and was not,
for this Commission to consider that information would be
to basically deprive an applicant of due process. And so
you're right not to consider late-filed things that were
available, but not put into your record.

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

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

I guess I would note as well that Mr. Sarvey
waived briefing on this matter. Transcript, page 145,
lines 8 through 11, if you need the reference. So to
suggest that there was some new briefing that needed to
happen, I think is contrary to what happened at the close
of evidentiary hearing.
So all those things being said, I think the Commission should do what it's on a course to do right now, which is to move forward with this project. And move forward with this approval, recognizing that the things that have been brought to you at the last minute don't change the substantial evidence in your record.

Give me a moment, please?

(Off mic colloquy.)

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

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

And with that I think I'll go ahead and end my
comments, so thank you.

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

Let's turn to staff, please.

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

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

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

VICE CHAIR SCOTT: Yes, please. We'll get that now.
MR. OLIVER: Okay, so on number 16, it's on the final page 5, staff had proposed that the footnote for Guidelines 15124 be changed to Guidelines 15063(d). It currently says (b), which we believe to be the wrong subdivision for that.

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

MR. OLIVER: That's correct.

VICE CHAIR SCOTT: Okay. Thank you.

Any other comments, Mr. Oliver?

MR. OLIVER: No more for me.

VICE CHAIR SCOTT: Okay. Thank you.

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

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

VICE CHAIR SCOTT: Thank you, Mr. Sarvey.

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

(Off mic colloquy.)

VICE CHAIR SCOTT: Correction, does anyone else have a comment on the proposed change to the errata, the proposed update to the errata, Applicant or Intervenor.
Mr. Harris: I just was checking the reference that Mr. Oliver put forth. And I concur that it is sub (d), so I luckily had it here. I don't have the memorized, so thank you. And I have no other comments, so.

Vice Chair Scott: Okay. Thank you, Mr. Harris.

Mr. Sarvey?

(No audible response.)

Vice Chair Scott: Okay, hearing none now let me turn to see whether there is any public comment. I am not seeing any in the room. If there's anyone in the room who would like to make a public comment, please now is the time.

(No audible response.)

Vice Chair Scott: All right, seeing nobody dashing towards our microphone let me check whether there are any public comments on our WebEx or the phone.

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

Commissioner Douglas, please.

Commissioner Douglas: All right. Well, thank you, Commissioner Scott and I do have some comments to offer. As the Presiding Member assigned to this proceeding, and to other data center proceedings, but limiting my comments here really to this proceeding.
So the approval of the Committee Proposed Decision would establish that the Commission has found based on substantial evidence in the record that the standby backup generators may be exempted from the Commission's exclusive permitting jurisdiction over thermal energy facilities with a generating capacity of 50 megawatts or more.

And specifically, and the Hearing Officer went over these findings, but the Warren-Alquist Act allows for this exemption to be issued when the following findings can be made. The facility will have a generating capacity of more than 50 and up to 100 megawatts, and the decision, the Proposed Decision deals with that question I think very clearly. No substantial impact on the environment would result from the construction or operation of the facility, and again the decision deals with this clearly.

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

And finally that there will be no substantial impact on energy resources from the construction or
operation of the facility.

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

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

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

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

VICE CHAIR SCOTT: Well, thank you so much,
Commissioner Douglas. I want to echo many of the comments that you made and also thank our Intervenor for his participation in the proceeding. As you noted, we carefully considered the input from all the parties including information and comments from the Applicant, the staff, the Intervenor, written comments we received from California Department of Transportation, City of San Jose Airport Department, and others.

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

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

Around April 2nd through about the 8th or so of 2019 we published the Notice of Receipt of the SPPE
application in the "San Jose Mercury News" and in the "World Journal" in both English and Chinese.

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

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

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

I want to echo the thanks that you had for staff, and Applicant Intervenor for their thoughtful engagement on this process. Their participation and input has made this very robust and it's resulted in a thorough consideration of all of the issues that were presented to us in the SPPE. And I also want to say thank you to our Hearing Officer for
her good work, and to you and your team for your great work on this and also to my advisers, and to Kristy Chew, the Hearing Adviser.

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

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

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

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

I see the Hearing Officer has come forward.

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

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

COMMISSIONER MONAHAN: Yes, thank you.

VICE CHAIR SCOTT: Other comments or questions?

Okay, well with then may I have a motion on Item 1?

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

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

COMMISSIONER DOUGLAS: And there's an Adoption Order?

HEARING OFFICE COCHRAN: Yes.

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

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

COMMISSIONER DOUGLAS: All right, so moved.

COMMISSIONER MONAHAN: I second.

VICE CHAIR SCOTT: All those in favor?

(Ayes.)

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

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

COMMISSIONER MONAHAN: Yes, so as you both know this is a big year for different analytical reports coming out of the CEC related to transportation. So we've been working with the FTD team, the Fuels and Transportation Division team around timelines and products for both -- well for three reports. But specifically the Vehicle Grid
Integration Report and the 2127 Charging Analysis Through 2030 Report.

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

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

VICE CHAIR SCOTT: It's that that time of year where the wrapping up of the 2019 IEPR overlaps with the getting going of the 2020 IEPR, so it's exciting to hear having the great outlines. And I think that adjustable pieces will be really nice and give power and voice to the work and the analytics that we carry out here at the
Commission. It's really great work and so having it in a way that people can digest it and understand it, I think is incredibly important. So I'm glad that you're working on that for us next year or this year.

Let me turn to Commissioner Douglas, any reports?

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

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

VICE CHAIR SCOTT: Great, I will just note as I mentioned briefly just a second ago, the 2019 IEPR is
wrapping up. The final is posted to our web page and will be for our consideration in our later in February Business meetings, so I commend that document to you all. Please do take them some time to read through the draft.

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

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

MR. BOHAN: Nothing to report, thank you.

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

MS. GALLARDO: Nothing to report.

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

So with that let me turn to Item 5, Public Comment. I do not see public comment in the room. Do we have any public comment on the phone or WebEx? Okay, I'm
getting a no there as well.

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

MS. HOUCK: Nothing to report.

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

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

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REPORTER’S CERTIFICATE

I DO HEREBY CERTIFY THAT THE TESTIMONY IN THE FOREGOING HEARING WAS TAKEN AT THE TIME AND PLACE THEREIN STATED; THAT THE TESTIMONY OF SAID WITNESSES WERE REPORTED BY ME, A CERTIFIED ELECTRONIC COURT REPORTER AND A DISINTERESTED PERSON, AND WAS UNDER MY SUPERVISION THEREAFTER TRANSCRIBED INTO TYPEWRITING.

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.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 26TH DAY OF MARCH, 2020.

SUSAN PALMER
CERTIFIED REPORTER
CERT 00124
TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

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.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of March, 2020.

Susan Palmer
Certified Reporter
CERT 00124