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BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the Matter of:)
) 20-BUSMTG-01
 Business Meeting)
 _____)

REMOTE ACCESS ONLY

The California Energy Commission's November 16, 2020 Business Meeting will be held remotely, consistent with Executive Orders N-25-20 and N-29-20 and the recommendations from the California Department of Public Health to encourage physical distancing to slow the spread of COVID-19. The public is able to participate and observe the meeting consistent with the direction in these Executive Orders. Instructions for remote participation can be found in the notice for this meeting and as set forth below in this agenda.

MONDAY, NOVEMBER 16, 2020

1:00 P.M.

Reported by:
Martha Nelson

APPEARANCES

Commissioners (Via Remote)

David Hochschild, Chair
Janea Scott, Vice Chair
Karen Douglas
Andrew McAllister
Patricia Monahan

Staff Present: (Via Remote)

Drew Bohan, Executive Director
Darcie Houck, Chief Counsel
Nick Oliver, Staff Counsel
Jared Babula, Staff Counsel
Susan Cochran, Hearing Officer CEC
Noemi Gallardo, Public Advisor
Eric Veerkamp, Compliance Project Manager
Leonidas Payne, STEP Project Manager
Joseph Hughes, Air Resources Supervisor
Geoff Lesh, Manager STEP Engineering Office
Cody Goldthrite, Secretariat

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Noemi Gallardo	1
Shawn Pittard	2
Jared Babula	4
Darcie Houck	3, 4, 5
Lisa DeCarlo	3, 5

Others Present (Via Remote)

Interested Parties

Rob Parker, Geysers Power Company	2
Robert Sarvey, Intervenor	3, 4, 5
Scott Galati, DayZen, LLC	3, 4, 5

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<u>Public Comment</u> (Via Remote)	Agenda Item
Frank Biehl, Santa Clara and San Benito Counties Building and Construction Trades Council	3, 4, 5
Jakub Zielkiewicz, Bay Area Air Quality Management District, BAAQMD	3, 4, 5
Wesley Dyer, California Air Resources Board	3, 4, 5
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Mike Petouhoff, One Grid Energy Solutions	

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- a. Pursuant to Government Code Section 11126(e), the CEC may adjourn to closed session with its legal counsel to discuss any of the following matters to which the CEC is a party:
- i. *In the Matter of U.S. Department of Energy (High Level Waste Repository) (Atomic Safety Licensing Board, CAB-04, 63-001-HLW); State of California v. United States Department of Energy (9th Cir. Docket No. 09-71014)*
- 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, Case No. 34-2016-00204586)*
- iv. *Natural Resources Defense Council, Inc., et al. v. United States Department of Energy (Federal District Court, Northern District of California, Case No. 17-cv03404)*
- v. *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)*

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vi. <i>State Energy Resources Conservation and Development Commission v. HyGen Industries, Inc.</i> (Sacramento County Superior Court, Case No. 34-2019-00252543)	
vii. <i>Olson-Ecologic Testing Laboratories, LLC v. CEC.</i> (Orange County Superior Court Case No. 30-2019-01115513)	
viii. <i>Interlink Products International, Inc. v. Xavier Becerra, Drew Bohan, Melissa Rae King</i> (United States District Court for the District of New Jersey, Case No. 2:20-cv-10566)	
ix. <i>Southern California Gas Company v. California State Energy Resources Conservation and Development Commission</i> (Orange County Superior Court, Case No. 30-2020-01152336-CU-WM-CXC).	
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1 P R O C E E D I N G S

2 NOVEMBER 16, 2020

1:01 p.m.

3 CHAIR HOCHSCHILD: All right. Well good
4 afternoon everyone. Today is Monday, November 16th, and
5 we'll begin the Energy Commission's Business Meeting.
6 Let's begin. If we could have Commissioner McAllister do
7 the Pledge of Allegiance for us?

8 BOARD MEMBER MCALLISTER: Great, perfect.

9 (Whereupon the Pledge of Allegiance is recited.)

10 CHAIR HOCHSCHILD: Thank you, Commissioner.

11 BOARD MEMBER MCALLISTER: Thank you.

12 CHAIR HOCHSCHILD: So again, despite the positive
13 developments we're seeing in the news about COVID-19
14 vaccines, which is very promising, we are still seeing some
15 very concerning numbers around the trends. And want to
16 remind everyone to remain vigilant, wear a mask when you're
17 out in public, wash your hands frequently and keep your
18 distance throughout this pandemic until we get through it.

19 I also wanted to remind everyone that this year
20 is the 45th anniversary of the California Energy
21 Commission. I've asked Vice Chair Scott to lead us in
22 putting that celebratory symposium together. That will be
23 Monday, December 7th, and we'll be posting more information
24 about that as we get closer. And that will be open to the
25 public and to staff as well.

1 And we're also going to be doing the first
2 inaugural California Clean Energy Hall of Fame Awards,
3 lifting up a remarkable group of winners who've just been
4 selected by the statewide selection committee. That event
5 will be also open to the public. That's going to be on
6 Thursday, December 10th, and we'll be posting information
7 about that. Special thanks to our Public Advisor Noemi
8 Gallardo for pulling that together.

9 Today's Business Meeting is being held remotely
10 without a physical location for any participant consistent
11 with Executive Orders N-25-20 and N-29-20 and the
12 recommendations from the California Department of Public
13 Health to encourage social distancing in order to slow the
14 spread of COVID-19. The public may participate and/or
15 observe this meeting, consistent with the direction of
16 these executive orders. Instructions for remote
17 participation can be found in the notice for this meeting
18 as set forth in the agenda posted on the Energy Commission
19 website.

20 Pursuant to California Code of Regulations Title
21 20, Section 1104(e), any person may make oral comment on
22 any agenda item. To ensure the orderly conduct of business
23 such comments will be limited to three minutes per person
24 as to each item listed on the agenda that will be voted on
25 today. Any person wishing to comment on information items

1 or reports, which are non-voting items shall reserve their
2 comments for the general public comment portion of the
3 meeting agenda and shall have three minutes total to state
4 all remaining comments.

5 And with that, let's turn to Item 1, the 2019
6 Energy Commission Diversity Commitment Update. Let's
7 welcome Noemi Gallardo to present on that.

8 MS. GALLARDO: Hello Chair, Vice Chair, and
9 Commissioners. For the record, I'm Noemi Gallardo, the
10 Public Advisor presenting the Energy Commission's 2019
11 diversity report. I want to start by wishing you a belated
12 happy anniversary. April of 2020 marks the fifth-year
13 anniversary of the Commission, putting into resolution its
14 diversity policy. And my presentation today is a report on
15 the progress we've made on that commitment, specifically in
16 2019.

17 The Commission advanced diversity and equity well
18 before the resolution. And as Vice Chair Scott has said,
19 "Diversity and equity are part of this agency's DNA." And
20 still, it is important to uplift that the Commission made
21 the policy explicit in order to commemorate the commitment
22 and hold ourselves accountable to the work. Next slide.

23 We realized that including all Californians in
24 our policies and processes is essential to achieving our
25 clean energy goals. We cannot do it alone and the

1 Commission understands that the benefits of the 100 percent
2 clean energy future we're striving for must be for 100
3 percent of Californians.

4 The Commission's diversity policy is an
5 acknowledgement that we cannot leave anyone out or leave
6 anyone behind, especially during times of crisis like what
7 we're facing now when the communities who tend to be hurt
8 first and worst by pollution are also those
9 disproportionately impacted by the pandemic, economic
10 hardship, and social injustices. The work we're doing to
11 invest and help accelerate the economic recovery through
12 equitable policies is critical, because policies tailored
13 to benefit the most marginalized and underserved of our
14 communities will inevitably benefit all Californians. Next
15 slide.

16 The approach for the 2019 Diversity Report
17 differs from what we've done in the past. Historically
18 we've had each division present and conduct the diversity
19 report in the month of April. This year we decided to take
20 a comprehensive agency-wide approach and when the pandemic
21 forced us into remote mode in mid-March we had to make many
22 quick pivots, including delaying the presentations. I
23 think it bears clarifying though that the presentation was
24 delayed, but efforts to advance diversity and equity
25 continued and have remained a priority for our agency.

1 Accordingly, I want to thank all deputy
2 directors, heads of small offices and my other partners at
3 the Commission for their commitment to diversity.

4 And I obtained the information for the 2019
5 Diversity Report through a needs assessment I conducted
6 with the deputies and heads of small offices, along with
7 surveys completed by all divisions and data compiled
8 through the CEC Investments Tool, formerly known as the
9 Project Equity Map.

10 Also, a big lesson I learned in preparing for
11 this report is that I can't cover all of the incredible
12 work done by the Commission, what I present today is a
13 sample of our efforts. And even then it's going to take me
14 a little bit to get through it all, so patience is good. I
15 included links within the slides for those who want to dig
16 into the details on their own separately. And I'd also
17 like to clarify that we're scheduled to present the 2020
18 Diversity Report in April 2021, and the plan is to provide
19 a more extensive five-year lookback on our progress since
20 implementing the resolution in 2015, and to focus on the
21 IDEA Initiative. Next slide.

22 The key action items of our diversity policy are
23 found in one of the final paragraphs of the 2015 resolution
24 shown here. I'll break it down. Next slide.

25 The diversity policy emphasizes increasing the

1 participation of and benefits to small businesses and
2 businesses owned by women, disabled veterans, minorities,
3 and LGBT members of our community. These efforts
4 collectively are known as supplier Diversity. Next slide.

5 The diversity policy also focuses on increasing
6 the participation of and benefits to economically
7 disadvantaged and underserved communities, whether they're
8 located in urban areas in Northern California, tribal lands
9 near the coast or in the mountains, and in the desert areas
10 of Southern California or anywhere in between or on the
11 periphery. These efforts collectively are known as energy
12 equity. Next slide.

13 Now I want to focus on our objectives and metrics
14 for the diversity commitment. The two main objectives are
15 to increase participation, which we measure using the
16 metrics of outreach and engagement in the form of events,
17 networking panels, education, etcetera. The second is
18 increasing benefits, which we measure using the metrics of
19 investments in the form of opportunities for contracting,
20 funding and workforce development. Next slide.

21 We'll first look at highlights from our efforts
22 to increase participation through outreach and engagement.
23 Next slide.

24 One of the Commission's major achievements in
25 2019 was the launch of Empower Innovation, an online

1 networking platform that helps connect energy-technology
2 innovators with diverse businesses, communities and
3 organizations to find funding and partnership
4 opportunities. We currently have over 1,600 members,
5 including nearly 500 organizations and over \$2 billion in
6 funding possibilities. The platform has a filter for
7 opportunities focused on equity, and also a way for members
8 to receive a monthly digest of funding opportunities
9 related to disadvantaged communities. This platform has
10 become even more valuable than we imagined now that we're
11 working remotely and not traveling. It's helping us create
12 a virtual community unrestricted by geography. Next slide.

13 Another way the divisions' advanced participation
14 in their programs in 2019 was by maximizing internal
15 resources such as the Public Advisor's Office. All policy
16 divisions indicated they have been working more closely
17 with the Public Advisor's Office and have engaged us
18 earlier in their processes to ensure they're reaching
19 interested stakeholders beyond the list servers. And to
20 expand their reach to diverse stakeholders for
21 opportunities to provide input, attend workshops, help us
22 promote events, serve on workshop panels, join committees
23 and more. This is key, because by reaching out beyond our
24 traditional circles we gain more perspective and can more
25 constructively address the issues we're tackling and the

1 policies we're advancing.

2 And one of the key stakeholders the divisions are
3 seeking out more frequently is the Disadvantaged
4 Communities Advisory Group who you see pictured on this
5 slide, and who we commonly refer to as the DACAG. The
6 feedback the DACAG has provided about programs and projects
7 has contributed to accelerating our clean energy and equity
8 goals. And the exchanges we've had in workshops, like the
9 IEPR, SB 100 and others are much richer, because of the
10 diverse expertise we've gained through the participation of
11 the DACAG members. Next slide.

12 Another outreach and engagement highlight is that
13 all policy divisions as of 2019 have implemented tribal
14 liaisons to more closely and consistently work with Tom
15 Gates and his team to conduct meaningful and appropriate
16 outreach to tribes. The tribes aren't explicitly called
17 out in the diversity policy, because although our programs
18 including the Tribal Program are to affect disadvantaged
19 communities, in the tribal realm we must attempt to affect
20 those communities through the gateway of tribal government
21 due to our obligations to conduct government-to-government
22 consultations.

23 Our agency has cultivated a special relationship
24 with tribal governments thanks to the leadership of Tom
25 Gates, Commissioner Douglas's office, and our Tribal

1 Program. The coordination of the Tribal Program fits well
2 with our broader diversity efforts on funding and outreach,
3 which is why I couldn't present this report without
4 speaking about the Tribal Program.

5 And for those of you looking at the screen
6 there's a lot happening on this slide and that's exactly
7 the message I wanted to convey. They do a lot. In 2019
8 the Tribal Program put on and participated in multiple
9 events in Sacramento and in tribal areas. In addition to
10 the convenience, the Tribal Program also improved its
11 digital resources by enhancing the Commission's tribal
12 webpage and tribal contact database.

13 The Tribal Program also invested in the
14 Commission's internal education. They provided an Energy
15 Academy presentation that introduced the concepts of the
16 state tribal history the past two centuries and how that
17 culminates in the state's current tribal policies including
18 Governor Newsom's Executive Order N-15-19. The intention
19 was that Commission staff being made more aware of the
20 difficult history and the current attempts to reconcile the
21 wrongs of that history may be more willing to outreach with
22 tribes, increase tribal participation in Commission
23 programs and topics, and increase the Commission's
24 diversity as regards to Native American employment. Next
25 slide.

1 Here is a photo of the event organizers for the
2 Sustaining Tribal Resources Conference that happened in
3 July 2019. The facility in the background is the Piute
4 Shoshone Cultural Center located on the Bishop Piute
5 Reservation near Bishop, California, where the conference
6 was hosted. The conference focused on how tribes might
7 enhance state dialogue on addressing, preparing for and
8 adapting to climate change. The conference was attended by
9 90 attendees representing 16 tribes, and 12 state agencies,
10 and yes that's Commissioner Douglas and Tom Gates in the
11 mix. Next slide.

12 The Tribal Program is also responsible for an
13 effort that exemplifies our goals to both increase the
14 participation of and benefits to historically underserved
15 communities.

16 The Siting, Transmission, and Environmental
17 Protection Division with assistance from Commissioners
18 McAllister and Douglas established a \$2.25 million funding
19 program for tribes called the Tribal Government Challenge.
20 Aside from \$2 million in grants to California Native
21 American tribes to conduct energy and climate change
22 planning the program includes \$250,000 for a gap analysis
23 contract to outreach, select data about, and report back on
24 the status needs and opportunities for California Native
25 American tribes related to energy and climate change needs.

1 Currently there are 8 projects that serve 10 tribes
2 throughout California.

3 In 2019, the Commission partnered with the
4 Strategic Growth Council to jointly implement the program.
5 This partnership continues to benefit both agencies in
6 multiple ways.

7 Additionally, the Commission actively engaged in
8 dialogue with various peer agencies to submit a funding
9 request to the Legislature to fully fund a tribal climate
10 change research program that would inform the state's fifth
11 climate change assessment. Next slide.

12 SB 100 provided us an additional opportunity to
13 effectively engage the community by continuing to meet
14 Californians where they are. The SB 100 team led by Terra
15 Weeks and the Energy Assessments Division conducted
16 multiple workshops throughout the state in Sacramento, San
17 Francisco, Redding, Diamond Bar. And the photo on the left
18 is from the scoping workshop we held in Fresno, which was
19 packed.

20 For our 2020 efforts on SB 100 we're seeking to
21 connect with even more communities, whether we're in-person
22 or virtual such as those in tribal areas and the Imperial
23 Valley. I'll note here that the Commission takes community
24 input very seriously and has invested a lot of resources to
25 shift our in-person events smoothly and quickly to

1 accessible online formats after the pandemic hit this year.

2 Generally, we've learned that being virtual has
3 multiple perks, such as reduced travel and cost barriers
4 which helps put participants on a more even playing field.
5 It used to be that people who had the privilege and means
6 to afford attending in-person had a much better experience
7 from those who could only call in or watch through
8 streaming. We even heard from most participants in our
9 IEPR workshops that they prefer the virtual format rather
10 than in- person.

11 I included a 2020 photo here to make the point
12 that being virtual also enables us to schedule a convening
13 quickly, like you would a call, with the added benefit of
14 being able to see each other. The photo on the right is
15 from a meeting on Zoom between DACAG Representative
16 Stephanie Chen. Program staff with Stephanie introduced us
17 to ERDD staff Kaycee Chang and Abigail Jacob. And I chose
18 this photo because as you can tell by the smiling faces we
19 had fun connecting and advancing energy equity in a
20 technology space. And because we could see each other we
21 realized that we all happen to be women of color and
22 couldn't resist taking this picture, we were all super-
23 excited. Next slide.

24 Another approach that characterizes the
25 Commission's commitment to diversity is to value

1 communities and community-based organizations as experts.
2 We realized that it is not necessary for them to have
3 academic or technical expertise, their lived experiences
4 suffice. And because we value this expertise we're
5 responsive to input and guidance from the community.

6 The Clean Transportation Investment Plan is a
7 great example from 2019 of how constructive community input
8 has been. Commissioner Monahan and the team from the Fuels
9 and Transportation Division applied an equity lens to their
10 investment plan efforts, including seeking input from DACAG
11 and other stakeholders about how to improve the plan. And
12 the team implemented many of DACAG's recommendations,
13 including diversifying the investment plan's Advisory
14 Committee. This image is a snapshot of some of the new
15 committee members. Next slide.

16 All policy divisions have indicated they
17 increased outreach to small businesses, diverse vendors,
18 and business entities in general. Because the Commission
19 doesn't currently have a standardized tracking system
20 specific to businesses and vendors I can't show agency-wide
21 results, but I do have some examples.

22 So the Renewable Energy Division partnered with
23 Rosemary Avalos from the Public Advisor's Office to
24 targeted outreach efforts to farmer communities and to cast
25 a wide net of invitations for the renewable energy for

1 agriculture program grants. They invited over 100
2 individuals and business entities that included small
3 farmers, corporate farms, and farmers associations among
4 others. And the oversubscription of REAP is an indicator
5 of the successful outreach efforts.

6 I want to add a warm and fuzzy story from the
7 REAP grant program here. One of the recipients, Marsha
8 Habib, is a self-employed minority female organic farmer in
9 San Benito. She's using the REAP funds to install solar
10 panels, energy storage and EV infrastructure, leading her
11 to benefit from operational profitability, climate change
12 resiliency and the most potent perk, achieving personal
13 empowerment. Next slide.

14 Another example is actions by the Building
15 Standards Office. They frequently invite businesses
16 involved in the construction industry to their events and
17 programs. Specifically in 2019, they invited small
18 businesses operating in the energy efficiency and
19 affordable housing sector to participate in the 2019
20 California Energy Efficiency Action Plan.

21 The action plan covers issues, opportunities and
22 savings estimates pertaining to energy efficiency in
23 California's buildings, industrial and agricultural
24 sectors. It has three goals that drive energy efficiency
25 and it prioritizes diversity by removing and reducing

1 barriers to energy efficiency and low-income and
2 disadvantaged communities. Forums like the action plan can
3 be transformational opportunities for small businesses and
4 diverse vendors who tend to come from low income and
5 underserved communities. And these opportunities help them
6 build connections which increases opportunities to expand
7 their portfolios. Next slide.

8 So let's shift to highlights from 2019 about
9 increasing supplier diversity benefits through contracting
10 opportunities. Next slide.

11 We'll start with statistics provided by the
12 Department of General Services about the Commission's
13 contracting with small and disabled veteran-owned
14 businesses. So the state has established a target of 25
15 percent of overall agency contracting dollars to go towards
16 small businesses and 3 percent for disabled veteran-owned
17 businesses. As the graph shows in fiscal years 2018-19 and
18 2019-20 we did fairly well. We hit the mark both years for
19 contracts with disabled veteran-owned businesses at 5.86
20 percent one year and 4.17 percent the next. For small
21 businesses at 11.18 percent we missed the mark in 2018-19,
22 but did hit the mark in 2019-20 at 47.37 percent.

23 To clarify, the drastic change you see in small
24 business contracting from one fiscal year to the next is in
25 large part due to shifting between years to our new system

1 called FISCAL, which has a different reporting mechanism
2 than what was used previously. And I'll refer more
3 granular questions related to these stats to my colleague
4 Rob Cook. Next slide.

5 Another example of how we're advancing supplier
6 diversity is through the efforts of the Energy Research and
7 Development Division who invested \$23.9 million in
8 contracting to 44 small businesses through the Electric
9 Program Investment Charge, Public Interest Energy Research,
10 and the Food Production Investment Program. All of these
11 contracting opportunities help small businesses one
12 contract at a time to build wealth and lift their families
13 out of poverty and to create jobs in their communities.
14 Next slide.

15 Now we'll focus on highlights of our energy
16 equity efforts to increasing benefits in the form of
17 funding opportunities. Next slide.

18 A major highlight you're all familiar with is
19 EPIC. Using a competitive process to select the strongest
20 projects, the Commission can invest more than \$130 million
21 of EPIC funds in scientific and technical technological
22 research each year. EPIC's primary purpose is to unleash
23 innovation to aid California's transition to clean energy
24 system. And this graph shows AB 523's requirement that a
25 total of 35 percent of technology demonstration of

1 deployment funds be invested in project sites, project
2 sites located in and benefiting disadvantaged communities.
3 Next slide.

4 The happy news is that as of December 31st, 2019,
5 we flipped the script. We have exceeded the mandate
6 investing 65 percent of technology demonstration and
7 deployment funds toward project siting in disadvantaged and
8 low-income communities, rather than 35 percent. And in
9 dollars that's more than \$186 million. What these
10 investments mean are opportunities for local
11 transformational change through technology cost savings and
12 economic development. Next slide.

13 Here is a map showing the cumulative EPIC
14 demonstration project sites through December 2019 located
15 in disadvantaged and low-income communities with clusters
16 appearing in the Bay Area, Central Valley, greater Los
17 Angeles area and into the Inland Empire. Next slide.

18 EPIC exemplifies how the Commission consistently
19 exceeds its compliance requirements to help ensure it is
20 meeting community needs. EPIC has also been very
21 responsive to community feedback. In 2019, the EPIC team
22 added new scoring criteria in EPIC technology demonstration
23 solicitations to ensure that each project in the
24 disadvantaged or low-income area is providing direct
25 benefits to the local community.

1 Additionally, the Commission will continue to
2 provide set-asides and applicable EPIC solicitations for
3 projects in and benefiting disadvantaged or low-income
4 communities, or both. The EPIC team also exemplifies the
5 Commission's recognition that an essential way to connect
6 with the community is through local community-based
7 organizations who function as a bridge to residents. Next
8 slide.

9 The EPIC team has added parameters to its manuals
10 for EPIC demonstration solicitations, with proposed
11 projects located in and benefiting low-income or
12 disadvantaged communities to help ensure that the
13 requirement to work with a community-based organization is
14 not treated as a mere checkbox. But instead results in
15 actual community engagement for EPIC demonstration
16 solicitations with set-aside funding for proposed projects,
17 located in and benefiting low-income or disadvantaged
18 communities. Within investor owned utilities services
19 territories, each proposed project must allocate
20 appropriate funding for engagement with community-based
21 organizations for relevant tasks under the scope of work.

22 Another requirement is for the community-based
23 organization to have an office in the region and have a
24 demographic profile like the communities they serve. Next
25 slide.

1 Agency-wide we understand that we must go above
2 and beyond to make an enduring difference in the lives of
3 Californians. And aside from EPIC we have other funding
4 opportunities that have benefited disadvantaged
5 communities. Using our CEC investments tool we were able
6 to calculate the cumulative total invested by seven of our
7 grant and incentive programs in projects located in
8 disadvantaged communities as of October 2020. The programs
9 are the Local Government Challenge Grant, Food Production
10 Investment Program, Renewable Energy for Agriculture, Clean
11 Energy Jobs Act, Clean Transportation, Geothermal Resources
12 Development Account, and the New Solar Homes Partnership.
13 Yes, it is a mouthful. The total investment is \$811
14 million. Next slide.

15 So here we just show the percentage of funds that
16 each of those seven programs have invested in disadvantaged
17 communities from their total monies through October 2020.
18 And for each program we're investing at least in the teens.
19 And the majority have invested about 28 percent or more.
20 Next slide.

21 This is a map with yellowish blocks representing
22 DAC areas according to the CalEnviroScreen. The colored
23 dots that look like rainbow sprinkles or confetti represent
24 project sites funded by grants and disadvantaged
25 communities through October 2020 the LGCG, EPIC, REAP, Prop

1 39, CTP and GRDA. We didn't include EPIC, because we
2 showcased those investments separately. And we didn't
3 include PIER because we didn't calculate those monies
4 through October 2020. And we don't show NSHP because
5 residential locations are confidential. Despite those
6 caveats you can see that the Commission is covering a lot
7 of ground. And some of the CalEnviroScreen areas aren't
8 visible because of the numerous projects sites. And we
9 also see there are still some areas of opportunity. Next
10 slide.

11 In 2019, the Commission also increased its
12 efforts to obtain feedback from grant applicants in order
13 to improve our application processes and user experience.
14 Jennifer Martin-Gallardo serves as a fulltime impartial
15 liaison who conveys feedback from grant recipients to the
16 Commission Chair and other Commissioners. Jen and I have
17 been working together to gather feedback from community-
18 based organizations. And one of the reoccurring messages
19 we've heard is state applications are overwhelming for
20 organizations with limited resources and capacity. So Jen
21 is working diligently to make the Commission's processes
22 even more effective and streamlined for applicants. Next
23 slide.

24 Now we'll pivot to workforce training and
25 development opportunities. As we consider how to build

1 ourselves back up as a state after the toll that 2020 took
2 on families due to the pandemic, wildfires, racial
3 injustices and other hardships, it's even more critical for
4 us to invest in people, to train them and connect them to
5 quality jobs that provide a pathway to a resilient future.
6 Next slide.

7 The Fuels and Transportation Division again has
8 stepped up and is to be commended for their tremendous work
9 to accelerate workforce training and development
10 opportunities. One key program is a \$1 million project for
11 school bus replacements in low income and disadvantaged
12 communities that provides training for zero-emission school
13 bus maintenance technicians and bus operators. There are
14 64 school districts and 9 colleges participating in this
15 training where 233 electric school buses will be deployed.
16 This type of effort increases work opportunities while
17 improving public health and providing students the
18 experience of riding in the coolest school buses. Next
19 slide.

20 FTD also takes to heart that workforce
21 development opportunities need to be ongoing, include clean
22 transportation education, reach multiple generations, and
23 train in culturally diverse communities. One of the key
24 partnerships they've developed to address these areas is
25 with the advanced transportation and logistics center

1 through the California community college system.

2 In 2019, FTD established and expanded investment
3 in zero-emission vehicle workforce training and development
4 programs and curriculum through 7 community colleges that
5 are all located in low income and disadvantaged communities
6 and that are also ethnic-serving institutions. This
7 opportunity provides a critical pathway for students to
8 gain access to careers and advanced technologies who may
9 not have been able to go to a four-year college or had
10 other viable opportunities. Next slide.

11 Another key partnership helps get students in
12 high school-career technical education excited about zero-
13 emission vehicle technology. This program provides high
14 school students with hands-on experience to build electric
15 cars with specific curriculum. All 28 schools funded to
16 date are located in low income and disadvantaged
17 communities. This program also provides electric-vehicle
18 training to high school faculties.

19 I accompanied Commissioner Monahan, Larry Rillera
20 and other FTD staff to some of the recipient high schools,
21 and what I remember most is how excited the students were
22 to be in class and to talk about their projects. It was
23 also impressive to see how the students under their own
24 initiative sought to enhance the stature of this new
25 electric-vehicle class in their schools and use social

1 media to promote this program to their communities.

2 It was equally thrilling to see firsthand how the
3 faculty instructors were really proud of the student's
4 achievements and how students were suddenly developing into
5 our leaders in these classes and how they were planning for
6 their futures after high school. It's been one of my
7 favorite experiences while at the Commission, so I thank
8 Patty for letting me join them on that. Next slide.

9 That concludes the programmatic highlights. Now
10 we'll pivot to our internal efforts, starting with the
11 Diversity Career Fair. It's been an annual event since
12 2016; that's on the next slide.

13 In 2019 the Training Office educated over 40
14 attendees about the state's appointment and interview
15 process. Staff from every division participated informing
16 the communities about their work. And we don't know if any
17 of the attendees were hired, but it was beneficial to
18 expose more diverse applicants to the Commission and the
19 state process generally. Next slide.

20 In 2019 we also strengthened our recruiting
21 efforts by dedicating Jessica Gee to this work, who you see
22 here. The deputy directors and small offices all indicated
23 they were very grateful to be able to lean on Jessica to
24 help find talented candidates, especially for hard-to-fill
25 classifications. She improved the student program by

1 streamlining policies for the existing student assistant,
2 volunteer and internship programs agency-wide. Jessica
3 provided career counseling to internal and external
4 candidates. She piloted a career ambassador program to
5 test creating small recruitment teams in each division and
6 office. Next slide.

7 Jessica also implemented student program
8 orientations to educate student assistants, volunteers and
9 interns about the agency and state-hiring process. This is
10 a photo from July 2019 commemorating the first student
11 program orientation. I'm really grateful for Jessica's
12 investment to help increase diversity at the Commission
13 with fresh perspectives. Next slide.

14 In 2019 the Commission also launched an agency-
15 wide initiative to advance inclusion diversity, equity and
16 access. Next slide.

17 The IDEA Initiative is a two-prong approach to
18 advance these four principles, with a focus on internal
19 efforts called IDEA-In, and a focus on external efforts
20 called IDEA-Ex. IDEA-In is set up as a task force that
21 anyone at the agency can join and it's basically action by
22 the workforce for the benefit of the workforce.

23 IDEA-Ex is composed of executive-level leaders
24 developing programmatic strategy. Carousel Gore, Courtney
25 Smith, Darcie Houck and I are the co-executive sponsors of

1 IDEA. Next slide.

2 IDEA-Ex leaders have indicated we should focus
3 efforts on making transformational changes for communities.
4 And this is a glimpse of the strategy we've been kind of
5 brainstorming, which will serve as a roadmap with a
6 timeline. We've noted that it's important to start by
7 defining key terms such as the communities we serve, which
8 I began to call energy equity communities as a big
9 umbrella. And we're also very interested in developing an
10 equity framework that can be adopted agency-wide for our
11 programmatic work. We also seek to develop metrics for
12 accountability and evaluation. And of course we realized
13 we need to determine action.

14 We're really, really excited about the idea of
15 conducting a large-scale community-needs assessment and
16 listening session to help us determine what our priorities
17 and goals should be. And cracking the tough nut of how to
18 provide meaningful technical assistance is another area we
19 seek to explore. Next slide.

20 So for IDEA-In we've had multiple convenings with
21 the task force with at least 100 to over 200 attendees at
22 meetings. One of the key results we're hearing from staff
23 about IDEA-In is that the authentic dialogue is leading to
24 better understanding of each other and to having a greater
25 sense of belonging at the Commission. We're learning from

1 analytical data and employees' stories about how we can
2 make the Commission an even better workplace.

3 And we've determined there are five areas of
4 opportunity that we've turned into subgroups, which
5 include: hiring/recruitment, transforming culture, staff
6 development/ promotions, access/resources, and tracking
7 progress/ accountability. These five groups are diligently
8 working to develop recommendations for short and long-term
9 action to implement at the Commission. And we plan to
10 share recommendations next year. Next slide.

11 So a few clear next-steps that can help advance
12 our diversity policy efforts are: first, to continue
13 investing in the idea initiative; second, a group of us
14 from IDEA-Ex is reviewing the diversity policy to explore
15 how we can refresh our commitment. And third, a major
16 observation I made while working on the diversity report,
17 is that it would help us to develop a standardized tracking
18 system for our equity efforts to ensure we accurately
19 capture investments in small businesses, diverse vendors,
20 tribes and others.

21 In conclusion, I want to emphasize that I'm
22 committed to continue seeking ways to improve our efforts
23 for the benefit of all Californians, including our
24 workforce.

25 And I also want to give a shout-out to some folks

1 who supported me with this presentation and graciously put
2 up with my pestering -- next slide -- Dorothy, Karina, Pam,
3 Abby, Larry, Courtney, Travis, Hilarie and Shawn, I owe you
4 cookies.

5 And I'll end with an extra thanks to all of you:
6 Chair, Vice Chair, Commissioners, Drew and Darcie for your
7 inspiration and commitment to accelerate inclusion,
8 diversity, equity, and access at the Commission.

9 I'll take questions if you have any. Otherwise
10 that was a mouthful, so I need to take some water.

11 CHAIR HOCHSCHILD: Thank you so much, Noemi, for
12 all that work and also to all the staff from all the
13 programs. I'm just incredibly proud. I know all the
14 Commissioners are really proud of the whole team. I wanted
15 to especially recognize Commissioner Douglas for the
16 leadership on the tribes, especially. I was fortunate to
17 be able to join at the event a year ago with the Bishop
18 Paiute and Tom Gates and everyone, and am proud of all that
19 work.

20 Let's go to Commissioner discussion. Why don't
21 we start with Vice Chair Scott?

22 VICE CHAIR SCOTT: Well thank you, Noemi, for
23 that excellent presentation of everything. I think it is
24 really wonderful to see. And I think it's a great emphasis
25 that we have at the Commission on, as you mentioned,

1 equity, diversity, access, inclusion. And when you put
2 everything together in the way that you did and then spend
3 some time presenting all of the different topics and all of
4 the different ways that the Commission is engaged it's
5 really fantastic. And it's not just me and my office, or
6 you and your office, but it's all of us in all of our
7 offices. And we think about this, and we work on it every
8 day.

9 And it matters a lot, right? And I think we're
10 doing a good job with the connections, with the engagement
11 we're trying to do. I think the Energy Commission does a
12 good job of listening and then trying to revise or update
13 based on information and data that we hear from other
14 folks. And what you presented, the work that we're doing,
15 I think is a really solid portfolio. And so I just want to
16 applaud you and everyone around the Commission who makes
17 this happen every day. As you mentioned at the beginning
18 it does need to be within our DNA. It's not something that
19 one or two people can kind of do and have the whole
20 organization work together well. And so everyone's kind of
21 got their sleeves rolled up and thinking about this,
22 working on it really closely. And I think we're excited
23 about the progress that we've made.

24 And we also recognize that there's lots more to
25 do, right? And so there's, again, we're always open.

1 We're looking for constructive feedback. It's a challenge
2 sometimes to engage folks who don't follow energy all day,
3 every day. And so if people have some creative ideas about
4 how we can continue to do outreach, you know, we're always
5 open to those.

6 So anyway, I just wanted to say thank you so much
7 for the excellent presentation. And thank you to all of
8 the Energy Commission staff across all of our divisions
9 that helped make this work happen every day, because we
10 just can't emphasize enough how important it is to have
11 this level of, again, inclusion, equity, diversity and
12 access around the Commission. So thank you.

13 CHAIR HOCHSCHILD: I'm shocked to hear there are
14 people who don't follow energy every day. (Laughter.) Any
15 other Commissioners wishing to make a comment, Commissioner
16 Douglas.

17 COMMISSIONER DOUGLAS: Yeah just a few brief
18 comments, first of all, Noemi, thank you so much for that
19 presentation. I know you put a lot of time and work into
20 it and there was a lot to cover. And I know you were
21 wondering if you could get through it all in the timeframe,
22 and I think only by speaking very quickly, but that was
23 fantastic.

24 I've been really pleased to have the opportunity
25 to work closely with Commissioner Scott and really with all

35

1 of you on the Energy Commission's equity efforts and I just
2 appreciate the commitment that is being shown and
3 demonstrated in what Noemi presented today. I've enjoyed
4 the work.

5 I'm very pleased to see how well we have, for
6 example, integrated the recommendations of the DACAG into a
7 lot of our work. Transportation was called out, but in
8 other areas as well, I've personally appreciated and
9 benefited from interacting with the DACAG. I know many of,
10 probably all of my colleagues have.

11 And I'm also very pleased with the progress and
12 work in the Tribal Program. And thank you for highlighting
13 that. As you mentioned, it's not the same program. There
14 are structural reasons why it's organized around our
15 government-to-government obligation, but we've benefited so
16 much. Not only from the hard work of Tom Gates and staff
17 in the Tribal Program, but from your engagement, Noemi, and
18 from the leadership shown from really all of the divisions.
19 A specific call-out to EPIC, because they've worked hard to
20 help create opportunities for tribes within our research
21 program. But tribal outreach from all of the divisions has
22 become really good. And it's something that we've been
23 able to leverage and work on and will continue to, so
24 thanks for that.

25 And I really appreciate the work that's been done

1 and led internally on the staff side, but with just on
2 ensuring diversity in our internal practices, fostering a
3 climate of inclusion. And ensuring that people feel
4 comfortable at the Energy Commission as everybody brings
5 their capabilities and their background and their ideas
6 into the workplace and we work together to do the state's
7 business.

8 And so I'll just probably end by -- obviously in
9 my mind as I say that -- was our diversity celebration,
10 which was really nice. And so I think that's probably all
11 I'll say on this. But thank you so much for the report
12 out, Noemi.

13 CHAIR HOCHSCHILD: Thank you, Commissioner.
14 Anyone else wishing to make a comment, Commissioner
15 McAllister?

16 COMMISSIONER MCALLISTER: Yeah, I'll chime in,
17 just really nothing but good things to say about Noemi.
18 All of your effort, this is a huge transformational shift
19 in focus and emphasis, I think, at the Commission. And
20 it's many years in the making. I just think that it's a
21 fundamental matter of how we do business.

22 And so just pushing on all of the different
23 buttons and pulling all the levers we have to help really
24 infuse everything we do with appreciation for diversity.
25 And not just an appreciation sort of generally, but very

1 specific commitments and very specific actions we can take.
2 I mean, there just aren't other states as diverse and as
3 large and as innovative in all different ways as
4 California. And so I think this is another way we can
5 really show leadership.

6 And again, I always bring back to like pragmatic
7 results. You know, it has the benefit of being the right
8 thing to do, but it also is something that we have to do if
9 we want to achieve our collective goals. And so it really
10 is just in everyone's best interest. And, I think, shines
11 a light on the fact that these inequities that are built
12 into our society are harmful in many ways, not just in the
13 energy sector, but across the board. And so we have to do
14 our part there as well.

15 So anyway, good, good. I think giving a broad
16 context is all I wanted to do there. And just thank you
17 for all this, all the very detailed work you're doing along
18 these fronts. And to Vice Chair Scott and all the
19 Commissioners as well, for every everything that you're
20 doing on this along these lines. So thank you very much.

21 CHAIR HOCHSCHILD: Thank you, Commissioner.
22 Commissioner Monahan?

23 COMMISSIONER MONAHAN: Yeah well, first I'm going
24 to pile on the Noemi appreciation bandwagon to say you've
25 brought so much great energy, enthusiasm, drive, vision to

1 the Commission, so I just appreciate it on a personal
2 level. And I think organizational level as well, just how
3 much energy that you -- and I also want to acknowledge that
4 there are lots of others that are -- Courtney and Carousel
5 and others that are putting in a lot of time and energy
6 into the IDEA-In and IDEA-Ex, and it's just awesome, so
7 thank you, Noemi.

8 And I feel -- on the one hand I feel very proud
9 to be part of the organization that's leaning in on
10 diversity, equity, inclusion and access. I also feel like
11 we have a lot of work to do. We have more work to be able
12 to define benefits beyond project location. On our grants
13 we have more work, I think looking inward, to see how do we
14 create an Energy Commission that welcomes everybody. And
15 to me, this work is never done, we've never arrived. It's
16 just a matter of kind of opening your eyes to greater
17 challenges and trying to address those challenges as best
18 you can. I feel like when I look back 20 years to the
19 person I was 20 years ago and now today, I've learned so
20 much. And we as an organization need to continue to learn
21 and grow and look inward and criticize ourselves for what
22 we fail to do and strive always to do better.

23 So I just look forward to working with you,
24 Noemi, and the DACAG and others. Especially on this
25 question around how do we define project benefits and how

1 do we measure that, which is hard work. It's hard work,
2 and yet we have to get there.

3 So I thank Vice Chair Scott for her leadership of
4 the DACAG and Commissioner Douglas with their leadership
5 with tribes and just the fact that all of us want to do a
6 better job. We, I think, we all come at it with open
7 hearts. And so let's work together to do better.

8 CHAIR HOCHSCHILD: Thank you, Commissioner, for
9 those comments.

10 All right let's move on to Item 2, Geysers Power
11 Company, LLC Settlement Agreement. Shawn?

12 MR. PITTARD: There we go.

13 CHAIR HOCHSCHILD: Yeah, there you go.

14 MR. PITTARD: All right, good afternoon,
15 Commissioners, my name is Shawn Pittard. I'm the Deputy
16 Director for the Siting, Transmission and Environmental
17 Protection Division. I'm here today to request your
18 approval for a settlement agreement between the California
19 Energy Commission and the Geysers Power Company.

20 With me today our Staff Counsel Kirk Oliver and
21 Jared Babula. Also with me from STEP are Eric Veerkamp,
22 our Compliance Project Manager; Geoff Lesh, who's our
23 Engineering Office Manager; and our Inspection Team
24 Supervisor Fred Folks (phonetic). Let's have the next
25 slide and start with the map. Thank you.

1 So to give you the idea of where these facilities
2 are located the Geysers Power Company owns and operates six
3 geothermal power plants that are licensed by the CEC and
4 located in either Lake County or Sonoma County. Let's have
5 the next slide for a closer view.

6 These power plants have collectively generated
7 300 megawatts of baseload renewable energy, beginning in
8 1982. All right, one more slide. Next slide, please.

9 An example of one of the plants, Grant Unit 20.
10 In February and March 2018 CEC staff conducted site visits
11 and inspections at the Geysers facilities. On April 17,
12 2018, staff issued a compliance advice letter informing GPC
13 that CEC staff was investigating the fire protection
14 systems at the Geysers facilities for compliance with
15 applicable fire codes and consistency with CEC licenses and
16 compliance monitoring plans.

17 On November 20, 2019 the Energy Commission staff
18 informed GPC that it alleged that the six jurisdiction
19 Geysers facilities were out of compliance with the
20 applicable Final Decisions, their respective compliance
21 monitoring plans, and applicable fire codes.

22 GPC has worked with CEC staff since the April 17,
23 2018 compliance advice letter to recommission the fire
24 protection systems at each of the Geysers facilities. In
25 assessing the fire protection systems at the Geysers

1 facilities GPC prepared updated Basis Of Design documents,
2 BODs, for each of the Geysers facilities. GPC has hired a
3 fire protection engineer who is a third-party expert to
4 help create, revise, and refine the BODs. The fire
5 protection engineer also helped implement the initial
6 recommissioning, developed a cooling-tower fire protection
7 guidance memorandum, and scheduled recommissioning
8 activities.

9 GPC's cooperation and other efforts to repair and
10 improve its fire protection systems have saved the CEC time
11 and resources and further investigation and adjudication of
12 the alleged violations. Given GPC's continuing and
13 diligent cooperation, CEC staff and GPC believe that rather
14 than engaging in formal adjudication it would be more
15 productive to enter into a settlement to allow the parties
16 to focus their collective resources on the ongoing
17 recommissioning activities. Which, in turn will further
18 expedite completion of the BODS, and ensure that the fire
19 protection systems at the Geysers facilities remains safe
20 and reliable.

21 In developing that settlement, CEC staff
22 considered the cooperation of GPC, the specific facts
23 developed by the CEC and GPC staff during the course of the
24 investigation, the actions and omissions by the prior
25 owners before GPC's acquisitions of the Geysers facilities.

1 And we applied the relevant factors in the Public Resources
2 Code Section 25534.1(e) to determine that settlement rather
3 than adjudication is a more appropriate use of the CEC's
4 and GPC's collective resources.

5 CEC staff worked with GPC to develop additional
6 Conditions of Certification, to ensure the Geysers
7 facilities operate in compliance with all applicable final
8 Commission decisions, the respective compliance monitoring
9 plans and applicable fire codes.

10 The agreed-upon Conditions of Certification GEN-
11 1, COM Conditions of Certification 1 through 11, fire
12 protection Conditions of Certification 1 through 5 are
13 intended to be amendments to the Final Decisions for each
14 of the Geysers facilities. Condition of Certification fire
15 prevention 1 is intended to be an amendment to the Final
16 Decision for Units 3, 17 and 19.

17 The legal requirements at issue, as well as
18 staff's allegations and GPC's position are included in the
19 settlement agreement, which provides for a payment of
20 \$2,100,000 by GPC to the CEC. In addition, changes to the
21 Conditions of Certification are also included in the
22 settlement agreement. All right, could I have the next
23 slide, please?

24 Staff's recommendation, we recommend that the CEC
25 approve the settlement agreement and changes to the

1 Conditions of Certification and direct the Executive
2 Director to execute the settlement agreement on behalf of
3 the CEC. That concludes my presentation. Thank you.

4 CHAIR HOCHSCHILD: Thank you, Shawn. Let's go to
5 public comment. Noemi, do we have any comment on this
6 item?

7 MS. GALLARDO: Yes, we have a number of folks on
8 the line. We'll start with Rob Parker, Regional Vice
9 President of the Geysers.

10 MR. PARKER: Yes, thank you. Can you hear me?

11 CHAIR HOCHSCHILD: Yes, we can.

12 MR. PARKER: Okay, great. Thank you. I'd first
13 like to extend a thank you to staff and the Commission for
14 allowing me the opportunity to comment. As stated my name
15 is Rob Parker. I am the new Vice President of Regional
16 Operations at the Geysers and have more than 30 years of
17 experience in the power industry. I'd like to start by
18 emphasizing that at the Geysers the safety of our employees
19 and our community is of the highest priority and a core
20 value.

21 Our Geysers team has worked, and will continue to
22 work, cooperatively with the CEC to address the issues
23 raised by the CEC. GPC has successfully upgraded and will
24 continue to enhance its fire protection systems, reporting,
25 and record keeping. I'd like to emphasize that none of

1 these matters caused or contributed to any fires. And we'd
2 like to thank the CEC staff for their hard work and
3 diligence in resolving this matter.

4 So thank you for your time, I appreciate it.

5 CHAIR HOCHSCHILD: Thank you.

6 MS. GALLARDO: All right, Chair, this is Noemi,
7 again the Public Advisor. I think it was only Rob who was
8 supposed to be speaking. There are several other folks
9 from the Geysers, but Rob was the representative voice.

10 CHAIR HOCHSCHILD: Okay, thank you.

11 Let's move on to Commissioner discussion,
12 Commissioner Douglas.

13 COMMISSIONER DOUGLAS: Yes, thank you. So first
14 of all I just wanted to note that this is obviously a
15 significant and important proposed settlement. And it
16 reflects the Commission's prioritization of health and
17 safety at jurisdictional power plants to ensure that lives
18 and property and reliability are well protected.

19 And I think it reflects very well on the
20 diligence of the Energy Commission's compliance team
21 supported by the Chief Counsel's Office to help ensure that
22 the conditions of the license with regard to health and
23 safety were met, or are being met. I appreciate the
24 Geysers constructive and proactive work with the Energy
25 Commission staff to resolve outstanding issues and Mr.

45

1 Parker's participation today. And the commitment that the
2 Geysers has shown to make the necessary corrections on the
3 ground at the jurisdictional power plants.

4 I think that settlement of these issues is vastly
5 preferred to litigation of issues. And obviously getting
6 remediation at the site asap is our highest priority. So
7 I'm very glad to see that the staff and the Geysers were
8 able to reach agreement on how to proceed. And based on
9 the facts before us I strongly support and recommend
10 approval of this settlement agreement.

11 CHAIR HOCHSCHILD: Great, other Commissioner
12 comments?

13 (No audible response.)

14 CHAIR HOCHSCHILD: Hearing none, let's entertain
15 a motion. Commission Douglas, would you be willing to move
16 the item?

17 COMMISSIONER DOUGLAS: Yes, I move approval of
18 this item.

19 CHAIR HOCHSCHILD: Vice Chair Scott, would you be
20 willing to second?

21 VICE CHAIR SCOTT: Second.

22 CHAIR HOCHSCHILD: Okay, all in favor say aye.
23 Commissioner Douglas?

24 COMMISSIONER DOUGLAS: Aye.

25 CHAIR HOCHSCHILD: Vice Chair Scott?

1 VICE CHAIR SCOTT: Aye.

2 CHAIR HOCHSCHILD: Commissioner McAllister?

3 COMMISSIONER MCALLISTER: Aye.

4 CHAIR HOCHSCHILD: Commissioner Monahan?

5 COMMISSIONER MONAHAN: Aye.

6 CHAIR HOCHSCHILD: And I vote aye as well. That
7 item passes unanimously. Let me thank all the staff and
8 the professionals from the Geysers for coming to resolution
9 on this.

10 Let's move on to Item 3, Small Power Plant
11 Exemption for the Sequoia Backup Generating Facility. I
12 guess we're going to hear that after Walsh and Mission
13 College. Okay, let's do Walsh first and Mission College
14 second. Okay.

15 It looks like are we going to go -- Darcie
16 recommended we go to a closed session at this time?

17 MS. COCHRAN: Chair Hochschild, this is Susan
18 Cochran, I believe that was the plan.

19 MS. HOUCK: Yes, yes. Chair this is Darcie.
20 Yes, we are going to go to an initial closed session to
21 deliberate. And then we'll come back on the record and
22 provide direction to the parties on how to proceed with the
23 three SPPE items.

24 CHAIR HOCHSCHILD: Okay thanks. So we'll go to
25 closed session, and then we'll reconvene. Thank you.

1 (Off the record at 1:56 p.m.)

2 (On the record at 2:17 p.m.)

3 CHAIR HOCHSCHILD: Okay, welcome back everybody.
4 Thank you for your patience. What we're going to do is
5 hear Mission College in its entirety, take public comment
6 on that and Commissioner questions. Then we're going to
7 hear Walsh in its entirety, take public comment, take
8 Commissioner questions on that. And then we'll vote both
9 of those items out and then move on to Sequoia.

10 So let's proceed with Mission College.

11 VICE CHAIR SCOTT: Chair Hochschild?

12 CHAIR HOCHSCHILD: Yes?

13 VICE CHAIR SCOTT: I think we're still missing
14 Commissioner Douglas.

15 CHAIR HOCHSCHILD: I thought I saw her.

16 MS. GALLARDO: She hasn't turned on her video.
17 She's still signed in, but not with video.

18 CHAIR HOCHSCHILD: Karen, are you able to hear
19 us? Well maybe she --

20 MS. HOUCK: I think she said she needed two
21 minutes before she came back.

22 CHAIR HOCHSCHILD: Oh, fine. Thank you, Vice
23 Chair Scott. Let's wait until she's back.

24 MS. GALLARDO: She's back.

25 CHAIR HOCHSCHILD: Hi, Commissioner Douglas,

1 you're back? Okay, I just relayed to everyone we're going
2 to hear Mission College first, then Walsh, and then vote on
3 each of those items before we move on to Sequoia. So let's
4 begin with Mission College.

5 MS. DECARLO: Oh, I'm sorry. This is Lisa
6 DeCarlo. I see my name here, but I would imagine that
7 because you're hearing a petition for reconsideration from
8 Mr. Sarvey, perhaps the Hearing Office should either tee
9 that issue up or Mr. Sarvey should present his position.

10 MS. HOUCK: We're waiting for Commissioner
11 Douglas to come back Lisa, we --

12 CHAIR HOCHSCHILD: No, she's back.

13 MS. HOUCK: Oh, okay. For some reason my video
14 is not clearly working and I apologize. I don't know that
15 I heard what was said right before Lisa talked. This is
16 Darcie.

17 MS. GALLARDO: Darcie, your video is working. We
18 see you.

19 MS. HOUCK: Okay, all right. I'm not sure what
20 it is, but it's not showing up on my computer, so I'm going
21 to apologize. I heard Lisa speaking, but I didn't hear
22 what was said right before Lisa.

23 CHAIR HOCHSCHILD: We're ready to begin with
24 Mission College, so I'm not clear who should go first.
25 Darcie if you --

1 MS. HOUCK: Okay, are we starting with Mission
2 College or with Walsh?

3 CHAIR HOCHSCHILD: We're going to start with
4 Mission College and then go to Walsh.

5 MS. HOUCK: Okay, let me -- okay, so Chair, would
6 you like me to just provide an overview of where we are?

7 CHAIR HOCHSCHILD: Sure.

8 MS. HOUCK: So on August 12th, 2020, the
9 Commission approved the Small Power Plant Exemption for the
10 Mission College backup facility.

11 On September 10th, 2020, Intervenor Robert Sarvey
12 filed a Petition for Reconsideration of the Commission's
13 Final Decision to grant the Small Power Plant Exemption.
14 The Commission is reviewing this, Mr. Sarvey's motion to
15 reconsider, under the principles of Title 20 Section 1720
16 of the Energy Commission's regulations. The regulations
17 don't specify that we allow for reconsideration of Final
18 Decisions and Small Power Plant Exemption matters; however,
19 the Commission has used this standard in previous reviews
20 of motions to reconsider for such exemptions.

21 The Petitioner here, Mr. Sarvey, has the burden
22 to prove that the material presented in his petition is
23 either new evidence that could not have been produced
24 during the evidentiary hearings on the matter, is an error
25 of fact or law, or a material change in law. Mr. Sarvey

1 must fully explain why the matter set forth in his petition
2 could not have been considered during the evidentiary
3 hearings and how their effects of -- in that the effects of
4 the information he's providing have an effect on the
5 substantial elements of the decision that was adopted by
6 the Commission.

7 If the Commission denies this petition the CEC's
8 Final Decision stands as-is. If the Commission grants the
9 petition, the Commission then must determine the procedure
10 in which to resolve any matter that it is ordering
11 reconsideration of. And with that I will turn this back
12 over to you, Chair, and if there's any questions I'm
13 available.

14 CHAIR HOCHSCHILD: Thank you.

15 Let's move on to Mr. Sarvey.

16 MS. GALLARDO: This is Noemi, the Public Advisor.
17 Mr. Sarvey, you can unmute and turn on your video, if you'd
18 like to start.

19 MR.SARVEY: Okay, thanks. Thank you,
20 Commissioners. Can you hear me okay?

21 CHAIR HOCHSCHILD: Yes, we can.

22 MR. SARVEY: Okay. Well, I set all my comments
23 up not to duplicative and most of my arguments are
24 contained in the Sequoia Data Center Remand. Well, I'll
25 try to struggle through this without repeating things over

51

1 and over, but I expected to start with the Sequoia issue.
2 But I'll try to start at this issue, Mission College.

3 CEC staff claims that the Air Resources Board
4 comments do not affect the material element of the Mission
5 College decision, when if that was true why is CEC staff
6 now recommending that the Energy Commission conduct EIRs in
7 the San Jose Data Center and the Great Oaks South Data
8 Center proceedings? In granting staff's proposal to
9 conduct an EIR the San Jose Data Center Committee stated
10 that here staff's intent to conduct a more thorough
11 analyses required under an EIR are appropriate. Given that
12 CARB and BAAQMD, two agencies with expertise in air quality
13 and public health modeling, analysis and impacts have
14 expressed concerns that staff's analyses and modeling might
15 not fully identify potential significant air quality and
16 public health impacts. Thus, given the totality of the
17 circumstances in this case, we agree that an EIR would best
18 meet the purposes of CEQA, and decline Applicant's request
19 to direct staff to prepare an IS/PMND.

20 Mission recognizes that CARB's comments
21 indicating that environmental impacts for emergency
22 operation and cumulative impacts arising from the operation
23 for all of the CEC data centers are material issues. The
24 Mission College Data Center decision relies on emergency
25 operations being too speculative to analyze. And yet the

1 Air Resources Board and the evidence demonstrates
2 otherwise.

3 Staff's analysis in the Mission College decision
4 do not even mention, much less consider, the impacts of the
5 five approved data centers and the other three data centers
6 proposed at the CEC. CEC staff's insistence to conduct
7 EIRs in the remaining data center proceedings undercuts
8 their argument here that the Air Resources Board and BAAQMD
9 comments do not affect a material element of the Mission
10 College decision.

11 CEC staff also claims that the recent heat storm
12 and rotating outages are not evidence, calling into
13 question a substantive element of the decision to grant
14 Mission College SPPE.

15 The Final Decision relies on CEC staff's
16 estimates that the likelihood of a data center operating in
17 emergency mode is 1.6 percent a year. And staff calculated
18 this by examining Silicon Valley power outages. Staff
19 calculates the percentage based on an evaluation of Silicon
20 Valley powers curtailments over a 10-year period. But the
21 fact is all these outages occurred between 2006 and 2020
22 over a 4-year period.

23 The heat storm caused 112 megawatts of diesel
24 backup generators to operate Santa Clara Data Center. The
25 Final Decision relies on CEC staff's best estimates that

1 the likelihood of a data center operating in emergency mode
2 is 1.6 percent per year when considering historical
3 outages. This latest outage increases staff's 10-year
4 outage percentage and increases the likelihood of emergency
5 operations, which affect the material element in the
6 decision.

7 CARB's comments are substantial evidence that
8 demonstrates that emergency operations and cumulative
9 impacts are feasible, necessary, and required to comply
10 with CEQA, who considers probation is appropriate under
11 these circumstances. And I hope you've read the comments
12 that I filed previously. And that's all I have for the
13 moment. Thank you.

14 CHAIR HOCHSCHILD: Thank you.

15 Should we see if there's a response from, it's
16 Mr. Galati?

17 MR. GALATI: Yes, Chair. I'm here.

18 CHAIR HOCHSCHILD: Did you want to make any
19 comments in response to that?

20 MR. GALATI: Yes, please. Thank you very much
21 for this opportunity to address you. Commissioners, you
22 are applying, as Ms. Houck's just described, a very strict
23 standard on what is required for a Petition for
24 Reconsideration.

25 Mr. Sarvey has said two things in his opening

1 statement that are inaccurate. The first is that there
2 were no cumulative impact analysis. The second was is that
3 there were no emergency operation analyses. This is
4 conflating two issues that I'll talk, probably, a little
5 bit more about in the Sequoia proceeding.

6 CEQA does require you to look at things and
7 determine whether feasible and then to evaluate
8 consequences that are foreseeable. But what it doesn't
9 require you to do is to engage in speculative modeling and
10 analysis to do that foreseeable evaluation. And that's
11 exactly what your staff did.

12 Let's take cumulative impacts. The Bay Area Air
13 Quality Management District guidelines have a screening
14 cumulative impact tool. That's what was used, so there was
15 a cumulative impact analysis. There wasn't a modeling
16 analysis for air quality. There was for public health,
17 because the Bay Area has a CEQA guideline and a methodology
18 on how you do public health cumulative analysis.

19 So again, this applicant and staff analysis
20 follows the existing CEQA guidelines of which we talked
21 about at the evidentiary hearing. We briefed and we had
22 quite a bit of disagreement with Mr. Sarvey on those
23 points.

24 The second is emergency operations. Emergency
25 operations were evaluated, they just weren't modeled.

1 There's a difference. I'll give you an example. The clear
2 (indiscernible) emergency generation is foreseeable. We're
3 building emergency generators. Another thing we're doing
4 is we're actually putting in fire safety measures. We're
5 putting in fire suppression measures, because a fire is
6 foreseeable, although very unlikely. But we don't model
7 the air quality impacts from a fire. And we don't also
8 model air quality impacts from emergency operation.

9 And while we look forward to working with CARB in
10 other proceedings, this proceeding's finished. This
11 proceeding, this Applicant, is under construction and there
12 needs to be finality. And what Mr. Sarvey has done has
13 found that CARB initially agrees with some of the comments
14 that Mr. Sarvey has made. But that assertion in his recent
15 response to this petition actually makes our point. And I
16 think staff agrees all of the issues raised by CARB and all
17 of the issues raised by Mr. Sarvey are the same and they
18 were adjudicated. They're just disagreement and
19 disagreement is not new evidence. Disagreement is not an
20 area of change, in fact. And no one has pointed to a
21 change in law.

22 So applying your own standard, we don't even get
23 past Step One, which is what's the new evidence that
24 couldn't be presented earlier? What is the change in fact?
25 And what is the change in law?

1 The second piece is that if there were those
2 things they had to undercut a fundamental finding that the
3 Commission made. And Mr. Sarvey just fails to do that. He
4 points out these extreme heat storms. But he then says
5 that emergency generators were required to run. What we do
6 know, and what the Energy Commission has determined during
7 its root cause at least at this point, is very few
8 generators -- I think all I could find was 12 megawatts
9 were actually curtailed. Everyone else voluntarily ran, so
10 that the power they would use and was available to it,
11 could be distributed to other places in California.

12 So at the end of the day that's not enough. And
13 I really urge the Commission to deny this petition. Let
14 this important project continue putting people to work
15 during a time when work is necessary and is important.
16 Thank you.

17 CHAIR HOCHSCHILD: Thank you.

18 Unless there's questions from Commissioners for
19 Mr. Galati let's move on to staff. Mr. Babula?

20 MS. DECARLO: Oh hi, this is Lisa DeCarlo I'm the
21 staff attorney for the Mission College facility for staff.

22 Yeah, we agree with what Mr. Galati said. Mr.
23 Sarvey has not met what is a very high burden for granting
24 a Petition for reconsideration. And we have outlined -- we
25 address all of his assertions in our written filings. I

1 can respond to this assertion that because we're doing an
2 EIR for Mission College all previous projects now are
3 subject to an EIR.

4 As we stated in our -- in that issue in
5 (indiscernible) staff, when doing a -- proposing to do an
6 EIR, not because our previous analysis are lesser than what
7 we would do going forward. But because we believe the
8 process is more responsive when an EIR is in place. So
9 that doesn't affect our analysis. We anticipate it still
10 being the same except for an expanded alternatives
11 analysis.

12 Regarding emergency operations this assertion
13 that the recent energy emergencies have impacted the
14 analysis to the extent that causes the Energy Commission to
15 have to revisit it, that is unsupported. We have
16 thoroughly analyzed emergency operations in the Mission
17 College proceeding and the heat -- the mere fact that an
18 emergency situation arose, so that a few data centers then
19 operated their backup generators, is not an indication that
20 the underlying analysis presented in the Mission College
21 facility is now somehow flawed or needing revisiting.

22 So for those reasons we recommend the Commission
23 deny the Petition for Reconsideration.

24 CHAIR HOCHSCHILD: Okay. Thank you, Lisa.

25 Before we go to public comment, any questions

1 from Commissioners for any of the parties?

2 (No audible response.)

3 CHAIR HOCHSCHILD: Hearing none, let's go to
4 public comment.

5 MS. GALLARDO: This is Noemi, the Public Advisor.
6 So let's check to see with a show of raised hands if
7 there's any anyone on Zoom that wants to make public
8 comments. Please feel free to press the raised hand icon.
9 So Chair, I'm not seeing anyone on Zoom. And -- oh.

10 MR. BIEHL: I was upgraded to this position to
11 speak, it's Frank Biehl.

12 MS. GALLARDO: Hi, Frank. Go ahead.

13 MR. BIEHL: Okay, I can do this very quickly.
14 I'm Frank Biehl. I'm representing David Bini the Executive
15 Director of the Santa Clara and San Benito Counties
16 Building and Construction Trades Council. Our Council
17 represents 27 craft trade unions with over 30,000 members
18 in the respective two counties.

19 Our organization continues to support approval of
20 the Mission College backup generation facility. We went on
21 the record with this position at a previous hearing. We
22 continue to support this project and ask that the Petition
23 for Reconsideration be denied. Thank you.

24 CHAIR HOCHSCHILD: Any other comment, public
25 comment, Noemi?

1 MS. GALLARDO: I don't see any raised hands.
2 Let's just make a final call. Anyone else wishing to make
3 a public comment please raise your hand or go ahead and
4 unmute.

5 MR. ZIELKIEWICZ: This Jakub from the Bay Area,
6 should I jump in now or is there a separate --

7 CHAIR HOCHSCHILD: Yeah.

8 MS. GALLARDO: Yes.

9 CHAIR HOCHSCHILD: Do you have a comment on
10 Mission College?

11 MR. ZIELKIEWICZ: Yeah, so the comment applies to
12 all three of them, but I'll make the comment here. And we
13 can revisit later on with the other two if that helps. So
14 again, my name is Jakub Zielkiewicz speaking on behalf of
15 the Bay Area Quality Management District. And we've been
16 engaged with CEC from early stages on, on Mission College
17 and likewise with Walsh and Sequoia. And our position is a
18 steadfast approval of these data centers with diesel
19 engines is inconsistent with the State of California's
20 goals to achieve carbon neutrality as soon as possible and
21 no later than 2045.

22 Approval of these diesel engines in communities
23 most impacted by air pollution is inconsistent with the
24 legislative intent of the AB 617 Community Air Protection
25 Program. And approval of these diesel-engines blocks locks

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1 in not only the testing and maintenance operations and
2 associated adverse climate air quality and public health
3 impacts, but it also locks in the yet-to-be-determined
4 impacts associated with the emergency operations of these
5 engines.

6 Currently CEC staff assumes that emergency
7 operations of these backup diesel engines at all three of
8 these facilities is zero hours. And that assumption is
9 based on relying on the ten years of reliability data from
10 Silicon Valley Power that ends in fall of 2019. Although
11 the SVP data shows reliability information it does not show
12 hours of backup generator emergency operations.

13 And if you look at the McLaren SPPE proceeding,
14 there was a discussion of Vantage Data Centers showing 17
15 hours of emergency operations that was associated with a --
16 hour grid event. And so the inference that the SVP outages
17 translates to emergency operations, that's flawed. And the
18 incorrect conclusion that emissions from those outages are
19 de minimis has led CEC staff to state that analysis of the
20 impacts of emergency emissions are speculative and not
21 required by CEQA.

22 As part of the ongoing collaboration between CEC
23 and CARB staff, CEC has requested that the Air District
24 obtain data pertaining to emergency operations of the
25 diesel generators at the existing data center facilities in

1 the region. And I'll note that this data collection is an
2 ongoing process and there's quite a lot of information.
3 But the findings to date indicate significantly different
4 emergency operations than currently assumed by CEC staff.

5 The Air District's information shows that data
6 centers operate under emergency conditions for significant
7 amounts of time. And that the emissions for such emergency
8 operation should be considered as reasonably foreseeable
9 impacts as required in CEQA for both air quality and
10 greenhouse gas impacts.

11 Based on approximately one year of data ending
12 September 2020 from data centers in Santa Clara, more than
13 half of the identified data centers ran their generators as
14 a result of emergencies. Many data centers had multiple
15 emergency events over the course of the year. Emergency
16 operation approached 50 hours for one generator for one
17 event. One facility had over 800 hours of emergency
18 operations across numerous generators and numerous
19 emergency events. And again, this is all over the course
20 of one year only, so this data --

21 CHAIR HOCHSCHILD: Jakub, I'll have to stop you.
22 You're at your three minutes, but thank you for those
23 comments.

24 MR. ZIELKIEWICZ: I'll continue with the next
25 ones. Thank you.

1 CHAIR HOCHSCHILD: Thank you. Yes, you can do
2 that at Walsh.

3 Okay, any other public comments, Noemi?

4 MS. GALLARDO: Let me check. Is there anyone
5 else from a local or state agency who has public comments
6 they would like to make? If so you should do so now.

7 MR. DYER: Hi.

8 MS. GALLARDO: You can unmute or raise your hand.
9 Oh, go ahead.

10 MR. DYER: Hi, this is Wesley Dyer, attorney at
11 the California Air Resources Board. Our comments are more
12 so for the Sequoia Data Center so I'm going to save the
13 bulk of them for there. But I will just note that to the
14 extent that our October 15th,, 2020 comments are playing a
15 role here we will just note that we recognize that CEC
16 staff has responded to those comments in the case of
17 Sequoia. But from our standpoint those responses focused
18 on procedural and legal objections without further
19 substantive analysis. And so we respectfully disagree with
20 those responses and still stand by our October 15th
21 comments to the extent that they may play a role in here.
22 I just wanted to make that clear.

23 Otherwise, I'll be commenting more on the Sequoia
24 proceeding.

25 CHAIR HOCHSCHILD: Thank you.

1 Noemi, anyone else on the line for public
2 comments?

3 MS. GALLARDO: Let me check again.

4 Any other local or state agency representative
5 who wish to make a public comment please do so now. You
6 can unmute or raise your hand.

7 (No audible response.)

8 MS. GALLARDO: Okay I'm not hearing anything, not
9 seeing any hands. Chair, let me just check to see if
10 there's anyone else aside from representatives from
11 agencies who would like to make a public comment please
12 raise your hand or let us know. Okay, Chair, I'm not
13 seeing anything. We can move forward.

14 CHAIR HOCHSCHILD: Okay, thank you.

15 Commissioner Douglas before we move onto --

16 MS. HOUCK: Chair?

17 CHAIR HOCHSCHILD: Yeah, you have one more?

18 MS. HOUCK: Just real briefly here, I'm just
19 looking back and I'm not sure that Mr. Sarvey had a chance
20 to make a reply to staff and the Applicant's comments.

21 CHAIR HOCHSCHILD: Oh, my apologies.

22 Yeah, let's see, Mr. Sarvey did you have any
23 response you wanted to offer to Mr. Galati?

24 MR. SARVEY: Oh, yes. Thank you, Commissioners.

25 You heard from the Bay Area Quality Management the analysis

1 that you're relying on for emergency operations and the
2 frequency of their operation is completely flawed. And
3 your entire decision is based on that analysis, so
4 obviously your entire decision is flawed and unreliable and
5 you should reconsider this decision. Thank you.

6 CHAIR HOCHSCHILD: Thank you.

7 Noemi, no more comments, correct?

8 MS. GALLARDO: That's correct, Chair.

9 CHAIR HOCHSCHILD: Okay. So we're not going to
10 vote on this item until we've also heard Walsh. But we can
11 talk it through. Unless, Commissioner Douglas, would you
12 recommend we hear Walsh and then talk them both through
13 together? What's your preference?

14 COMMISSIONER DOUGLAS: Well my recommendation is
15 we hear Walsh and then discuss both.

16 CHAIR HOCHSCHILD: Okay. Let's do that. So
17 let's move on to Walsh if we could.

18 MS. HOUCK: Chair, I can. On August 12th -- this
19 is Darcie Houck, the Chief Counsel -- on August 12th, 2020
20 the Commission approved the Small Power Plant Exemption for
21 the Walsh Generating Station.

22 On September 10th, 2020, Intervenor Mr. Robert
23 Sarvey filed a Petition for Reconsideration of the
24 Commission's Final Decision to grant a Small Power Plant
25 Exemption for the Walsh Backup Generating Station. The

1 Commission in reviewing a motion for reconsideration -- I'm
2 going to reread the standard -- there is not a specific
3 allowance for reconsideration of small power plant
4 exemptions. But we have used the standard set out in Title
5 20, California Code of Regulations, Section 1720 of the
6 Commission's Regulations.

7 And that standard requires, and shows that Mr.
8 Sarvey would have the burden here. And that he must prove
9 that the material presented in his petition amounts to new
10 evidence that could not have been produced during the
11 evidentiary hearings during the preceding, that there's a
12 material error of fact or law, a material change in law.
13 And Mr. Sarvey must fully explain why the matters set forth
14 in his petition could not have been considered during the
15 evidentiary hearings. And how the information set forth in
16 the petitions would have an effect upon a substantial
17 element of the decision.

18 If the Commission denies this petition then the
19 Commission's Final Decision stands, if the Commission
20 grants the petition the CEC must determine the procedures
21 by which to resolve any matter being reconsidered,
22 including but not limited to accepting additional comments,
23 briefing, referring the matter back to the Committee or
24 reopening the record.

25 I just also want to remind the parties that this

1 proceeding is being recorded and transcribed. And that
2 they should speak slowly and clearly and state their names
3 before they speak and in order to ensure that we have an
4 accurate record for the proceedings. And that they're not
5 expected to talk over each other and that they should be
6 respectful of each other.

7 And that since this is Mr. Sarvey's petition he
8 would speak first. Then we would go to the Applicant, then
9 staff. Mr. Sarvey would then have a chance to rebut. And
10 then we would hear public comments. And with that I will
11 turn this back over to you, Chairman.

12 CHAIR HOCHSCHILD: Thank you, Darcie.

13 So let's move on to Mr. Sarvey for your initial
14 argument.

15 MR. SARVEY: Okay. Thank you, Commissioners.

16 The Walsh Decision contains the same material
17 defects as the Sequoia Decision and the Mission College
18 Decision. There is no cumulative impact modeling and no
19 emergency operations modeling.

20 Like the Sequoia Data Center the Committee for
21 the Walsh Data Center also requested a cumulative impact
22 assessment. On August 29th, 2019, the Committee for the
23 Walsh Data Center held its status conference for the
24 application. At that conference the Committee expressed an
25 interest in the cumulative air impact analysis of the

1 project in conjunction with other data centers on the SVP
2 South loop. As the Committee stated at the August 29th
3 status conference for the Walsh Data Center, "Our further
4 area is cumulative impacts. What projects have been
5 previously approved or are under construction that are
6 being used for a cumulative impact analysis?"

7 For example, in Walsh, it's Walsh on the same
8 loop as SC-1, McLaren and Laurelwood for determining
9 cumulative impacts for reliability. Similarly, this would
10 also impact air quality. And I know there were several
11 data requests that staff put forward about these types of
12 issues in terms of cumulative impacts analysis, but were
13 also very interested in that. And air quality always
14 raises to me an issue of public health and environmental
15 justice.

16 On August 8th, 2019, Energy Commission staff
17 issued Data Request Number Eight, which stated, "Please
18 provide the cumulative impact modeling analysis, including
19 Walsh Data Center and other identified new and planned
20 projects within six miles of the Walsh site." Of course I
21 advocated for a cumulative impact assessment and an
22 emergency operations analysis. But just like the Sequoia
23 proceeding every party, but the Applicant requested these
24 analyses.

25 The difference between the Sequoia project and

1 the Walsh project is that the Walsh project is directly
2 adjacent to the Lafayette Data Center currently under
3 Energy Commission review with its 54 backup diesel
4 generators. The Walsh IS/PMND and Applicant's documents
5 never mentioned, much less assess, the impacts of combined
6 construction and operation of the Walsh Data Center in
7 conjunction with the Lafayette Data Center, even though
8 both were constructed and operated almost simultaneously.
9 This fact alone warrants reconsideration of the Final
10 Decision.

11 CEC staff argues in opposition to the Petition
12 for Reconsideration that the petition identifies rolling
13 blackouts, unprecedented strain on the grid, states of
14 emergency, public safety power shutoffs, and programmatic
15 comments regarding backup diesel generators made by the
16 California Air Resources Board as their rationale for the
17 petition.

18 CEC staff says none of these events affect the
19 Final Decision. CEC staff is ignoring their own
20 determinations through rotating outages. And CARB comments
21 now require EIRs in both the San Jose Data Center case and
22 the Great Oak South Data Center proceeding to address the
23 Air Resources Board comments and impacts of energy
24 emergencies on air quality in the project area.

25 The Walsh Data Center is situated no differently

1 than the other data centers CEC staff is preparing EIRs for
2 except there is an un-analyzed 154-megawatt Lafayette Data
3 Center sitting next to the Walsh project. BAAQMD
4 Regulation 1-215 defines a facility as "any property, real
5 or personal, which may incorporate one or more plants all
6 being operated or maintained by a person as part of a
7 identifiable business or a contiguous or adjacent property,
8 and shall include but not be limited to plants, refineries
9 and power plant generating plants."

10 The Applicant admits in his opposition to the
11 reconsideration that Digital Realty will in fact manage and
12 operate the project. This project will be partially owned
13 and completely operated by Digital Realty who owns 100
14 percent of the Lafayette Data Center. Digital Realty lists
15 651 Walsh Partners as their subsidiary in their 2019 10K
16 (phonetic) report.

17 The application filed by Walsh Data Center in the
18 City of Santa Clara lists Joe Hubbard of Digital Realty as
19 the owner of the Walsh Data Center. Joe Hubbard of Digital
20 Realty appeared as the witness for the Walsh Data Center at
21 the evidentiary hearing. The SPPE application for the
22 Walsh Data center at the CEC has Digital Realty Advertising
23 pictured on the front of the proposed data center. The
24 Secretary of State website lists Digital Realty as the only
25 member of the Board of Directors for 651 Walsh Partners.

1 Even the Final Decision states on page 23, "Joe Hubbard,
2 the Senior Design Director for Digital Realty, a parent
3 company of the Applicant, testified it does not conduct
4 pull-the-plug tests." In reality, the Lafayette Data
5 Center is nothing more than an expansion of the Walsh Data
6 Center and should be considered as such.

7 But the real issue is not who owns and operates
8 the Walsh Data Center, the real issue is that the Walsh and
9 Lafayette Data Center impacts were not considered together
10 in the environmental analysis, even though they're
11 constructed and operated concurrently.

12 The Walsh decision states on page 25, "However
13 Mr. Sarvey stated that the revised HRA undertaken by staff
14 is deficient, asserting that several of these projects were
15 not included in the analysis."

16 We now know the Lafayette Data Center located
17 adjacent to the project has health risks from construction
18 and operational impacts that were not considered in the HRA
19 evaluation, creating a material air in the Final Decision.
20 CEC staff continues to bend its decision to not follow
21 emergency operations, stating in its opposition to
22 reconsideration that modeling operations, emergency
23 operations requires too many assumptions to result in
24 useful information about a project's potential for
25 significant adverse impacts. And any conclusion

1 (indiscernible) modeling would be speculative.

2 You just heard from BAAQMD that the CEC staff
3 analysis of the backup generator hours of operation is
4 extremely flawed. Evidence in the proceeding shows that
5 the CEC staff modeled 50 hours of emergency operations in
6 this proceeding to determine the health risk from the
7 project. The evidence shows the Applicant modeled 50 hours
8 of emergency operations in this project to determine if the
9 project's CO emissions violated any air quality standards.

10 BAAQMD, the air quality agency who will permit
11 this facility, did in fact model emergency operations in
12 the Santa Clara Data Center. BAAQMD's emergency operations
13 analysis determined that the short term NO2 impacts would
14 create a maximum 1 hour NO2 concentration of 1,276
15 micrograms per cubic meter, which is three times the
16 straight regulatory limit. The results were meaningful
17 enough for BAAQMD to limit the project operations to 700
18 hours per year for all engines combined and limit the time
19 of day they could operate. Those restrictions are
20 contained in the CEC's decision on the Santa Clara project.

21 Following emergency operations is feasible,
22 provides meaningful results and as required by CEQA as the
23 record demonstrates. There are arguments and evidence in
24 this proceeding that emergency operations and cumulative
25 impacts will result in potential significant and paramount

1 impacts substantiated by the California Air Resources Board
2 and the Bay Air Quality Management District. Considering
3 these factors the reconsideration of the Walsh decision is
4 appropriate. Thank you.

5 CHAIR HOCHSCHILD: Thank you.

6 Unless there is a question from Commissioners,
7 let's go to Mr. Galati.

8 MR. GALATI: Thank you very much Chair,
9 Commissioners. Again, the standard that you're providing
10 here is what is the new evidence that should be presented
11 here? What is the error of fact or what is the error of
12 law? And whether or not those have an actual causative
13 effect on the substantive element of this decision.

14 I never tire of listening to Mr. Sarvey. And the
15 reason I never do is because I learn something very
16 different about those very proceedings that I actually
17 participate in. It is true that Mr. Sarvey asked for a
18 motion of compelling, asked for a cumulative impact
19 analysis. But he didn't tell you the rest. We went and
20 spoke to the Committee and we actually had a hearing on
21 that motion to compel. And it was determined that what we
22 were doing was appropriate under the CEQA guidelines,
23 excuse me, the Bay Area Air Quality Management District's
24 CEQA guidelines. So that's some part of the story that you
25 didn't hear.

1 The second part of the story that you didn't hear
2 is that this ability and way to address emergency
3 operations has actually evolved over time. I did the first
4 data center project that you've seen in a while, which was
5 in 2017, and '18, which was McLaren. And then you got the
6 Laurelwood project. In McLaren you did not evaluate the
7 emergency operations by modeling, you evaluated them by
8 determining that they were not very frequent. In
9 Laurelwood, staff modeled it. And guess what, you came up
10 with a number but it didn't matter. It didn't tell you
11 anything. It wasn't meaningful, because ultimately what
12 you tried to determine was how often will that occur and
13 under what circumstances could it be worse or less?

14 And so during the time we're having these motions
15 to consider a cumulative in emergency operations you are
16 working on Laurelwood. Laurelwood's decision comes out and
17 it informs the rest of the decisions. So I can understand
18 why CARB might have some questions about how we got to the
19 point of having emergency generation operations not
20 modeled. But I don't understand how Mr. Sarvey does,
21 because he was part of these proceedings and it's an
22 evolution and he failed to tell you about them.

23 Similarly, he fails to tell you that you have two
24 declarations in front of you, under penalty of perjury,
25 that these projects are not the same owners. Second, this

1 ownership is not the ultimate decision. What is the
2 decision, and the Commission has issued two jurisdictional
3 determinations on this point for data centers, and that is
4 that if the facilities are not master-planned together,
5 share property together, and share infrastructure together
6 they are not the same facility. And this facility as
7 supported by the declarations, as supported by what I told
8 you at the Business Meeting and in our writings, is this
9 facility.

10 It basically has distinct entities. They're
11 different ownerships. They are independent. They have two
12 different sites and they have no shared infrastructure.
13 Why would somebody build a data center if it was going to
14 work with another data center and have two substations and
15 two interconnections and two entrances and two securities
16 and separate employees if they weren't separate? The
17 bottom line, Commissioners, is these projects aren't
18 master-planned together. And quite frankly, they thought
19 they'd be done with Walsh a lot sooner than the Lafayette
20 center.

21 And so I think what you've heard here is a lot of
22 speculation on Mr. Sarvey's part. Because see, Mr. Sarvey
23 never has to prove anything, he only has to say something
24 and then we have to disprove it. We've done it here.

25 Lastly, I'd like to just reiterate it's very

1 frustrating to hear Bay Area Air Quality Management
2 District come up with data that it could have come up with
3 for a long time. I mean, Mr. Zielkiewicz actually
4 testified in some of these proceedings and we didn't have
5 any of these conversations.

6 Again I implore you, Commissioners, that the
7 integrity of your proceeding should be based on having an
8 end. We cannot continue to analyze, analyze, analyze.
9 Even if we did do emergency modeling for air quality, you
10 would be stuck with the same decision that you're stuck
11 with now which is, is it frequent enough to be a
12 significant impact?

13 And the idea that there's a facility out there
14 that has 800 hours of emergency operation when each
15 generator is only allowed 50 is surprising to me. I
16 suspect that that's a mistake. I look forward to seeing
17 that data. Tomorrow we're having a workshop in the Great
18 Oak South project and I hope to roll up my sleeves, look at
19 that data and try to find out what's really going on.

20 But here, Commissioners, we need a decision on
21 this project. It's already got its city permit and is
22 waiting on demolition. So it's surprising and this late
23 participation, coming up with new facts and ideas shouldn't
24 be rewarded. So I ask you very much, and respectfully as I
25 can, to please deny this petition.

1 CHAIR HOCHSCHILD: Thank you.

2 Let's hear from staff.

3 MS. GALLARDO: Jared, you're muted. Jared, you
4 should unmute on your computer screen.

5 MR. BABULA: I'm on the phone. Is that better?
6 Can you hear me?

7 MS. GALLARDO: We hear you.

8 CHAIR HOCHSCHILD: We can hear you. Hi, Jared.

9 MR. BABULA: Okay great, thanks. So I'd like to
10 just confirm what Mr. Galati said that there's a couple of
11 things here. Again, is there a new evidence? Is there new
12 information? And so Mr. Sarvey hit on a lot of points.
13 And I just want to hit some key ones that were more
14 recently added to his argument that weren't quite covered
15 in the staff's response.

16 And so one of the things he brings up is this
17 issue of the 99-megawatt Lafayette Data Center in not being
18 included in any type of sort of cumulative impact analysis.
19 And so there is one thing that's important to realize is
20 there's an existing data center, a smaller one, at 2805
21 Lafayette Street. That data center was included in the
22 cumulative health risk assessment as detailed in the
23 testimony of Dr. Ann Chou (phonetic) in the transcript at
24 page 135. And so we did look at that existing one.

25 In regards to the current Lafayette Data Center

1 before the Commission under review that was filed well
2 after staff performed its initial study. And also after
3 staff responded to comments and implemented additional
4 analysis as suggested by the Bay Area Air Quality
5 Management District. Therefore, the information regarding
6 that project wasn't included. But in evaluating the
7 Lafayette project staff will be able to consider the
8 Walsh's part of the cumulative impacts analysis regarding
9 construction and so forth. So that will get picked up in
10 that project.

11 Mr. Sarvey also states that the Walsh Final
12 Decision makes a legal error, one that mistakenly concludes
13 that air quality cumulative impact assessment is not
14 necessary. Again, I want to make sure we're clear that
15 detailed in Exhibit 203, Staff's Exhibit, the health risk
16 assessment covering cancer and chronic impacts associated
17 with the testing and maintenance as the backup generators
18 did, include as recommended by the Bay Area Air Quality
19 Management District emissions, from existing sources within
20 1000 feet of the Walsh project. Plus a portion of the San
21 Jose Airport and it also included Sequoia and McLaren and
22 this 802-805 Lafayette existing data center.

23 And so the health risk assessment was robust. It
24 included all the different existing facilities around the
25 site. And it was also based on an exposure profile of all

1 33 backup generators running at 100 percent to the maximum
2 allowable time of 50 hours per year.

3 Now for criteria pollutants, the Final Decision
4 correctly states that based on the daily average or annual
5 emissions from testing of generators the Bay Area Air
6 Quality Management District's threshold triggering the need
7 for a cumulative analysis was not met. And so the decision
8 is correct legally.

9 The final thing I want to address is Mr. Sarvey's
10 allegation that because of CARB's comments we are now doing
11 EIRs in these other projects before STEP staff's reviewing.
12 And so for the San Jose Data Center case that -- I just
13 want to really touch on that one -- so the appropriate
14 environmental document is assessed on a project-by-project
15 basis. And the decisions in other cases are not relevant
16 to the current petition before the Commission.

17 But to ensure an accurate record, the rotating
18 outages were not a factor in determining to -- in a
19 determination to produce an EIR in the San Jose Data Center
20 case. Staff made that decision prior to the August rolling
21 blackouts and it's primarily based on the fact that the
22 prior iteration of the project had an adopted EIR. And
23 unlike Walsh, the San Jose Data Center did not have its own
24 on-site substation and it requires a number of miles of
25 transmission upgrades. And there are also some potential

1 traffic impacts. So based on these other factors in the
2 decision, staff felt that an EIR was more appropriate.

3 The other last thing I want to address is this
4 just recent statement that the Air District just made
5 regarding some sort of emergency operations that are
6 different than what staff may have utilized in our
7 assessment. If some of these projects are operating at a
8 greater level, I mean all the generators are permitted by
9 the Air District. And so if this exemption is continued
10 and goes to the locals for review the Air District can
11 insert things into the permit to ensure the operations of
12 the generators are consistent with what's being described
13 in the project description and so forth.

14 So again, I would remind everybody we're
15 approving or not approving exemptions. We're not actually
16 approving the project. And so that's all I have unless
17 there's a question from the Commissioners. Thanks.

18 CHAIR HOCHSCHILD: Thank you.

19 Mr. Sarvey, anything you wanted to say in
20 response to either what you heard from Mr. Galati or Mr.
21 Babula?

22 MR. SARVEY: Oh yes, thank you. We keep hearing
23 that emergency operations are not frequent (indiscernible)
24 may not be modeled. BAAQMD's comments today laid back to
25 rest indicating that one data center alone operated in

1 emergency mode for 800 hours in one year. Staff is
2 claiming they are ignorant of the existence of the 99-
3 megawatt Lafayette Data Center. And I don't know if that's
4 true, but the big question is why Mr. Galati and Walsh
5 Partners never revealed the existence of the Lafayette Data
6 Center to the Committee.

7 So the potential for environmental impacts from
8 the adjacent data centers needs to be evaluated and you
9 need to reconsider this decision.

10 CHAIR HOCHSCHILD: Okay, thank you.

11 Any public comments on this item, Noemi?

12 MS. GALLARDO: Yeah, this is Noemi, Public
13 Advisor, so let me check.

14 First, are there any representatives from
15 federal, state, or local agencies who would like to speak
16 on this item? Please either raise your hand or go ahead
17 and unmute and state your name and affiliation.

18 MR. ZIELKIEWICZ: This is Jakub Zielkiewicz again
19 from Bay Area. Is this an okay time to jump in?

20 CHAIR HOCHSCHILD: Yeah, we're talking about
21 Walsh here, so you're free to comment on Walsh.

22 MR. ZIELKIEWICZ: Yeah, so this is a
23 continuation, I suppose, of other remarks and trying to
24 respond to some of the points made. But based on the
25 information that was requested by CEC as part of the

1 ongoing CEC, CARB and Air District collaboration the
2 information received today suggests that zero hours of
3 emergency operations is an inappropriate assumption.

4 And I think in some of the comments made the
5 mentioning of timing of this information and that it's
6 being raised now -- yes, the timing of the CEC and CARB
7 requests and our compiling the Air District of this
8 information could perhaps be viewed as untimely,
9 unfortunate, inconvenient. In terms of the CEC proceedings
10 however, it would also be a public disservice to not raise
11 this issue before the Commission today prior to your
12 consideration of the 250-plus megawatts of these diesel
13 engines across all three of these facilities.

14 And so we believe it's incumbent upon or on CEC
15 to take the time to review this data that's coming in,
16 that's being gathered, and on the use of these backup
17 diesel generators during emergencies before proceeding with
18 the approval of Walsh, Mission College and Sequoia as well.
19 And without consideration of this information our view is
20 that recommendation to proceed at this point seems
21 premature.

22 There was mention of local permitting actions.
23 And in our view the local permitting actions that's within
24 our jurisdiction authority, that does not absolve the CEC
25 from its duty under CEQA to evaluate and mitigate

1 imminently foreseeable emission impacts from these types of
2 projects. And specifically the emergency operations that
3 we're identifying, have identified, and will continue to
4 identify them.

5 I'll stop at that point and I'll make some more
6 comments during the subsequent Sequoia decision. Thank
7 you.

8 CHAIR HOCHSCHILD: Thank you.

9 Noemi, any other public comments?

10 MS. GALLARDO: Let's check, anyone else
11 representing federal, state, or local agencies who would
12 like to speak? Either please raise your hand or go ahead
13 and unmute and begin speaking.

14 MR. DYER: Hi, this is Wesley Dyer with CARB
15 again. And I'll just again reiterate that to the extent
16 that our October 15th comments that we submitted on Sequoia
17 are relevant or being considered here as well, just note
18 that we again disagreed with CEC staff's responses and
19 stand by those comments.

20 And would just note that these data centers are
21 not quite aligned with California's kind of longer-term
22 goals in terms of climate and air quality. And so we --
23 but we do view these as a good kind of pivot point in
24 moving forward together with CARB and the Commission and
25 the local air districts. And then again, we'll have more

1 full comments on Sequoia. Thanks.

2 CHAIR HOCHSCHILD: Thank you.

3 MS. GALLARDO: All right, this is Noemi, Public
4 Advisor. Just checking to see if there's any other
5 representatives from federal, state, or local agencies who
6 would like to speak?

7 (No audible response.)

8 MS. GALLARDO: Okay I'm not seeing anyone or
9 hearing anything, anyone other than representatives as
10 agents interested in making a comment? I see one hand
11 raised. That is Claire Warshaw. I will open your line
12 now, Claire. Go ahead and state your name and your
13 affiliation, if any.

14 MS. WARSHAW: My name is Claire Warshaw. I don't
15 have an affiliation. I used to work for SMUD. Can you
16 hear me?

17 CHAIR HOCHSCHILD: Yes, we can hear you.

18 MS. WARSHAW: Okay, I wrote down a few notes.
19 I've listened to a little bit of this and heard a lot of
20 Commission work by listening to business meetings. And my
21 comments are probably not all that important, but I'll make
22 them quick.

23 I've never seen the Commissioners really reject
24 anything during the Business Meeting and I think that
25 that's something that is unusual to learn. Also, it seems

1 in terms of every kind of job and business that even your
2 own staff won't speak against something like this, because
3 they risk losing their own work doing that. And that's
4 never really noticed or helped very much by a situation
5 like this.

6 The other agencies, the other state agencies and
7 legislation that I've heard spoken about by the
8 Commissioners in business meetings, it seems kind of
9 counter-productive to have diesel going at all, so it was
10 surprising when all these data centers came in. And they
11 are building, so this is distributed backup generation
12 that's being installed for buildings that are important to
13 the business owners, and not in the past considered as much
14 of a critical asset, but now it's kind of a modern thing.
15 A hospital might be more something that I would have
16 considered for backup diesel.

17 Diesel seemed like the thing to run to when you're
18 looking for a generator right now. And designers haven't
19 really probably had a plan in place where they could learn
20 to do something else to put in back in its generation. But
21 that kind of thing is suggested by what the Clean Energy
22 Group has put into a publication, which I put to the docket
23 in terms of solar and storage.

24 And the Silicon Valley Power Plant, or excuse me,
25 the Silicon Valley Power is an organization. And the

1 Governor in an emergency can make a virtual power plant out
2 of these things without it being in the control of the
3 building owners. So that's an unusual thing to think
4 about.

5 And also it's when you have one representative,
6 Gallardo -- I'm sorry, I'm not trying to hurt your name --
7 representing all these different buildings it doesn't seem
8 like separate owners of buildings. It seems like one mass
9 and which happens with developers. They are a very
10 powerful group. They hire a lot of people, the land, time,
11 energy, costs, all that stuff pushes hard against getting
12 these things done. And I've been in that position a lot
13 where they want it done yesterday. And there's a lot of
14 power behind that, because there's a lot of people behind
15 that so I know that pain. So that seems important to
16 remember. As a designer you might have more design work if
17 you were to reconsider, but that is just one small group
18 compared to that.

19 CHAIR HOCHSCHILD: Thank you so much for those
20 comments.

21 Anything further on public comment, Noemi?

22 MR. BIEHL: This is Frank Biehl.

23 MS. GALLARDO: Let me check. Now go ahead, Frank.

24 MR. BIEHL: Thank you. Again, Frank Biehl. And
25 at the risk of being repetitive, although I don't think

1 that's necessarily a problem here today, I'm representing
2 David Bini, Executive Director of the Santa Clara and San
3 Benito Counties Building and Construction Trades Council.
4 Our Council represents 27 craft trade unions with over
5 30,000 members in the two counties.

6 I think what you're faced with here today is a
7 procedural issue. I attended hearings before on all three
8 of these particular plants, and I believe the Commission
9 made a decision. And unless there's something
10 extraordinary here today there's no reason to go back on
11 the decision that you made before. Our organization
12 continues to support the approval of the Walsh backup
13 generating facility. We went on record at this, at the
14 previous hearing, and we continue to support this project.
15 And we ask that the Petition for Reconsideration be denied.
16 Thank you for your time today.

17 CHAIR HOCHSCHILD: Thank you.

18 Noemi, is that it or are there further comments?

19 MS. GALLARDO: I do not see any other hands, so
20 just let's do one last call. Anyone else who would like to
21 speak on this item, please either raise your hand or unmute
22 and go ahead and start speaking.

23 (No audible response.)

24 MS. GALLARDO: All right Chair, I'm not seeing
25 anyone or hearing anyone so I think we can move forward.

1 CHAIR HOCHSCHILD: Okay, let's turn to
2 Commissioner discussion on both these items starting with
3 Commissioner Douglas.

4 COMMISSIONER DOUGLAS: Well, thank you Chair
5 Hochschild. And I've had the opportunity to obviously look
6 at the written materials submitted and hear the comments
7 today and I think I will have more to say. But I do
8 suggest that we reconsider returning to closed session for
9 deliberation on this item now that we've heard from the
10 parties and the public.

11 CHAIR HOCHSCHILD: Okay.

12 And sorry, Commission McAllister, go ahead.

13 COMMISSIONER MCALLISTER: I would agree with that
14 assessment, just I'm feeling the need to regroup a little
15 bit and digest a little bit of what we've heard. And would
16 suggest that we have a closed session on these two items.

17 CHAIR HOCHSCHILD: Okay. We will go into closed
18 session then and then come back shortly. Thanks.

19 (Off the record at 3:15 p.m.)

20 (On the record at 4:00 p.m.)

21 CHAIR HOCHSCHILD: All right, do we have
22 everybody?

23 MS. GALLARDO: Yes, everybody is here.

24 CHAIR HOCHSCHILD: Okay. All right we're back
25 from closed session. Let's go to Commissioner discussion

1 starting with Commissioner Douglas.

2 COMMISSIONER DOUGLAS: All right. Well thank you,
3 Chair Hochschild. As I noted at the beginning, or before
4 we left for closed session, I do want to make some comments
5 now that I've heard from everything, everybody on this.
6 And I really am prepared at this point to make some
7 comments and then make a motion to deny reconsideration.
8 And what I wanted to do is ask if I should just go ahead
9 and do that and explain the basis of that or would anybody
10 else like to say anything before I do that?

11 (No audible response.)

12 COMMISSIONER DOUGLAS: All right, it looks like I
13 will do that then. And so I'm starting with comments on
14 the Mission College reconsideration. So as you know,
15 Commissioners at the August 12th Business Meeting, the
16 Commission adopted an Order adopting the Committee Proposed
17 Decision, including adopting the Initial Study and
18 Mitigated Negative Declaration, and granting a Small Power
19 Plant Exemption for Mission College. And on September
20 10th, 2020 Intervenor Robert Sarvey filed a Petition for
21 Reconsideration of the Final Decision.

22 Consistent with the broad discretion afforded to
23 the Commission under Public Resources Code, Section 25530,
24 it is appropriate to apply the principles found in the
25 California Code of Regulations Title 20, Section 1720 to

1 determine whether to grant Mr. Sarvey's Petition for
2 Reconsideration.

3 While Mr. Sarvey has filed CARB, or California Air
4 Resources Board's written comments in the Mission College
5 docket, Mr. Sarvey has not presented any evidence to show
6 how CARB's written comments filed on Sequoia can or should
7 be applied to Mission College.

8 While the heat storm and public safety power shut-
9 off events of August and September 2020 were not
10 contemplated at the time of the adoption of the
11 Commission's Final Decision, a review of the Final Decision
12 indicates that it considered a broad range of potential
13 events that could cause an outage and necessitate operation
14 of the emergency backup generators. These events do not
15 undermine the conclusion in the Commission's Final
16 Decision, that operation of backup generators is likely to
17 be infrequent and of limited duration. Nor do they call
18 into question whether Silicon Valley Power will have
19 sufficient resources by power to the Mission College Data
20 Center.

21 The Bay Area Air Quality Management District
22 participated throughout this proceeding and indicated that
23 their concerns were addressed by the analyses presented by
24 staff. We appreciate their participation here today and
25 also their participation earlier in the proceeding. I do

1 note, however, that despite their awareness of the
2 significance of the issue of frequency of emergency
3 operations in this proceeding they did not provide comments
4 that were specific to the Mission College proceeding. Nor
5 did they provide enough specificity for us to ascertain how
6 that information could affect the conclusions in the
7 decision.

8 Similarly, we value CARB's participation today,
9 but their comments also lacked sufficient specificity to
10 support the Petition for Reconsideration or affect our
11 original conclusions.

12 The Commission's Final Decision relied on the Bay
13 Area Air Quality Management District's CEQA guidelines to
14 analyze air quality impacts. Under those guidelines,
15 because the emissions from Mission College's backup
16 generators did not exceed the project-level thresholds of
17 significance, no separate cumulative impact analysis is
18 required. The Commission's Final Decision addresses
19 comments received regarding the use of technology,
20 alternatives to diesel power backup generators. No
21 alternatives analysis is required because there is no
22 substantial evidence that Mission College will have a
23 significant adverse impact on the environment.

24 Based on the foregoing, Mr. Sarvey has not
25 presented new evidence or shown an error in law or change

1 or error in law to support his Petition for
2 Reconsideration.

3 So based on the foregoing, I move to deny the
4 Petition for Reconsideration of the Commission's Final
5 Decision granting a Small Power Plant Exemption to the
6 Mission College backup generating facility. And direct the
7 Hearing and Policy Unit of the Chief Counsel's Office to
8 prepare an order memorializing our decision on the basis of
9 the facts and findings I just outlined.

10 CHAIR HOCHSCHILD: Okay. Is there a second?

11 Vice Chair Scott, would you be willing to second
12 that?

13 VICE CHAIR SCOTT: Yes, I second.

14 CHAIR HOCHSCHILD: Okay, so this is for Mission
15 College. Let's take the vote. All in favor say aye.

16 Commissioner Douglas?

17 COMMISSIONER DOUGLAS: Aye.

18 CHAIR HOCHSCHILD: Vice Chair Scott?

19 VICE CHAIR SCOTT: Aye.

20 CHAIR HOCHSCHILD: Commissioner McAllister?

21 COMMISSIONER MCALLISTER: Aye.

22 CHAIR HOCHSCHILD: Commissioner Monahan?

23 COMMISSIONER MONAHAN: Aye.

24 CHAIR HOCHSCHILD: And I vote aye as well.

25 Let's turn now to Walsh.

1 COMMISSIONER DOUGLAS: So this is Commissioner
2 Douglas. I would propose the same action in Walsh. And if
3 there's no objection I will make the same points I just
4 did.

5 CHAIR HOCHSCHILD: Is there any other
6 Commissioner discussion? If there's no other Commissioner
7 discussion do you want to make the motion?

8 COMMISSIONER DOUGLAS: I will. I will still read
9 the following just to make sure we have it on the record
10 for both cases. Consistent with a broad discretion afforded
11 to the Commission under Public Resources Code, Section
12 25530, it is appropriate to apply the principles found in
13 California Code of Regulations Title 20, Section 1720 to
14 determine whether to grant Mr. Sarvey's Petition for
15 Reconsideration.

16 While Mr. Sarvey has filed CARB's written
17 comments in the Walsh docket, Mr. Sarvey has not presented
18 any evidence to show here CARB's written comments filed on
19 Sequoia can or should be applied to Walsh.

20 While the heat storm and public safety power
21 shut-off events of August and September 2020 were not
22 contemplated at the time of the adoption of the
23 Commission's Final Decision a review of the Final Decision
24 indicates that it considered a broad range of potential
25 events that could cause an outage and necessitate operation

1 of the emergency backup generators. These events do not
2 undermine the conclusion in the Commission's Final Decision
3 that operation of backup generators is likely to be
4 infrequent and of limited duration. Nor do they call into
5 question whether Silicon Valley Power will have sufficient
6 resources to provide power to the Walsh Data Center.

7 In the Bay Area Air Quality Management District,
8 the Bay Area Air Quality Management District, or BAAQMD
9 participated throughout this proceeding and indicated that
10 their concerns were addressed by the analyses presented by
11 staff. We appreciate their participation here today and
12 also earlier in the proceeding. But note that despite
13 their awareness of the significance of the issue of
14 frequency of emergency operations in this proceeding, they
15 failed to provide comments that were specific to the Walsh
16 proceeding. Nor did they provide enough specificity for us
17 to ascertain how the information could affect the
18 conclusions in the decision.

19 Similarly, we value CARB's participation today as
20 well. But their comments also lack sufficient specificity
21 to support the Petition for Reconsideration or affect our
22 original conclusions.

23 The Commission's Final Decision relied on
24 BAAQMD's CEQA guidelines to analyze air quality impacts.
25 Under those guidelines, because the emissions from Walsh's

1 backup generators do not exceed the project-level
2 thresholds of significance, no separate cumulative impact
3 analysis is required.

4 The Commission's Final Decision addresses
5 comments received regarding the use of technology,
6 opportunities to diesel-power backup generators. No
7 alternatives analysis is required, because there's no
8 substantial evidence that Mission College will have a
9 significant adverse impact on the environment.

10 Based on the foregoing, Mr. Sarvey has not
11 presented new evidence or shown an error in law or change
12 or error in law to support his Petition for
13 Reconsideration.

14 So based on the foregoing I move to deny the
15 Petition for Reconsideration of the Commission's Final
16 Decision granting a Small Power Plant Exemption to the
17 Walsh backup generating facility. And direct the Hearing
18 and Policy Unit of the Chief Counsel's Office to prepare an
19 order memorializing our decision on the basis of the facts
20 and findings that I just outlined.

21 CHAIR HOCHSCHILD: Thank you, Commissioner.

22 Vice Chair Scott are you willing to second that
23 motion?

24 COMMISSIONER MCALLISTER: Could I just make a
25 very brief comment?

1 CHAIR HOCHSCHILD: Oh yeah, go ahead Commissioner
2 McAllister.

3 COMMISSIONER MCALLISTER: So recognizing that
4 there's a motion on the table I just want to encourage,
5 going forward, that Bay Area and ARB and anybody else who
6 can participate in that provide information that they have
7 about actual runtime and actual reality, the basis and
8 reality for the behavior of backup generators. We can only
9 benefit from that in proceedings going forward. So I
10 wanted to just make clear that we appreciate your being
11 here and beginning to offer that, but encourage more
12 specificity over time.

13 CHAIR HOCHSCHILD: Thank you, Commissioner.

14 (Overlapping Colloquy.)

15 COMMISSIONER DOUGLAS: And if I could Chair, I
16 just also appreciate the participation and input. I look
17 forward to more of it. And I did want to say if I
18 accidentally said Mission College instead of Walsh, I mean
19 Walsh.

20 CHAIR HOCHSCHILD: I think you said Walsh.
21 There's a motion on the table.

22 Vice Chair Scott, are you willing to second the
23 motion?

24 VICE CHAIR SCOTT: Yes, I'll second.

25 CHAIR HOCHSCHILD: Okay. All in favor say aye.

1 Commissioner Douglas?
2 COMMISSIONER DOUGLAS: Aye.
3 CHAIR HOCHSCHILD: Vice Chair Scott?
4 VICE CHAIR SCOTT: Aye.
5 CHAIR HOCHSCHILD: Commissioner McAllister?
6 COMMISSIONER MCALLISTER: Aye.
7 CHAIR HOCHSCHILD: Commissioner Monahan?
8 COMMISSIONER MONAHAN: Aye.
9 CHAIR HOCHSCHILD: And I vote aye as well. That
10 item passes unanimously. Thank you.

11 At this time, I'm going to give the reins here to
12 the Vice Chair. I have to depart for a meeting, so thank
13 you Vice Chair Scott. And we'll take up Sequoia.

14 VICE CHAIR SCOTT: Indeed, so with that let's
15 move on to the Small Power Plant Exemption for the Sequoia
16 Backup Generating Facility, which was originally listed as
17 Item Number 3 on the agenda. For this agenda item, a Small
18 Power Plant Exemption for the Sequoia Backup Generating
19 Facility, the Commission will reconsider the remand it
20 issued in September on its own motion. I will explain the
21 order that we will hear from the parties and the public.
22 But first, I will ask the Chief Counsel to summarize the
23 standard for review as to the motion. So I welcome Darcie
24 Houck to present please.

25 MS. HOUCK: Thank you, Vice Chair Scott.

1 At the September 9th, 2020 Business Meeting the
2 Commission approved a Motion to Remand the Sequoia Backup
3 Generating Facility to the Committee for further
4 consideration given the recent energy emergencies caused by
5 the extreme heat events. These emergency events were
6 raised in comments by both CARB and the Bay Area Quality
7 Management District during the September 9th Business
8 Meeting.

9 The Commission, in addition to the remand of the
10 matter back to the Committee, also requested that CARB
11 provide additional comments in writing no later than
12 October 15th, 2020.

13 During the meeting there were technical
14 difficulties, which prevented some of the parties from
15 commenting on the remand. The purpose of the hearing today
16 is to consider whether the Commission should affirm, affirm
17 with modifications, or vacate the Commission's adoption of
18 the Motion to Remand. The Chair of the Commission has the
19 authority to regulate the conduct of proceedings and
20 hearings, including the power to designate the process for
21 commenting on a matter under California Code of Regulations
22 Title 20, Section 1203(c). The Commission is taking this
23 additional step to reconsider its actions of the Motion to
24 Remand again, because parties and the public were unable to
25 comment on the previously approved Motion to Remand.

1 The Motion to Remand is not being -- the
2 Applicant also filed the Petition for Reconsideration on
3 September 10th, the day after the September 9th Business
4 Meeting. The motion on today's agenda is a motion on the
5 Chair's own motion. Given the technical difficulties, it
6 is not a granting of the hearing for the Applicant's motion
7 that was filed. So we just wanted to be clear that this is
8 on agenda today based on the Commission's own motion.

9 And if the Commission affirms the remand to the
10 Committee the record remains open in any outstanding issues
11 identified by the Commission will be addressed through the
12 Committee, which may seek additional information,
13 testimony, briefing and/or comment on the matter. And may
14 make amendments to the current Committee-proposed decision
15 or request additional analysis in the underlying
16 environmental review document. If the Commission vacates
17 the remand of the matter to the Committee it may adopt or
18 deny the proposed decision as presented or modify that
19 decision at today's meeting. Or it may choose to modify
20 the decision and place it on a future agenda for
21 consideration by the Commission.

22 I want to remind the parties that the item is
23 part of the official record of the proceeding for the
24 Sequoia Backup Generating Facility and of this November
25 16th Business Meeting. We're recording and transcribing

1 this hearing. And in order to ensure that we have an
2 accurate record the parties are to speak slowly and
3 clearly. This proceeding is being conducted remotely and
4 all parties will be unmuted for the duration of the public
5 portion of the proceeding. Parties are not to interrupt
6 each other. And only one party is to speak at a time when
7 called on by the Vice Chair. Before you speak, each time
8 make sure to slowly and clearly state your name.

9 And I will turn the matter back over to the Vice
10 Chair to provide for the order that parties will be heard.
11 Thank you.

12 VICE CHAIR SCOTT: Okay. Thank you very much,
13 Darcie.

14 Before the arguments begin each of the parties
15 should please state their name for the record, starting
16 with the staff, then the Applicant, and then Mr. Sarvey,
17 with the final reply by staff. We will ask each party
18 representative to state their name for the record, please.
19 So staff?

20 MS. DECARLO: Good afternoon, Lisa DeCarlo,
21 Energy Commission Staff Counsel representing the STEP
22 Division. We also have Leonidas Payne, STEP Project
23 Manager; Joseph Hughes, Air Resources Supervisor for the
24 STEP Engineering Office; and Geoff Lesh, Manager of the
25 STEP Engineering Office in case there are questions.

1 VICE CHAIR SCOTT: Great, thank you very much.
2 Next, to the Applicant, please.

3 MR. GALATI: Scott Galati, representing C1-Santa
4 Clara, LLC, on behalf of CR CyrusOne in the Sequoia Backup
5 Generating Facility.

6 VICE CHAIR SCOTT: Great, thank you very much.
7 And then Mr. Sarvey?

8 MR. SARVEY: Oh, first of all there wasn't any
9 technical issues at the September 9th Business Meeting, so
10 let's quit lying about that.

11 VICE CHAIR SCOTT: Oh, Mr. Sarvey we're just
12 doing our introductions right now, so would you state who
13 you are

14 MR. SARVEY: Robert Sarvey. Thank you.
15 (Overlapping colloquy.)

16 VICE CHAIR SCOTT: So now we're ready to hear the
17 staff's initial arguments. Ms. DeCarlo, please go ahead.
18 Thank you all for the introductions.

19 MS. DECARLO: Thank you, Lisa DeCarlo. And we've
20 got a PowerPoint presentation that will walk you through
21 basically our responses to the comments that have been
22 filed subsequent to issuance of the Committee-proposed
23 decision. I am the Staff Attorney representing the
24 California Energy Commission staff on this item. Next
25 slide.

1 Benefits to California, the matter currently
2 before the CEC is whether to grant an exemption from the
3 CEC's jurisdiction for the Sequoia Data Backup Generating
4 Facility, or whether to affirm the earlier Motion to Remand
5 the proceeding for further analysis by the (indiscernible)
6 Committee. This is important to California, because data
7 centers provide a number of critical services to the state,
8 including services needed for retail operations, banking,
9 emergency 911 services and telework to name just a few.
10 Next slide.

11 As I'll discuss in the following slides this
12 project has been subject to a lengthy, thorough evaluation.
13 And no comments submitted to date provide substantial
14 evidence that this particular project would result in
15 significant adverse environmental impacts. The Committee
16 proposed decision provides proper support for the finding
17 that the project complies with the Warren-Alquist Act,
18 Public Resources Code Section 25541, and an exemption
19 should be granted. Next slide.

20 This project has been under review by the CEC for
21 over a year. And there were multiple opportunities for
22 comments throughout the proceedings and prior to the close
23 of evidentiary record. The Committee held multiple status
24 conferences and outreach was made to all relevant agencies,
25 including CARB when the application was first filed and

1 when the proposed mitigated negative declaration was
2 published in January.

3 Comments after this record has closed should be
4 entertained only if they provide substantial evidence that
5 could not have been made previously, that the project would
6 result in a significant adverse impact. To decide
7 otherwise penalizes those who follow the appropriate
8 procedure and does not serve to encourage full
9 participation in the proceeding at the appropriate time.
10 Next slide.

11 As part of this process, the Bay Area Air Quality
12 Management District participated extensively providing
13 comments on staff's analysis and testifying at the
14 evidentiary hearing. If an exemption is granted, BAAQMD
15 would be responsible for issuing the project's air quality
16 permit, which would include making a fact-based available
17 control technology determination and vetting the project
18 proposed NOx offset. This is an important point regarding
19 the comments made about the Tier 4 engines.

20 We did not evaluate alternatives in this
21 proceeding to any extent, because we did not find a
22 significant adverse impact for this project, but that does
23 not prevent BAAQMD from requiring a Tier 4 engine, should
24 it deem it's warranted in its review of the proposed
25 permit.

1 We are here, just we would -- the Energy
2 Commission would just be granting an exemption, not a
3 permit. And our decision does not in any way force BAAQMD
4 into accepting the project as currently proposed.

5 One quick note about Mr. Zielkiewicz's comments
6 about new data regarding operations in emergency mode, we
7 definitely welcome, and staff welcomes the opportunity to
8 review that data. It's our understanding that that is raw
9 data at this point and hasn't really been interpreted,
10 analyzed. There are a lot of factors that go into an
11 operation. We definitely look forward to getting a better
12 sense of how many engines were operating during these
13 various scenarios. And we think there is an opportunity to
14 dive into that in subsequent proceedings, including we have
15 our Great Oaks proceeding fully underway and we have an EIR
16 Scoping meeting tomorrow where we're hoping to really get
17 into some of these issues with BAAQMD and CARBs. Next
18 slide.

19 The CEC received comments after publication of
20 the Committee-proposed decision in five topic areas. I'll
21 address each of these briefly and technical staff is
22 available after my presentation to respond if Commissioners
23 have additional questions. As I go through the comments it
24 is important to note two things: staff relied on public
25 guidance to conduct its analysis, and the comments do not

1 cite to any published guidance to support an argument that
2 staff should have done things differently. Next slide.

3 The comments are that staff should have performed
4 the modeling for readiness testing differently. No
5 published, as I mentioned, or otherwise adopted guidance is
6 provided however to support this assertion. Nor is any
7 modeling utilizing these proposals provided to show that
8 there would be indeed an impact if the assumptions were
9 altered. Next slide.

10 The comments assert that the proposed decision is
11 deficient for failing to model criteria pollutant emissions
12 during emergency operations. No other agency, however,
13 routinely models criteria pollutant emissions for interment
14 engines of this nature.

15 The proposed decision takes a qualitative
16 approach and considers several aspects of the project
17 including one, the likelihood of emergency operation; two,
18 the multiple speculative assumptions that would be needed
19 to model emergency operation; and three, the lack of an
20 established significant threshold. And concludes that
21 modeling in this circumstance would not provide meaningful
22 information to aid the public or decision makers in
23 reaching a conclusion on the significance of the proposed
24 project. Next slide.

25 The service territory in which this project would

1 be built is extremely reliable, making it likely that the
2 proposed backup generators would run very infrequently, if
3 at all. Over 10 years of operation SVP provided reliable
4 power to data centers in this area with the limited
5 exception of a few data centers for a total of 7 hours and
6 35 minutes over the entire 10-year period. This is an
7 important consideration when determining what impact this
8 project is likely to have.

9 And as I mentioned, we look forward to analyzing
10 BAAQMD's additional data on this matter as projects come up
11 for review. But at a certain point the Energy Commission
12 needs to have some finality about where an analysis ends
13 and when it can make its decision. And we believe nothing
14 so far has been provided that would necessitate the
15 Commission to reevaluate the analysis as it stands. Next
16 slide.

17 The comments also raised questions about the
18 appropriate CEQA thresholds that were used. Staff followed
19 the CEQA guidance adopted by BAAQMD. The comments do not
20 identify any other guidance that supports the assertion
21 that different thresholds should have been used instead.
22 Next slide.

23 The comments assert that the CEC needs to take a
24 closer look at whether to Tier 2 engines should remain
25 BACT. The CEC, however is not making a BACT determination

1 here. It's simply evaluating impacts in indicating whether
2 the project is as proposed -- apologies -- is proposed in
3 conformance with existing requirements. Staff's discussion
4 of BACT is based on BAAQMD's previous determinations that
5 Tier 2 engines are BACT. And BAAQMD indeed testified to
6 this in at the evidentiary hearing for Sequoia. But
7 nothing prevents BAAQMD from determining that Tier 4 is
8 BACT for this project when it receives the permit
9 application. Next slide, please.

10 The comments also suggest a more robust
11 alternatives analysis is necessary, with specific focus
12 again on Tier 4 engines and natural gas. Without a
13 potential significant impact however, there is no legal
14 requirement to conduct this analysis. And the Committee
15 proposed decision is not deficient, because of its absence.

16 So fundamentally, this issue is one about
17 fairness, about the CEC's process, about following the
18 process that has been established. And the Committee has
19 done that. The Committee has analyzed and reviewed all the
20 information provided throughout the process and has a
21 defensible decision. And the comments do not identify why,
22 in this instance, the Commission should deviate from that
23 process and entertain late-filed comments that could have
24 been provided earlier.

25 The comments made after September 9th, 2020

1 business meaning and in subsequent written comments echoed
2 comments already made and addressed in the record. The
3 comments did not identify anything that could be considered
4 substantial evidence that would justify remanding to the
5 Committee for further consideration.

6 Staff recommends the CEC vacate its Motion to
7 Remand and adopt the Committee proposed decision granting
8 the Small Power Plant Exemption to the Sequoia Backup
9 Generating Facility.

10 This concludes my presentation. And as I
11 mentioned, we have technical staff on the line in case
12 there are any detailed questions about the analysis.

13 VICE CHAIR SCOTT: Okay. Thank you, Ms. DeCarlo.

14 Do I have questions from any of the Commissioners
15 for the staff? Okay, I'm getting some shaking heads there.
16 No.

17 So let us now go on to Mr. Galati, the Applicant.
18 You may now present your argument, please.

19 MR. GALATI: Thank you, Scott Galati representing
20 C1-Santa Clara. I'll refer to them as CyrusOne for
21 purposes of this. Thank you Madam Vice Chair, members of
22 Commission. We really thank you for the opportunity to
23 reconsider and for us to be heard on this Motion to Remand.
24 We respectfully request that the Commission's ruling to
25 remand be vacated and the Commission adopt the proposed

1 decision without modification at today's Business Meeting.
2 CyrusOne agrees with staff's written comments on the Motion
3 to Remand.

4 And the bottom line is that the information
5 provided by CARB and even the recent comments by
6 Earthjustice simply do not provide anything new or any
7 analysis that would require a reopening of the record. As
8 demonstrated in staff and Cyrus's detailed filings the
9 arguments and opinion are not supported by analysis, even
10 though the proceeding was significantly delayed to actually
11 allow such analysis to be provided. Unsupported opinions
12 in accordance with the Energy Commission's own regulations
13 cannot be considered new evidence under those regulations.

14 The issues raised have already been thoroughly
15 analyzed and adjudicated at evidentiary hearing. Fairness
16 demands that the SPPE process have an ending and a Final
17 Decision.

18 The conditions process is one that is complex, to
19 say the least. It is not just a CEQA process, so they also
20 have their own regulations. And where others who haven't
21 participated in the Energy Commission process may not
22 recognize that coming to the final hearing at the end after
23 evidentiary hearing actually does the process, really, a
24 disservice.

25 We do look forward, and wanted to let you know,

1 that we are having a workshop tomorrow in the Great Oaks
2 South project. That is the appropriate place for us to
3 discuss things like we heard today from the Bay Area Air
4 Quality Management District. That staff hasn't done its
5 analysis, the Applicant hasn't had a chance to describe its
6 project objectives, alternatives can be discussed. That's
7 the right time, that's the right process. And the
8 Commission here by going through their process and going to
9 evidentiary hearing allows a lot more opportunity. But at
10 that point, we need to -- comments need to be about what
11 actually was missed in the proposed decision, not comments
12 that relate all the way back to staff's analysis was on the
13 wrong foot.

14 I think it's important for you to understand the
15 overall objective of the STC. You saw staff's slide there
16 recognizing how important data centers are. You know,
17 Sequoia is being designed to provide reliable services that
18 meet or exceed industry standards. They provide, data
19 centers provide this essential infrastructure without which
20 the Internet cannot operate and most modern businesses and
21 government services require. CyrusOne knows that clients
22 will not entrust their equipment, their data or their
23 internet functionality to a data center that does not
24 provide extreme high reliability. The sole purpose of the
25 backup generating portion of this facility is to provide

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1 that high level of reliability during an electricity
2 outage.

3 Sometimes it also gets lost here when you have a
4 good Applicant in front of you. And I'm going to take the
5 opportunity to highlight for you and the public just what a
6 good advocate you have in CyrusOne. It should be
7 acknowledged for its proactive, cooperative,
8 environmentally-minded approach that it applied to the
9 Sequoia data center, it's its first California enterprise.
10 They chose a site that was reusing an industrial site. The
11 site is a recently demolished brownfield site, which had
12 some problems to develop. It used to be used for a
13 recycled paperboard and mill house and had its own
14 (indiscernible) generation facility that burned oil. The
15 site is located adjacent to San Jose airport. And no
16 matter what people talk about when they use words like
17 environmental justice, it is significantly away from
18 sensitive receptors in an industrial section of town.

19 CyrusOne voluntarily added diesel-particulate
20 filters to the generators even though it's not required by
21 BACT rules. And in fact, in this case, the Bay Area Air
22 Quality Management District permit engineer who's working
23 on the permit simultaneously testified under cross-
24 examination that Tier 2 was BACT without the diesel-
25 particulate filters. And in fact we're using diesel-

1 particulate filters at a significant cost that reduces
2 approximately 90 percent of diesel particulate.

3 C1 has designed its maintenance and testing
4 operations to do one engine at a time. This helps reduce
5 knocks and noise impacts. C1 anticipates with its
6 maintenance and testing schedule to really only run these
7 generators for 10 hours annually, even though the CARB rule
8 allows it to be run 50 hours annually. C1 will offset its
9 NOx emissions at a level far in excess of the actual
10 anticipated maintenance and testing emissions.

11 C1 worked closely with the City of Santa Clara in
12 order to resolve city-related issues. It was poised for
13 approval on September 16th, 2020.

14 C1 included project design measures and a
15 complete discussion of alternative technologies it
16 considered in its application in August of 2019.

17 C1 worked cooperatively with staff, didn't object
18 to the numerous data requests, and modified the project
19 where staff requested.

20 You've heard in the other cases and you've heard
21 staff identify, and we agree, that all of these recent
22 contentions that are in the CARB comments -- emergency
23 operation modeling, appropriate threshold of significance
24 and offsets, alternative technologies, and best available
25 control technology -- they mirror the issues raised by

1 Intervenor Sarvey. Therefore they've already been
2 adequately considered by you.

3 Our response and staff's responses identify where
4 in the record the issues were considered and addressed
5 complete with citation. The assertion that data center
6 energy generators will be deployed more frequently for load
7 shedding and public safety power shutoff events is an
8 incorrect, speculative and unreasonable assumption. It
9 runs counter to the joint agency plenary root cause
10 analysis, it assumes the energy and agencies will not
11 implement actions to properly plan for future heat events,
12 and ignores the fact that in Silicon Valley Power service
13 territory where this project will be cited no data center
14 has been curtailed for any PS, PS (phonetic) event. And if
15 data centers had not elected to operate voluntarily for
16 load shedding, very few generators about 12 megawatts would
17 have been run during these extreme heat events.

18 We believe there's a difference between the two
19 California environmental quality concepts: the requirement
20 to evaluate foreseeable actions; and the prohibition of
21 conducting such analysis using speculative assumptions and
22 methods. Emergency operations were deemed foreseeable, were
23 thoroughly evaluated and determined along with all other
24 areas to not result in significant environmental impacts
25 because they're extremely rare. Modeling of air quality

1 emissions during such events was considered, attempted in
2 prior proceedings, and ultimately rejected as not resulting
3 in any meaningful information because the assumptions and
4 methods involve too much speculation.

5 Staff could not find any district or jurisdiction
6 in California that models air quality emissions from
7 emergency operation. Staff relied on an EPA memorandum
8 outlining the difficulty and unreliability of attempting to
9 model search events. There is simply nothing in the
10 comments that demonstrates a significant environmental
11 impact. Therefore CEQA does not require a reconsideration
12 of alternatives, even though CyrusOne provided one in
13 Chapter 5 of Exhibit 1 in its SPPE application. And it was
14 the only evidence in the record about alternatives.

15 Mr. Sarvey urged adoption of some of the
16 alternatives, but he also failed to demonstrate a
17 significant environmental impact.

18 The Sequoia project is not the forum to consider
19 whether Bay Area Air Quality Management District's BACT
20 rule and guidance or its CEQA guidelines should be
21 revisited. It is not the forum to discuss the role of
22 emergency backup generators in an entire region. It is not
23 the forum to discuss the measures needed to ensure the
24 electricity grid is so reliable that emergency operations
25 are not needed.

1 We do note that participation in other forums,
2 which might be better for CARB and the Bay Area Air Quality
3 Management District rather than on an individual project
4 basis. That being said, we look forward to our workshop
5 tomorrow.

6 Lastly, a bit of housekeeping that I have to do,
7 which is Mr. Sarvey filed six documents on November 2nd,
8 2020. We object to those documents being relied upon as
9 evidence as many were prepared prior to evidentiary hearing
10 in this matter and Mr. Sarvey has provided no showing of
11 good cause that would excuse his failure to file them as
12 exhibits according to the Committee orders earlier in the
13 proceeding.

14 CyrusOne has proved to be an environmentally
15 responsible company that did all it was asked and more in
16 the design of the STC. The facts, law and fairness support
17 vacating the Motion to Remand and adopting the proposed
18 decision without modification today at this Business
19 Meeting. I'm available to answer any of your questions.
20 Thank you.

21 VICE CHAIR SCOTT: Thank you very much, Mr.
22 Galati.

23 Let me look to my fellow Commissioners and see
24 whether they have any questions for you. Okay, I'm seeing
25 shaking heads, no, so thank you very much.

1 Let us now turn to Mr. Sarvey. Please present
2 your arguments at this time.

3 MR. SARVEY: Oh yeah, Applicant and staff are
4 labeling CARB's request for a cumulative impact analysis of
5 the many CEC's data centers projects as unreasonable. But
6 a review of the record shows every party in this proceeding
7 requested a cumulative impact analysis of the multiple data
8 centers, except the Applicant. And many for this project
9 requested a cumulative impact assessment of multiple data
10 centers at the December 17th, 2019 Sequoia Data Center
11 Status Conference. The Committee stated at that
12 conference, "Moving on to the broader issue of accumulative
13 impacts we are, of course, aware of the Energy Commission
14 has approved or is considering approval of small power
15 plant exemptions for a number of data centers with backup
16 generation in relatively close proximity. And we of course
17 need to consider whether those facilities contribute to a
18 cumulative considerable impact." The CEC staff themselves
19 issued data requests 11 through 14 on September 13th to
20 obtain the information to conduct the analysis.

21 On February 21st, 2020, I filed a Motion to
22 Compel the Applicant to do a cumulative analysis of the
23 operations of the many, many data centers. Despite
24 concerns by the Committee and the Intervenor and the public
25 no cumulative impact assessment has been performed.

1 CEC staff is still claiming that emergency
2 operations of data centers are speculative and do not
3 provide meaningful results that are not required by CEQA.
4 BAAQMD's (indiscernible) information that you could use
5 that all of the data centers in Santa Clara routinely
6 operate in emergency mode with one data center operating
7 using utilizing 800 hours of emergency operations. ARRA,
8 (phonetic) who oversees all air pollution control efforts
9 in California to contain and maintain healthy based air
10 quality standard disagrees with staff and also believes
11 that an emergency operation analysis is required by CEQA.

12 Staff claims that air districts in California do
13 not model emergency operations of diesel backup generators,
14 but evidence in the record does not support staff's
15 position. Exhibit 303 contains evidence that BAAQMD, the
16 Air Quality Agency who will permit this facility, did in
17 fact model emergency operations in Santa Clara Data Center.
18 This is the only CEC data center that BAAQMD has evaluated
19 under CEQA. In that project BAAQMD's emergency operations
20 analysis determined that short-term NO2 impacts could
21 create a maximum one-hour NO2 concentration of 1,276
22 micrograms per cubic meter, which is three times the state
23 regulatory limit.

24 The results were meaningful enough for BAAQMD to
25 limit the project's operations 700 hours per year for all

1 engines combined and limit the time of day they could
2 operate. These restrictions are contained in the CEC's
3 decision on the project.

4 Exhibit 305 is the Washington Department of
5 Ecology Health Impact Assessment of the CyrusOne Data
6 Center in Quincy, Washington. The Department of Ecology
7 routinely examines emergency operations and cumulative
8 impacts from its data center cluster in Quincy. Their
9 analysis concluded that the maximum short-term ambient one-
10 hour NO2 concentration from (indiscernible) was 1,446
11 micrograms per cubic meter. The CEC staff themselves
12 modeled 50 hours of emergency operations in its proceeding
13 to determine the health risks from the project, so it can
14 be done.

15 The Applicant modeled 50 hours of emergency
16 operations in this project to determine if the project's CO
17 emissions violated any air quality standards. Filing
18 emergency operations feasible provides meaningful results
19 and is required by CEQA as the record demonstrates and
20 BAAQMD has confirmed.

21 CEC staff dismisses the Air Resources Board
22 comments in the proceeding. But in the Great Oaks South
23 Data Center proceeding and the San Jose Data Center
24 proceeding CEC is now recommending and the Commission has
25 approved the use of environmental impacts reports instead

1 of Mitigated Negative Declarations. CEC staff's stated
2 purpose of conducting an EIR is to address the air quality
3 concerns of CARB and BAAQMD and provide an alternative
4 analysis.

5 Since staff and Applicant are refusing to conduct
6 a cumulative impact assessment in an emergency operation
7 scenario a remand is truly not the appropriate vehicle. In
8 (indiscernible) the SPPE application is warranted as the
9 record shows, their argument has been made in the preceding
10 that the project will result in significant environmental
11 impacts, and the fair argument has been substantiated by
12 the premier air quality agency in California, Air Resources
13 Board. Deny the SPPE.

14 VICE CHAIR SCOTT: Thank you, Mr. Sarvey.

15 Do I have questions for Mr. Sarvey from the
16 Commissioners? Okay, I'm seeing shaking of heads, so thank
17 you very much.

18 Next we will turn to Ms. DeCarlo. You may now
19 reply, present any replies that you have to the arguments
20 presented by the other parties, please.

21 MS. DECARLO: Oh, hello. I do not have any
22 responses, but we are available if the Commissioners have
23 any questions.

24 VICE CHAIR SCOTT: Great. I will check one more
25 time. Do the Commissioners have any questions for staff?

1 Okay, I'm seeing a no there. So, let us turn to the -- or
2 any other party. I'm still seeing a no, so let me turn to
3 the Public Advisor to see whether there are any public
4 comments on Sequoia, public comments on Item 3.

5 MS. GALLARDO: Hi, this Noemi Gallardo -
6 (Overlapping colloquy.) Yes, this is Noemi Gallardo Public
7 Advisor. Let me check real quick. First, starting with
8 federal, state, or local agencies, does anyone have any
9 comment? If you have not been converted to panelists
10 please hit the raised hand icon, so I can see, call you
11 out. And then if you have already been converted to a
12 panelist just please feel free to unmute and state your
13 name and affiliation and begin speaking.

14 Do we have anyone from any federal --

15 MR. DYER: Hi, this is --

16 MS. GALLARDO: Oh, go ahead.

17 MR. DYER: Not federal, but state, this is Wesley
18 Dyer. I'm an attorney with the California Air Resources
19 Board. And I believe that Tom Andrews, who is an Air
20 Pollution Specialist for CARB is also on the line and
21 available if there are any follow-up technical questions by
22 the Commission for us.

23 So I just want to note that in our October 15th,
24 2020 comments we did flag significant issues with the
25 current air quality analysis, which shows exceedances of

1 state health standards for even just single-engine testing
2 and maintenance operations. It did not include any air
3 quality analysis of emergency operations for criteria
4 pollutants. And it did not fully consider cleaner
5 technology alternatives, including you technologies that
6 are now in wide use such as Tier 4.

7 CARB recognizes that CEC staff did respond to our
8 comments. But again as I noted before, those responses
9 largely focus on procedural and legal objections without
10 further substantive analysis or really engaging with the
11 substance our comments. And so we respectfully disagree
12 with those responses and still stand by our October 15th
13 comments.

14 In particular, I do want to flag that we did
15 indeed note that if the NO2 impacts are -- standards are
16 evaluated properly with the standard method that is used
17 for evaluating compliance with the NO2 standard, there is
18 an exceedance of the state standard with this project as
19 currently proposed. However, if the Commission does decide
20 to proceed without further analysis on Sequoia, CARB of
21 course stands ready to work with CEC staff and with the Bay
22 Area Air Quality Management District when the Bay Area
23 issues permits to make sure that Sequoia's operations
24 protects public health.

25 As the Commission and its staff consider data

1 projects more broadly, CARB is interested and available to
2 assist going forward, of course. A core recommendation
3 here is that CARB, CEC and California air districts work
4 together, moving forward, to conduct a shared review of
5 options for data centers that can best protect public
6 health.

7 Conducting a full technology and environmental
8 review of impacts and options for data center technology,
9 perhaps via even a programmatic EIR, would help to ensure
10 that we do not lock in technologies that are out of date.
11 Ultimately, you know, the Internet should be powered by
12 cleanest energy available and we can work together to make
13 that happen.

14 So the process to date has moved forward through
15 reviews of individual data centers. CARB necessarily began
16 its involvement through the most immediate pending data
17 center, Sequoia. But the issues that the application
18 points out are global across all of these data centers. As
19 CARB has discussed there's strong evidence that data-center
20 operation can violate ambient air quality standards and
21 indeed it, with Sequoia, it does if they are powered by
22 outdated diesel technologies.

23 Because each data center represents a substantial
24 investment in infrastructure that will operate for decades
25 into the future now is our best chance to avoid

1 inappropriate technology investments. Indeed, as CARB's
2 comments have documented, dozens of facilities have already
3 used cleaner technology for backup power and cleaner
4 options will likely be available. So, as in particular
5 California is moving toward electrification, zero-emission
6 technology and carbon neutrality these data centers'
7 projects can and should be part of that movement. And
8 should be allowed --

9 MS. GALLARDO: This is Noemi the Public Advisor.
10 I apologize, Wesley, for interrupting you, but you have
11 reached your time limit. Unless the --

12 MR. DYER: Yes.

13 MS. GALLARDO: Thank you, Wesley.

14 MR. DYER: Yes, that was the end of my comment.
15 I noticed the end of the time, so thank you.

16 MS. GALLARDO: Thank you.

17 VICE CHAIR SCOTT: Thank you.

18 (Overlapping colloquy.)

19 Do we have any other -- oh, I'm sorry, do we have
20 any other public comments, Ms. Public Advisor?

21 MS. GALLARDO: No worries, we're thinking along
22 the same lines. Is there anyone else from a federal, state
23 or local agency who would like to make public comment at
24 this time?

25 MR. ZIELKIEWICZ: So this is Jakub from Bay Area

1 again. Am I free to make a comment?

2 MS. GALLARDO: Yes, go ahead Jakub.

3 MR. ZIELKIEWICZ: Great, so this is Jakub
4 Zielkiewicz again speaking on behalf of the Bay Area
5 Quality Management District. Vice Chair, Commissioners,
6 thank you again for considering these comments. And CEC
7 staff, as always thank you for the ongoing collaboration.

8 You've heard my comments for Walsh and Mission
9 College and I'd like to incorporate those by referencing
10 the Sequoia transcript. Regarding the emergency operation
11 issue, the upshot is that emergency operations over the
12 past year significantly exceed the assumptions made in CEC
13 staff's analysis. This is new data. It's new substantial
14 evidence and it should be analyzed. CEC staff's assertion
15 that this year's heat storm, public safety power shutoffs,
16 and load shedding events are isolated incidents and are not
17 likely to reoccur in the future runs contrary to what the
18 majority of climate models predict. In fact, those models
19 show that as the climate crisis worsens emergency events
20 are more likely to increase in frequency and not decrease.

21 Furthermore, differentiating between emergency
22 operations between voluntary load-shedding events and grid
23 outages, that's a distraction. Our lungs, the public
24 health, does not differentiate diesel emissions if they
25 come from a voluntary event from testing or from any other

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1 reason for that matter. What matters is that these engines
2 ran more, significantly more than what was analyzed by CEC
3 staff.

4 Again, we believe that it is CEC's responsibility
5 to take the time to review the data currently being
6 gathered on the use of backup generators during emergencies
7 before proceeding with approval of the Sequoia Data Center.
8 Without this consideration, a recommendation to reconsider
9 the Motion to Remand is premature.

10 The Air District's position is that the
11 assumption that a data center will have significant
12 emissions for emergency operations is not overly
13 speculative or unlikely to occur. In other words,
14 inclusion of emergency operations in the analysis is
15 required under CEQA. We agree with CARB's suggestion that
16 modeling emissions' impacts from emergency operations for
17 CEQA purposes is appropriate, given that those emissions
18 are imminently foreseeable. The Air District believes that
19 performing this emissions' modeling will show that there
20 are significant regional emissions and localized health
21 impacts from the emergency use of backup engines. If this
22 is the case under CEQA CEC should require that those
23 imminently foreseeable emissions be abated or controlled to
24 levels that are below state and federal ambient air quality
25 standards.

1 In the case of diesel engines appropriate
2 controls may necessitate a stipulation for Tier 4 engines
3 to reduce particulate matter and nitrogen oxides for local
4 ambient air quality concerns respectively. Even with
5 controls the Air District remains concerned about the
6 significant proposed fossil-fuel diesel capacity being
7 proposed for our region. As we struggle to contain the
8 climate crisis and as we strive to achieve carbon
9 neutrality statewide as soon as possible, due to these
10 concerns the Air District is currently considering
11 additional rulemaking under our own Permitting Authority
12 and the correct application of best available control
13 technology standard. That includes evaluating the efficacy
14 of Tier 4 engines to address these going forward.

15 However, as I mentioned in Walsh and the Walsh
16 comments --

17 VICE CHAIR SCOTT: Hi, Jakub. Apologies for
18 interrupting you, Jakub, but that your time is up unless
19 you want to wrap up quickly.

20 MR. ZIELKIEWICZ: All I'll say is that we
21 certainly appreciate the collaboration. We look forward to
22 working with CEC and CARB staff on incorporating the
23 emergency data into modeling assumptions and to pivot the
24 discussion away to a broader policy construct that enables
25 that deployment of cleaner alternatives at data centers.

1 Thank you.

2 MS. GALLARDO: All right, this is Noemi Gallardo,
3 Public Advisor. Again, are there any other representatives
4 from federal, state, or local agencies who would like to
5 speak? Please go ahead now.

6 (No audible response.)

7 MS. GALLARDO: All right, I'm not hearing anyone
8 or seeing anyone raise their hand. So anyone who is not a
9 representative from an agency and you would like to make a
10 public comment, please raise your hand.

11 MR. BIEHL: This is Frank Biehl.

12 MS. GALLARDO: Go ahead, Frank.

13 MR. BIEHL: Thank you very much. It's been very
14 interesting listening to all of your -- again, I'm Frank
15 Biehl. I'm representing David Bini, Executive Director of
16 the Santa Clara and San Benito counties Building and
17 Construction Trades Council. And again our Council
18 represents 27 craft trade unions with over 30,000 members
19 in the two counties.

20 I really appreciate your attention to process,
21 but I think you've reached the point where a decision needs
22 to be made. Our organization continues to support the
23 Sequoia Backup Generating Facility, that we've been on the
24 record with that, and we continue to support this project.
25 I think it's been about a year now and I think it's time

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1 and it's only fair for anyone who applies for such a
2 project that they get a conclusion.

3 Quite frankly I work in local government. In
4 addition to working for the Building Trades Council I'm on
5 a school board. I've served on the school board for 14
6 years and I understand process and I understand how it's
7 important. But at some point you have to make a decision.
8 You have to be fair to the people that are coming in and
9 you have to -- and I believe you have been fair, but it's
10 time to move forward. So I'm going to ask that you vacate
11 the remand, and that you approve the project today at
12 today's meeting.

13 Thank you very much for all your time and
14 consideration. It's been very interesting listening and
15 following all of your processes and listening to all the
16 questions. I think you've been very fair. I think you've
17 given the opportunity for anyone that has any question to
18 move it forward and to talk about it. I think there's
19 broader issues that need to be discussed, but this is not
20 the time to do that. This is the time to move forward with
21 this particular project. The person is brought it forward
22 in good faith and it's time to make a decision. Thank you
23 very much for your time and consideration to that.

24 MS. GALLARDO: Thank you, Frank.

25 Again, this is Noemi Gallardo, Public Advisor.

1 Are there any other people wishing to make a public comment
2 who are not representatives of agencies please do so now.
3 We welcome you to unmute or to raise your hand.

4 MS. AGELIDIS: Hi, this is Yasmine Agelidis. I'm
5 an attorney with Earthjustice. May I make a public
6 comment?

7 MS. GALLARDO: Yes.

8 MS. AGELIDIS: Perfect.

9 MS. GALLARDO: Please go ahead.

10 MS. AGELIDIS: Perfect. Thank you for the
11 opportunity to be able to comment on this item. The
12 proposed Sequoia Data Center project would rely on 54
13 onsite Tier 2 backup diesel generators, which are
14 significantly dirtier than fuel cell and natural gas
15 generators and even Tier 4 diesel engines.

16 We ask the Commission to remand the proceedings
17 for the Sequoia data center back to the Committee to
18 consider the air quality and public health impacts of this
19 project in light of California's recent energy emergencies.
20 These now annual heat storm events and outages are not only
21 devastating and dangerous in and of themselves, but they
22 can also translate to periods of heightened pollution
23 levels and poor air quality. The combination of running
24 polluting peaker plants, increased smog from high
25 temperatures, and widespread power outages creates a

1 dangerous environment for Californians, and for
2 environmental justice communities located near these data
3 centers in particular. Therefore, it's critical that the
4 Commission account for the significant emissions these Tier
5 2 backup diesel generators would contribute.

6 What's more, there's no reason to continue
7 investing in outdated and highly polluting Tier 2 diesel
8 backup generators when there are cleaner technologies
9 available. California's transition to zero-emissions power
10 generation is already underway. And it's critical the
11 Commission not permit fossil-fuel infrastructure that will
12 continue polluting communities for decades to come. We ask
13 that the Commission work with the California Air Resources
14 Board, Air Districts and community members before
15 permitting backup generation for this and any other data
16 center project.

17 Finally, we urge the Commission to remand the
18 proceedings to the Committee to evaluate the air quality
19 and public health impacts of the Sequoia Data Center in
20 light of the recent energy emergencies. Thank you very
21 much.

22 MS. GALLARDO: Thank you.

23 Again, this is Noemi Gallardo, Public Advisor.
24 Is there anyone else would like to make a public comment?
25 Please either raise your hand or go ahead and unmute and

1 speak.

2 MS. WARSHAW: I would like to, this is Claire
3 Warshaw speaking.

4 MS. GALLARDO: Hi there, is that Claire?

5 MS. WARSHAW: Yes.

6 MS. GALLARDO: Okay, go ahead.

7 MS. WARSHAW: This is Claire Warshaw. I used to
8 work for SMUD and I have a few comments --

9 MS. GALLARDO: Claire, sorry, it's hard to hear
10 you. Can you turn up the volume, apologies for
11 interrupting you.

12 MS. WARSHAW: Actually I'm not sure if I can.
13 Can you hear me now?

14 MS. GALLARDO: Yes, loud and clear. Thank you.

15 MS. WARSHAW: Sorry, I don't know why the
16 microphone changes. The hand-raising function wasn't
17 working, so I know that I'll get docked speaking. But --
18 and I can't see my time right now, but oh well.

19 I wanted to say working at SMUD in the Design and
20 Construction Department I noticed there were some projects
21 that lasted a couple of years. And not mine fortunately, I
22 had maybe one or two that might have lasted that long and
23 some that just never really finished themselves. But there
24 were definitely projects that lasted for years, so I just
25 want to put that out there for everybody. It's not

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1 unusual, although people with all the caffeine we have in
2 us, all the electricity we're used to, all the things that
3 we have changed in our society, we want things done. We
4 wanted them done all the time. Even myself as a designer I
5 wanted my projects done, all of them. That was always my
6 goal.

7 But there is some grace in thinking about things
8 and letting them last. And then maybe this will be for the
9 other data centers, so that people accept this more. These
10 are construction jobs and they're temporary. And then
11 you're going to have a data center that is more machine-
12 driven, not really as people-driven, so that's something to
13 consider in the future.

14 And then emergencies, if they really were
15 speculative I don't think this conversation would be had.
16 We wouldn't have to have backup generation for data centers
17 if emergencies were speculative. That has disturbed me all
18 along.

19 I wanted to say I understand the California
20 Energy Commission's position in terms of not having the
21 material when going through the process, and then CARBs
22 submitting it later. That would frustrate me too. In
23 fact, while I was working at SMUD where were times when
24 people sent me gobs and gobs of stuff to read and some of
25 it clearly irrelevant. And not even possible to use, but

1 it took up so much of my eyesight time that it was very
2 frustrating. And made me want to finish the project more.
3 So that is another thing to remember that there are people
4 out there are not always working in our favor. And I used
5 to call it snow, receiving email with documents and
6 documents and documents, so something just to think about.

7 Also the established processes might need
8 reconsideration, and it might be the time. Even though it
9 would frustrate these data center people immensely I think
10 that the way that this has happened I think that it's time
11 to reexamine the CEC process to have a little bit more
12 power in deciding when something needs to have a better
13 choice of generation. Now that we have virtual power plant
14 possibilities, there's this distributed generation from
15 buildings, and now wind as an emergency it's time to think
16 about this a little bit more. Emergencies are different
17 now than they used to be.

18 MS. GALLARDO: Thank you, Claire.

19 Again, this is Noemi Gallardo, Public Advisor.
20 Is there anyone else who would like to make a public
21 comment please raise your hand or go ahead and unmute and
22 begin speaking?

23 (No audible response.)

24 MS. GALLARDO: Vice Chair Scott I'm not seeing
25 any hands and I don't hear anyone either. So I think we

1 can proceed.

2 VICE CHAIR SCOTT: Okay, thank you very much,
3 Madam Public Advisor.

4 The Commissioners may now go into closed session.
5 So let me check with the Commissioners. Does any
6 Commissioner request a closed session on this matter?

7 COMMISSIONER DOUGLAS: Yes, I think a closed
8 session on this matter is a good idea.

9 VICE CHAIR SCOTT: All right, so we will now move
10 into closed session.

11 (Off the record at 5:02 p.m.)

12 (On the record at 5:47 p.m.)

13 MS. GALLARDO: Vice Chair Scott, I can't hear
14 you. I think you might be muted on your phone?

15 VICE CHAIR SCOTT: You are correct. I am looking
16 for Commissioner Monahan. Wait, I found her.

17 MS. GALLARDO: She's on there.

18 VICE CHAIR SCOTT: Okay. I do believe then we
19 have our critical mass of Commissioners and we can then
20 start back up again. Do I need to say any official magic
21 words for us to start back up again? (Laughter.) Okay,
22 I'm seeing a no, so yes we are started back up. Welcome.
23 Thank you everyone for your patience and being with us this
24 evening.

25 We had an opportunity to deliberate during our

1 closed session and now we're prepared to make a motion.
2 Commissioner Douglas, would you like to make that motion
3 for us, please?

4 COMMISSIONER DOUGLAS: Yes, I will. And so I'd
5 like to just make a super-brief statement and then make a
6 motion.

7 So unlike Walsh and Mission College, which we
8 just heard Mr. Sarvey's petition to reconsider, in which we
9 were asked to reconsider the Commission's previously issued
10 Final Decisions, the Commission has not issued a Final
11 Decision in the Sequoia case and therefore has not approved
12 the Sequoia project.

13 At the December 9th Business Meeting the
14 Commission issued a remand to address issues raised by CARB
15 regarding the Sequoia project. Now having received
16 comments from the parties, public agencies, and the public,
17 I'm prepared to make a motion. And that motion is that I
18 move that we modify and affirm the order to remand as
19 follows. That the Committee is directed to conduct limited
20 additional proceedings to consider those comments raised by
21 CARB and the Bay Area Air Quality Management District in
22 this proceeding that address 1) input assumptions regarding
23 NO2 emissions from routine testing and maintenance; and 2)
24 direct and cumulative impacts of emergency operations of
25 the project's backup generators.

1 The committee may address additional issues that
2 arise during these proceedings. In addition, in order to
3 facilitate a timely resolution of this matter the Committee
4 is directed to report on progress in this proceeding to the
5 full Commission of its January Business Meeting. So that's
6 the motion.

7 VICE CHAIR SCOTT: Okay, thank you very much.

8 May I get a second, Commissioner Monahan?

9 COMMISSIONER MONAHAN: I'll second that motion.

10 VICE CHAIR SCOTT: Okay. And with that let us
11 vote.

12 Commissioner Douglas?

13 COMMISSIONER DOUGLAS: Aye.

14 VICE CHAIR SCOTT: Commissioner Monahan?

15 COMMISSIONER MONAHAN? Aye.

16 VICE CHAIR SCOTT: Commissioner McAllister?

17 COMMISSIONER MCALLISTER: Aye.

18 VICE CHAIR SCOTT: So that vote is a unanimous 4-
19 0. The motion passes.

20 So just a reminder, we have a couple more items.

21 Thanks everyone again for your patience and for bearing
22 with us. The next item is Item 6, which is our Lead
23 Commissioner, or Presiding Member Report. Commissioner
24 Monahan, anything you'd like to report to us?

25 COMMISSIONER MONAHAN: I would -- no. I'm

1 hungry.

2 VICE CHAIR SCOTT: All right. That works. How
3 about our Commissioner Douglas, any reports?

4 MS. DOUGLAS: Extremely briefly, on Tuesday the
5 10th, the Chair and I had the opportunity to speak at the
6 Tribal Nations Conference. I'll talk more about it at the
7 next Business Meeting.

8 VICE CHAIR SCOTT: Sounds good. All right, thank
9 you Commissioner Douglas.

10 Commissioner McAllister?

11 COMMISSIONER MCALLISTER: You know, I will just
12 defer my comments to the next Business Meeting for now,
13 thank you.

14 VICE CHAIR SCOTT: All right, that works.

15 And my only comment for everyone is just a
16 reminder that December 7th, we'll be doing the 45th
17 Anniversary Celebration for the Energy Commission. That'll
18 be virtual, and you can find out information on our
19 webpage, energy.ca.gov. And we'll also have our Clean
20 Energy Awards on December 10th. So a fun energy-related
21 week, so please check that out for data and information.

22 With that we will now go on to Item 7. Does the
23 Executive Director have a report?

24 MR. BOHAN: Thank you, Vice Chair. No report
25 from the Executive Director. Thanks.

1 All right, with that Item 8, does the Public
2 Advisor have a report?

3 MS. GALLARDO: Hi, there. Yes, just really
4 quickly, I want to wish everybody a happy upcoming
5 Thanksgiving since we won't see the public then. That's
6 it. Thank you.

7 VICE CHAIR SCOTT: All right. Thank you very
8 much. And also please stay on for just a moment, Madam
9 Public Advisor, we need to check Item 9 for public comment.

10 MS. GALLARDO: Yes, this is Noemi Gallardo,
11 Public Advisor. This is the period for any person wishing
12 to comment on information items or reports of the meeting
13 agenda. You will have three minutes total to give comment
14 and may be limited to one representative per organization.
15 After your line is open, please spell your first and last
16 name, state your affiliation if you're representing an
17 organization. And we do have someone on the line.

18 We'll start with Tim Carmichael of Southern
19 California Gas Company. Tim, please begin speaking.

20 MR. CARMICHAEL: Good evening, can you hear me?

21 MS. GALLARDO: Yes, we can.

22 Okay. Commissioners, Tim Carmichael of Southern
23 California Gas Company. I know you've had a very long
24 afternoon, so just a brief couple of comments. Thank you
25 for the opportunity.

1 Since you've had a few SPPE diesel backup
2 generators on your agenda today I thought it was pertinent
3 to mention that natural gas can be a safe, clean and
4 reliable alternative to diesel. Since July, two of our
5 company facilities had been served with power from fuel
6 cells, which can be supplied with natural gas or nubile
7 natural gas and in the near future, hydrogen. Fuel cells
8 should be considered as alternatives to diesel backup
9 generators.

10 Unfortunately, more and more diesel and gasoline
11 fuel backup generators are being installed throughout the
12 state by residences and businesses and there can be
13 significant air pollution impacts. SoCalGas is
14 decarbonizing the gas system. We will meet our goal of 5
15 percent renewable gas for core customers by 2022 and 20
16 percent renewable gas by 2030.

17 SoCalGas recently filed a proposed modification
18 to the Distributed Energy Resources Tariff at the CPUC to
19 allow us to offer non-combined heat and power technologies
20 to our customers, which will enable us to offer all types
21 of fuel cells. Fuel cells can and should also play a
22 significant role in powering microgrids. We are hoping for
23 the CPUC approval by the end of this year for a separate
24 voluntary green tariff program that would allow customers
25 to voluntarily elect to replace all or a portion of their

1 natural gas use with renewable natural gas. This is
2 similar to clean energy procurement programs offered by
3 electric utilities and community choice aggregators.

4 Lastly, we see great potential for hydrogen and
5 we want to work with the State of California to achieve
6 this potential. Later this month we will file an
7 application at the CPUC to begin the process of developing
8 a hydrogen-blending standard for gas utilities in
9 California. This effort will include demonstration
10 projects. Thank you very much for considering my comments.

11 VICE CHAIR SCOTT: Thank you.

12 Madam Public Advisor, any other public comments?

13 MS. GALLARDO: Since we had several people come
14 through Zoom Let me just check on the Zoom. Anyone wants
15 to make a public comment who came through Zoom please raise
16 your hand. Let's see, I saw a person so let me repeat
17 that. Anyone wishing to make a comment please raise your
18 hand now.

19 All right, it looks like Mike is raising and then
20 lowering his hands, so let me allow him to speak, just in
21 case. Mike your line is open.

22 MR. PETOUHOFF: I just had a question. When is --
23 we just deferred an action to the January meeting. When is
24 the January meeting?

25 MS. GALLARDO: All right, so usually during

1 public comment it's just to state a comment, not ask a
2 question. I can follow up with you later unless
3 Commissioner Douglas, you wanted to respond. But I can
4 also follow up with Mike later.

5 COMMISSIONER DOUGLAS: I think it's a good idea
6 for you to follow up later. And feel free to check in.

7 MS. GALLARDO: Okay, will do. Thank you.

8 All right, is there any other public comments?
9 Please raise your hand. All right, Vice Chair Scott I do
10 not see any other hands and we don't have anyone else on
11 the Verizon line and there is no written comments, so we
12 may proceed.

13 VICE CHAIR SCOTT: Okay, thank you very much,
14 Madam Public Advisor. Let's go on now to Item 10, which is
15 the Chief Counsel Report, please.

16 MS. HOUCK: Can you hear me now?

17 VICE CHAIR SCOTT: Yes. Yes, I can.

18 MS. HOUCK: I do not have a report, I was trying
19 to check on the January date, but they will need to check
20 with Noemi on that to just confirm, so no reports.

21 VICE CHAIR SCOTT: Okay. Great, thank you very
22 much. With that everyone thank you for spending a little
23 bit of your evening with us and we are adjourned. Thanks
24 everybody.

25 (The Business Meeting adjourned at 5:57 p.m.)

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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.

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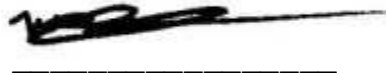
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