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BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the matter of,)
) Docket No. 17-SPPE-01
McLaren Backup Generating)
Facility Project)

PREHEARING CONFERENCE AND EVIDENTIARY HEARING
THE WARREN-ALQUIST STATE ENERGY BUILDING
CHARLES IMBRECHT HEARING ROOM
SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 30, 2018

1:13 P.M.

Reported by:

Julie Link, CER

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Karen Douglas, Commissioner, Presiding Member

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Janea Scott, Commissioner, Associate Member

Rhetta DeMesa, Advisor to Commissioner Scott

Matthew Coldwell, Advisor to Commissioner Scott

Kristy Chew, Technical Advisor to the Commission on Siting

HEARING OFFICER:

Susan Cochran

CEC STAFF PRESENT:

Jared Babula, Staff Counsel

Leonides Payne, Project Manager

Matthew Layton, Supervising Mechanical Engineer

Gerry Bemis, Air Resources Supervisor

Alana Mathews, Public Adviser

Rosemary Avalos, Senior Outreach Specialist in the Public Adviser's Office

APPLICANT:

Scott Galati, Esq., DayZen, LLC

Spencer Myers, President, Vantage Data Centers

Michael Stoner, Lake Street Ventures

Shari Libicki, Ranboll

Michael Orosco, More Consulting

APPEARANCES (CONT.)

INTERVENOR:

Robert Sarvey, Representative for Helping Hand Tools

ALSO PRESENT

Kevin Kolnowski, City of Santa Clara Electrical Utility
Silicon Valley Power (via WebEx)

Ariana Husain, Bay Area Air Quality Control Board (via WebEx)

EVIDENTIARY HEARING

Kevin Kolnowski

Shari Libicki

Spencer Myers

Michael Stoner

GENERATING CAPACITY PANEL

Shahab Khoshmashrab

Edward Brady

Matthew Layton

Robert Sarvey

AIR QUALITY PANEL

Shari Libicki

Jacquelyn Record

Wenjun Qian

Huei-An Chu

Gerry Bemis

INDEX

	Page
1. Call to Order	6
2. Motion to Dismiss	10
Evidentiary Hearing	17
3. Closed Session	52
4. Generating Capacity Panel	61
Air Quality Panel	79
5. Adjournment	120
Reporter's Certificate	121
Transcriber's Certificate	122

EXHIBITS

	IDENTIFICATION	EVIDENCE	WITHDRAWN
<u>Combined</u>			
1-29		57	
200-205		57	
300-305		57	

1

P R O C E E D I N G S

1
2 AUGUST 30, 2018 1:13 P.M.

3 COMMISSIONER DOUGLAS: All right. Good afternoon,
4 everyone, looks like we're ready to go here. This is the
5 prehearing conference for the McLaren Small Power Plant
6 Exemption.

7 Before we begin, I will introduce the Committee and
8 then ask the parties to introduce themselves for the record.

9 I'm Karen Douglas, Commissioner and Presiding Member
10 of the Committee.

11 And I'll introduce Commissioner Janea Scott who is
12 next to the Hearing Officer and then the Associate Member of
13 the Committee.

14 To my immediate left Susan Cochran, she's the Hearing
15 Officer.

16 To my right are my advisors, Jennifer Nelson and
17 Le-Quyen Nguyen.

18 And next to Commissioner Scott is Rhetta DeMesa and
19 Matt Coldwell, her advisors.

20 Kristy Chew, is she here? There's Kristy Chew, she's
21 the Technical Advisor to the Commission on Siting Matters.

22 And I just Alana Matthews come in the room, she's the
23 Public Advisor, she's here today.

24 So at this point, I'll ask the parties to introduce
25 themselves and the representatives starting with the

1 applicant.

2 MR. STONER: Michael Stoner with Lake Street
3 Consulting.

4 COMMISSIONER DOUGLAS: Does he need this? Okay.

5 MR. GALATI: Scott Galati, representing Vantage Data
6 Centers.

7 MR. MYERS: Spencer Myers, Senior Director of
8 Construction, Vantage Data Centers.

9 COMMISSIONER DOUGLAS: Okay. And staff, please.

10 MR. BABULA: Jared Babula, Staff Counsel.

11 MR. PAYNE: Leonidas Payne, Project Manager.

12 COMMISSIONER DOUGLAS: All right. And the
13 intervenor. Go ahead.

14 MR. SARVEY: Robert Sarvey, representing Helping Hand
15 Tools.

16 COMMISSIONER DOUGLAS: All right. Great. And -- so
17 we have a new mic system and the microphones -- these go the
18 court reporter. The ones on the desk in front of everybody
19 go out to the Webex. But we also have to project to hear
20 each other in the room because I don't think we're being
21 amplified within the room. Just to facilitate that
22 conversation.

23 So. Okay. Good. So anyone else on our list here?

24 So we know that -- Bay Area Air Quality Management
25 District, are you on?

1 MS. HUSAIN: Yes, this is Ariana with the Bay Area
2 Air Quality Management District.

3 COMMISSIONER DOUGLAS: Perfect. Thank you.

4 What about City of Santa Clara, Silicon Valley Power?

5 MR. KOLNOWSKI: Yes, Kevin Kolnowski is on.

6 COMMISSIONER DOUGLAS: For the city?

7 MR. KOLNOWSKI: Yes, for the city.

8 COMMISSIONER DOUGLAS: Super. Thank you.

9 What about Silicon Valley Power?

10 MR. KOLNOWSKI: Same.

11 COMMISSIONER DOUGLAS: Same. That's what I thought.

12 All right, good.

13 Any other government representatives? Federal,
14 state, or local, or Native American tribe -- tribes?

15 All right. It sounds like we've got all the agency
16 and public representatives.

17 So at this time I'll turn over the conduct of the
18 hearing to Ms. Cochran.

19 HEARING OFFICER COCHRAN: Thank you. And good
20 afternoon. This matter concerns the application for a small
21 power plant exemption, SPPE, initially filed by the Applicant
22 on December 21, 2017.

23 The Applicant proposes to construct a series of
24 backup generators in the city of Santa Clara to support
25 server farms known as the McLaren Data Center. The proposed

1 project currently consists of 47 Caterpillar diesel fired
2 generator sets. The specification for these generator sets
3 are set forth in Exhibit A to the revised application for an
4 SPPE filed on May 21, 2018.

5 Each generator is capable of producing up to 2.75
6 megawatts. These generators would not be connected to the
7 transmission grid. Instead, any and all power generated
8 would be used to support the McLaren Data Center in the event
9 of a power disruption.

10 The Committee noticed today's prehearing conference
11 and the Notice of Prehearing Conference, Evidentiary Hearing,
12 Scheduling Order, and Further Orders issued on July 23, 2018.
13 All of these documents that I have referenced and many of the
14 documents we'll be talking about today are available in the
15 online docketing system used by the Energy Commission.

16 Staff had published the draft initial study and
17 mitigated negative declaration on June 22, 2018. This
18 initial study and mitigated negative declaration was subject
19 to a 30-day public comment period that ended on July 24,
20 2018. Comments were received from the Applicant, Intervenor
21 Helping Hand Tools, and Clean Coalition.

22 Intervenor Helping Hand Tools filed a motion to
23 dismiss these proceedings on August 3, 2018. The Intervenor
24 then filed a motion to amend the procedural schedule on
25 August 10, 2018. On August 20, 2018, the Committee filed an

1 order and agenda indicating that these motions would be
2 considered today.

3 As explained in the July 23, 2018 notice, the basic
4 purposes of the prehearing conference are to assess the
5 project's readiness for hearings, to clarify areas of
6 disagreement or dispute, to identify witnesses and exhibits,
7 to determine upon which areas parties need to question the
8 other party's witnesses, and to discuss associated procedural
9 matters.

10 The first topic that we're going to discuss today
11 during the prehearing conference is the motion to dismiss.

12 The Energy Commission has the exclusive jurisdiction
13 to license all thermal power plants that generate over 50
14 megawatts. Section 25441 of the Public Resources Code
15 creates an exemption for small power plants. That section
16 defines a small power plant as those that do not exceed 100
17 megawatts. Section 25541 is silent on how generating
18 capacity is to be calculated.

19 In his motion to dismiss, Helping Hand Tools contends
20 that the calculation of generating capacity is governed by
21 Section 2003 of the Energy Commission's Regulations.

22 Mr. Lee, that document is ready to be displayed.
23 It's in the tray so if you could share our screen. And put
24 that up for me, please.

25 This section, Section 2003, states that the

1 generating capacity of an electric generating facility means
2 the maximum gross rating of the plant's turbine generator or
3 generators in megawatts minus the minimum auxiliary load.
4 There are then subparts to Section 2003 that talk about
5 different types of turbine generators, including steam and
6 otherwise.

7 So Applicant opposed the motion to dismiss. While
8 Intervenor had argued that the proposed generating facility
9 exceeds the 100-megawatt generating capacity because
10 47 generators times 2.75 megawatts per generator equals
11 129.25 megawatts, the Applicant contends that because the
12 generating facility can only provide power to the McLaren
13 Data Center, the correct method for calculating the
14 generating capacity is the maximum load that can be consumed
15 if all buildings were occupied and the mechanical load of the
16 buildings on the hottest, most humid day.

17 Staff also opposed the motion to dismiss arguing that
18 the Caterpillar generators identified in the revised
19 application are not turbine generators so that Section 2003
20 does not apply. Even if Section 203 does -- 2003 does apply,
21 Staff continues, the building load is a permissible factor to
22 determine generation.

23 Mr. Babula.

24 MR. BABULA: Yeah, I want to clarify, that's actually
25 what the Applicant had filed.

1 HEARING OFFICER COCHRAN: Oh, okay.

2 MR. BABULA: That is in the files. The -- you
3 characterize Staff as saying the 2003 doesn't apply. It's
4 actually the Applicant's position.

5 HEARING OFFICER COCHRAN: Okay. So 2003 does apply?

6 MR. BABULA: Our position was it's a framework for
7 calculating capacity factor for all types of prime movers as
8 we filed.

9 HEARING OFFICER COCHRAN: Okay. So I guess the first
10 question is, does Section 2003 apply? Why or why not? Is
11 the specified diesel fired generator set a turbine generator?

12 If Section 2003 does not apply, what law or
13 regulation controls how generating capacity is calculated --
14 calculated?

15 I'd also point out that in his opposition, Applicant
16 cited to a letter from the Energy Commission's Executive
17 Director that is not in the record of these proceedings.

18 It might make sense to have that document put into
19 the docket and made an exhibit to the extent that there are
20 facts in that document that you wish to rely upon in having
21 the Committee rule on the motion to dismiss.

22 Finally, the Applicant has interposed that it has a
23 warranty that limits the operability, shall we say, of the
24 gen sets. So that is also not an exhibit. And to the extent
25 the information contained in that warranty is applicable,

1 then that is something else that we might want to consider to
2 augment the record to add to the record of proceedings.

3 So who would like to answer my question first as to
4 whether 2003 applies?

5 MR. GALATI: I'd be happy to go first since I was the
6 one that says it doesn't apply.

7 HEARING OFFICER COCHRAN: Okay.

8 MR. GALATI: The strict reading of the regulation
9 says this is how you calculate the generating capacity from a
10 turbine generator. It just specifically says that. And as
11 the Commission is aware, in this case, this is not your
12 traditional power plant. This is not the methodology that
13 should be used and has been used in the past which is, "what
14 is the maximum generating capacity of a power plant minus its
15 internal loads?" That's what Staff uses for purposes of
16 determining jurisdiction.

17 And for most projects, we don't have a problem where
18 we're dealing with that jurisdiction. But the internal loads
19 are important because its net generating capacity is what can
20 actually be delivered to the grid. That is what Staff is
21 look -- that's why we have some projects that might have the
22 ability to generate over, for example, even a 49.9 megawatt
23 turbine can generate more than 49.9 megawatts. But with its
24 internal loads and with the way that it operates, that is why
25 that comes below the Energy Commission's 50 megawatt

1 generation.

2 So I don't believe that that Regulation, 2003, gives
3 us much guidance on how you would look at a facility such as
4 this which is intended to provide power to one user. This is
5 not intended to generate electricity for purposes of
6 transmitting it to the electrical grid.

7 Now in some cases, you could say since we're not
8 generating electricity to the grid, maybe it's not a power
9 plant at all. But we circumvented that -- that discussion,
10 that issue, and came to the Energy Commission working with
11 Staff since late last year on another project and then this
12 one, and decided it was prudent for us to go ahead and file
13 this application for a small power plant exemption even
14 though we don't deliver electricity to the grid.

15 HEARING OFFICER COCHRAN: Okay.

16 MR. GALATI: So we believe that, without 2003 giving
17 us a guidance we have to use, what is the capacity of
18 electricity that can be generated and that's going to be
19 limited, because we don't have the ability to store that
20 electricity, that's going to be limited by what the demand of
21 the building is. And that is also consistent with the
22 jurisdictional determination that we discussed with Staff on
23 the Santa Clara campus that Vantage owns.

24 HEARING OFFICER COCHRAN: I'm just -- I was just
25 momentarily surprised because a large microphone appeared.

1 MR. GALATI: I was just summarizing that it doesn't
2 apply.

3 HEARING OFFICER COCHRAN: Okay. Thank you.

4 Staff, did you have anything that you wanted to add?
5 And thank you for your clarification earlier, by the way.

6 MR. BABULA: Yeah, I just want to add that we filed
7 in filings yesterday to try to articulate that there are a
8 number of other types of technologies that we've applied 2003
9 as a framework, because generating capacity is all we're left
10 with, with the Warren-Alquist Act. And so you have to have a
11 mechanism to figure out what that is. And 2003 is a
12 framework to do that and that would cover reciprocating
13 engines, Stirling engines. So there are other stuff besides
14 turbine generators that come before the Energy Commission.

15 And so in order to get that "what is the generating
16 capacity?", and sometimes it's not that critical because the
17 megawatts is so high that you're not near one of these
18 threshold numbers of 50 or 100 or in the case of the
19 geothermal 300. And so you don't see detailed calculations
20 in those cases. But for a number of different cases, many
21 that don't even appear at the Energy Commission in a
22 proceeding because they're ruled to be below the 50
23 threshold, we have to use some framework and the 2003
24 provides that as a basis to -- to do those calculations.

25 And so if you need additional specific testimony on

1 calculations, I would invite technical staff to answer that.

2 HEARING OFFICER COCHRAN: And I forgot -- it's
3 probably later in my outline but I'll bring it up now because
4 you mentioned it, Mr. Babula, is that on Tuesday, the
5 Committee filed three questions that we asked the parties to
6 be ready to discuss today and also asked that if you were
7 able to, to -- to give us your information ahead of time.
8 And I'd like to point out that all the parties did in fact
9 provide us with information ahead of time and we thank you
10 for doing that because I think it may streamline some of
11 this. And that's something to be talked about later when we
12 get to the part where we're going to be doing a prehearing
13 conference for the actual exhibit list and what the exhibits
14 currently are.

15 MR. BABULA: I do have one thing that I hate to bring
16 up now but I do want to give a courtesy to Silicon Valley
17 Power has called in in an effort to assist the Committee on
18 the reliability question. We're hoping that we can get them
19 an idea of when they're going to be needed --

20 HEARING OFFICER COCHRAN: Okay.

21 MR. BABULA: -- to speak because --

22 HEARING OFFICER COCHRAN: Okay.

23 MR. BABULA: -- they're hoping it'll be kind of
24 around 1 as close as possible. So if possible, I'd like to
25 try to get their stuff into the record before so they're not

1 waiting since they're doing this as a courtesy to the
2 Commission.

3 HEARING OFFICER COCHRAN: Okay. So perhaps what we
4 can do -- so in order to do that, we would need to open the
5 evidentiary hearing, and we said we weren't going to do that
6 till after the prehearing conference. But as an
7 accommodation because we have agendaized those, there was
8 adequate notice that we were going to be doing both today, I
9 see no problem with opening the evidentiary hearing if the
10 presiding member and the associate member --

11 COMMISSIONER DOUGLAS: No, that's fine.

12 HEARING OFFICER COCHRAN: -- are okay with that.

13 Okay.

14 COMMISSIONER DOUGLAS: If we need to do that, yeah.

15 HEARING OFFICER COCHRAN: So. Okay. So the person
16 from Silicon Valley Power, are you still on the line with us?

17 MR. KOLNOWSKI: Yes.

18 HEARING OFFICER COCHRAN: Okay. What I want you to
19 do is I want you to raise your right hand. I'm going to
20 swear you in as a witness.

21 Before I do that, could you please spell your name
22 for the record?

23 MR. KOLNOWSKI: Kevin, K-e-v-i-n; Kolnowski,
24 K-o-l-n-o-w-s-k-i.

25 HEARING OFFICER COCHRAN: Okay. And if I butcher

1 your last name, I apologize.

2 [Mr. Kolnowski sworn.]

3 HEARING OFFICER COCHRAN: Thank you.

4 So yesterday, Staff's response to our questions gave
5 us some -- one of the questions that we had asked concerned
6 the likelihood of an outage at the McLaren Data Center. And
7 in reviewing Silicon Valley Power's website, there is a page
8 that talks about an outage history for Calendar Year 2017 and
9 for the time to date in 2018.

10 Have you -- are you familiar with that document?

11 MR. KOLNOWKSI: Yes.

12 HEARING OFFICER COCHRAN: Okay. So the information
13 contained on that page, how does that -- how would that
14 affect or not affect the Energy Commission knowing whether an
15 outage at the McLaren Data Center is a reasonable --
16 reasonably foreseeable event?

17 MR. KOLNOWKSI: The data presented on the website is
18 for the entire grid for the city of Santa Clara/ Silicon
19 Valley Power. And the intended audience for that -- the
20 intended audience for that data is our residential customer
21 base. This data is down to our individual 12 kV feeders that
22 serve various areas that have residential customers.

23 McLaren is taking service off of our 60 kV system.
24 And during the same time period, we had -- have had zero
25 customer -- or zero 60 kV customers lose power. So the data

1 on the website is not directly comparable to what McLaren
2 would be receiving.

3 As a point of reference, the past 12 months, we
4 monitor-- we track our data on a monthly basis. Our industry
5 standard for an average service availability index has been
6 99.9859 percent.

7 HEARING OFFICER COCHRAN: Okay. Does -- do any of
8 the other parties have any question -- Mr. Babula, why don't
9 we start since I believe that you're sponsoring this witness,
10 for want of a better term. If you could then sort of talk
11 what questions you might have.

12 MR. BABULA: Okay. I do -- I do have a question.

13 Mr. Kolnowski, can you describe the manner in which
14 the McLaren Data Center is connected to the SVP grid and what
15 features of that connection enhance reliability?

16 MR. KOLNOWKSI: The McLaren substation is going to
17 be -- or the McLaren Data Center is going to be fed by our
18 Parker substation which we're -- is currently being designed.
19 That feed will be taking off of our 60 kV southern loop.
20 When we talk about a loop, if you were to draw a circle and
21 put the Parker substation in the middle of it, you'd have in
22 it -- you'd have two legs that go back to the primary
23 substation which is taking feed at 115 kV. The way the SVP
24 has designed our systems, we typically build in redundancies
25 with our systems.

1 And in this case, since it's a loop, if one leg of a
2 loop, say faults, the substation -- the McLaren substation
3 would not lose power because it's being fed by the other
4 loop, the other part of the circle. And that's typically how
5 we do it. This is not a radial feed which would be feed
6 from our substation solely along a long route to McLaren and
7 this is how we typically have done it throughout our grid
8 system and so we get multiple feeds into a location.

9 MR. BABULA: Thank you. That's all the questions
10 that I have.

11 HEARING OFFICER COCHRAN: Okay. Thank you,
12 Mr. Babula.

13 Do either of the other parties have questions for
14 Mr. Kolnowski?

15 MR. GALATI: None from the Applicant.

16 MR. SARVEY: There are two existing data centers, the
17 Microsoft Data Center and the Santa Clara Data Center.

18 HEARING OFFICER COCHRAN: Also, if you could identify
19 yourself.

20 MR. SARVEY: This is Robert Sarvey representing
21 Helping Hand Tools.

22 There are two existing data centers, Microsoft and
23 the Santa Clara Data Center, located within 1000 feet of the
24 proposed McLaren Data Center. Because of their proximity, is
25 it more likely that they would all experience an outage at

1 once?

2 MR. KOLNOWKSI: No.

3 MR. SARVEY: Why?

4 MR. KOLNOWKSI: Because the way -- the way our loops
5 are designed. If you're at -- if a fault occurred at the
6 McLaren Data Center, those other loops can be fed -- it would
7 be fed via the rest of the remaining loop. So only McLaren
8 could be affected. Even if it was in directly at McLaren,
9 there are two feeds from our substation we built -- that
10 substation is being built with two transformers and they each
11 are loaded 50 percent. If that one transformer were to
12 fault, the other transformer would take up 100 percent load.

13 And if say something happened at one of the other two
14 data centers you referenced, the same situation would occur.
15 So it would only be -- they each have two trans -- all of
16 them have two transformers at the remainder -- remaining load
17 would be picked up by the other transformer.

18 And that's one thing that we do differently, we
19 typically build in the redundancy in all of our loops because
20 of this issue, we want a higher availability for our
21 customers.

22 MR. SARVEY: So there's no mutual upstream connection
23 for these three plants?

24 MR. KOLNOWKSI: If you go back to the--I think this
25 area would be fed either from our southern receiving station

1 to our -- I'm just checking a drawing, hold on.

2 This loop is fed via two 115 kV substations, our SRF
3 substation and our KRF substation. And if -- so you have two
4 feeds coming into the loop and they're at different
5 locations, they're not in the same location. So if -- say a
6 problem happened at one of those substations, the other
7 substation picks it up automatically. just -- the load is
8 just shifted. And there's no control system that's involved
9 in doing that.

10 MR. SARVEY: So those two substations are not related
11 in any way?

12 MR. KOLNOWKSI: They are remote. They're separate
13 from each other.

14 MR. SARVEY: Okay. During an earthquake, would you
15 expect grid failure in your utility during a major
16 earthquake?

17 MR. KOLNOWKSI: During the -- during the Loma Prieta
18 earthquake, our biggest problem was in our distribution
19 system where it goes to individual's homes. We have our --
20 our powerlines typically go in the back yard where we had the
21 lines slapping against each other and that's where our
22 challenges were. We did not experience a major event during
23 Loma Prieta at any of our substations.

24 MR. SARVEY: Thank you.

25 MR. KOLNOWKSI: So we don't anticipate that

1 happening.

2 MR. SARVEY: Thank you.

3 HEARING OFFICER COCHRAN: Is there any other
4 information that any of the parties believe that the
5 Committee needs from Silicon Valley Power?

6 MR. GALATI: None from the Applicant.

7 MR. BABULA: None from Staff.

8 HEARING OFFICER COCHRAN: Mr. Sarvey?

9 MR. SARVEY: No.

10 HEARING OFFICER COCHRAN: Mr. Sarvey, I asked if
11 there was anything else that you might need from this
12 witness.

13 MR. SARVEY: No.

14 HEARING OFFICER COCHRAN: Okay. Is there any
15 objection to releasing Silicon Valley Power?

16 MR. GALATI: No objection.

17 HEARING OFFICER COCHRAN: Okay.

18 MR. SARVEY: No objection.

19 MR. BABULA: No objection.

20 HEARING OFFICER COCHRAN: We'd like to thank you,
21 Mr. Kolnowski, on behalf of the Committee --

22 MR. KOLNOWSKI: Okay.

23 HEARING OFFICER COCHRAN: -- for helping us today.
24 Thank you for your information.

25 MR. KOLNOWSKI: You're welcome. Thank you.

1 HEARING OFFICER COCHRAN: Now I have to go figure out
2 where I was when last we met.

3 So I believe we were still talking about Section 2003
4 and its applicability to these proceedings and the status --
5 and I had not yet heard from Mr. Sarvey. I heard from both
6 Staff and Applicant.

7 And I know, Mr. Sarvey, that you passed out a
8 document to the Committee that is from the -- from this
9 proceeding. And it's from TN 222057 which I do not believe
10 is an exhibit in these proceedings; is that correct?

11 MR. SARVEY: No. It's Exhibit 3.

12 HEARING OFFICER COCHRAN: Oh, okay. I'm sorry. So
13 please, go ahead. What -- so did -- you wanted to -- would
14 you like to speak to the Section 2003 discussion we've been
15 having?

16 MR. SARVEY: Yes. I agree with Staff that 2003
17 applies but I don't see anywhere where 2003 excuses the
18 McLaren Data Center or allows the McLaren Data Center to
19 apply for an SPPE. There's nothing in there, there's nothing
20 at all in there that gives you any authority and there's
21 nothing in the rules of Practice and Procedure Title 20 that
22 gives you any authority to modify the output of the
23 generators by a continuous -- 70 percent continuous rating.
24 I don't see that anywhere in there.

25 In fact, the -- it says that there's no way that the

1 Applicant can lower the amount of generation by some
2 artificial means. So I don't see any way that this project
3 qualifies under Section 2003 for a SPPE treatment.

4 HEARING OFFICER COCHRAN: Mr. Sarvey, would you agree
5 that if the -- that 2003 applies only to turbine generators?

6 MR. SARVEY: No.

7 HEARING OFFICER COCHRAN: Why not?

8 MR. SARVEY: Because it has other -- has other
9 information about like relative average dry bulb temperature
10 and relative humidity that could be applied to other types of
11 generations. So I think you could apply it and I think it's
12 unfortunate they put the word turbine generator in there when
13 there's so many different kinds of generators. And I think
14 the Commission might want to address that in the next round
15 where the Rules of Practice and Procedure are amended.

16 HEARING OFFICER COCHRAN: Okay. Staff, as we
17 discussed earlier, the Committee had asked a series of
18 questions. And one of the questions that we asked on
19 August 28, 2018, was whether the proposed gen set was a
20 turbine generator. And I know that you had put in a
21 significant amount of information about the fact that it was
22 not a turbine generator; is that correct?

23 MR. BABULA: That's correct.

24 HEARING OFFICER COCHRAN: I just want to make sure
25 that I'm reading --

1 MR. BABULA: Right.

2 HEARING OFFICER COCHRAN: -- your documentation
3 correctly.

4 MR. BABULA: Right.

5 HEARING OFFICER COCHRAN: So could you briefly touch
6 upon why it's not a turbine generator?

7 And the other thing that I would like to point out is
8 that to the extent that there is factual information in the
9 responses that were given yesterday by all of the parties, we
10 again might need to identify those in exhibits and have them
11 included in the administrative record, because, as much as I
12 love lawyers, being one myself, what we say is not
13 necessarily evidence. So that's -- we -- I want to make sure
14 that we take care of all of that as well.

15 MR. BABULA: Right. And I do want to respond to that
16 in that if you noticed our submission was labeled as
17 testimony of and I had the Staff experts that were the
18 authors of that information.

19 HEARING OFFICER COCHRAN: Okay.

20 MR. BABULA: So I would consider those to be the
21 testimony of already in the record.

22 HEARING OFFICER COCHRAN: Okay.

23 MR. BABULA: Or will be when we go through that
24 process. So if there's -- I could have the technical staff
25 discuss the difference between a turbine generator and a

1 piston-based type of equipment if that's what you would need
2 to supplement. I just want to make sure the Committee has
3 everything it needs to make a decision. But I consider what
4 we submitted as testimony.

5 HEARING OFFICER COCHRAN: Okay. Thank you.

6 Mr. Sarvey.

7 MR. SARVEY: I would object to the Staff's comments
8 to the Committee's questions as testimony. It's basically
9 you -- you requested comments, they submitted testimony. We
10 haven't had an opportunity to review that testimony. It was
11 submitted yesterday. And I believe that it's not properly
12 termed testimony.

13 And as well as their previous 30-page explanation of
14 response to the comments of Helping Hands Tools was framed as
15 comment and now it's being included as testimony. So I think
16 there needs to be some clarification on how we're processing
17 these documents.

18 HEARING OFFICER COCHRAN: Okay. We'll talk about
19 that in a minute or so.

20 Is there -- is there anything further anyone would
21 like to say substantively about turbine generators, this
22 particular gen set -- and I see Mr. Layton coming to the
23 microphone.

24 If you could state your name and spell it for the
25 record, please.

1 MR. LAYTON: Matthew Layton, L-A-Y-T-O-N.

2 The -- the reciprocating engine is not a turbine. We
3 agree that a turbine is an axial flow device. The process
4 moves through the machine in an axial direction, along the
5 axis. Reciprocating engine is different. I do not know why
6 2003 was written the way it was written, I was not involved.
7 That's an interesting archeological dig, I will look into
8 that after this. But the fact that refers to a turbine
9 generator or a turbine is somewhat irrelevant to determining
10 a generator's capacity.

11 We're talking about electricity, that's what the
12 Energy Commission is designed for, is to deal with
13 electricity. How you make the electricity is somewhat
14 irrelevant as long as it's a thermal process, then it's
15 jurisdictional.

16 So whatever you take -- if you had a 70 megawatt
17 generator and took it back to the 1880s, you could make it
18 generate 70 megawatts by attaching it up to a large piston
19 steamed -- steam piston device that would turn that thing and
20 make 70 megawatts.

21 If you take it to the modern day and attach it to a
22 combustion turbine or a steam turbine, you would generate 70
23 megawatts. You attach it to an engine, solar - solar,
24 Stirling, or a reciprocating engine, it would generate 70
25 megawatts. The process upstream is somewhat irrelevant to

1 the 70 megawatts because that's what we're interested in.

2 The reason we wrote, I assume, someone wrote all that
3 detail in 2003 is that turbines, while highly efficient
4 compared to other devices because they are axial flow,
5 they're easier -- they're more efficient and they're also
6 easier to convert the rotational energy right into the
7 turbine generator or the turbine. They are very sensitive to
8 temperature, air density. So if on a hot day they don't work
9 as well, if you put them at 4,000 feet in the desert, they
10 don't work as well.

11 So the attempt, I assume, in 2003 was to kind of
12 qualify there's going to be some derates, some degradation of
13 performance and you need to account for that. Because,
14 again, we do not use nameplate in our proceedings -- in our
15 efforts to determine jurisdiction. It's a very handy device
16 to point at, it's permanently attached to the generator, it's
17 legally required.

18 We had some that just came to us from the Grayson
19 Facility that were circa 1940, the nameplate's still there.
20 Can't read it, it's not really relevant, but it's still
21 there. Nameplate is just what the vending manufacturer sells
22 you under ideal conditions that generator will make that many
23 megawatts.

24 So we don't think that 2003 -- in fact, it's never
25 been -- we've never had a difficulty in determining

1 jurisdictional capacity working through some of the steps in
2 2003. This gross -- what does it make on a good day at that
3 -- at that elevation, at that site, at that air temperature,
4 how many megawatts does the generator generate. Then how
5 much parasitic load do you have to come up with a reasonable
6 net. And then that's what's deliverable, that's what can go
7 to the grid.

8 And the -- I think the 50 megawatts is actually
9 important and so I disagree with Mr. Galati about that this
10 is not a power plant. The Commission at some point in time
11 or the legislature decided that 50 megawatts was significant.
12 Either 50 megawatts had a significant impact on the grid or a
13 50-megawatt power plant was a significant environmental -- of
14 concern. So 50 megawatts was the determining factor for our
15 jurisdiction or not.

16 This facility produces more than 50 megawatts so it
17 is a power plant that we're interested in. Whether or not
18 it's connected to the grid, it still avoids 50 megawatts or
19 does something. The grid -- the grid's interested even
20 though it gets isolated. So we think 2003 applies.

21 And that's -- that's as much history as I've got.

22 MR. GALATI: Ms. Cochran --

23 HEARING OFFICER COCHRAN: Thank you.

24 MR. GALATI: -- can I respond, please?

25 HEARING OFFICER COCHRAN: Yes, please.

1 MR. GALATI: I just want to be absolutely clear what
2 we're saying. What we're saying is 2003 does not tie your
3 hands as the only way to look at calculating a max generating
4 capacity. Because that is the way you look at it for a
5 turbine generator.

6 If you have another generator which the Energy
7 Commission has jurisdiction, 2003 can certainly provide
8 guidance. But remember, the motion to dismiss was filed
9 saying two thousand -- by Mr. Sarvey -- said 2003 prevents
10 the Energy Commission from looking at the McLaren backup
11 generating facility in the way that they did. And that's why
12 it is not applicable to this project as a constraint.

13 That's all we're saying. We're also not contesting
14 jurisdiction for this project in front of the Energy
15 Commission. Obviously we filed a small power plant
16 exemption.

17 But I just wanted to make it clear here, your
18 determination on whether it is a turbine generator or not a
19 turbine generator is just basically whether or not the
20 committee has to follow only the information in 2003
21 calculating jurisdiction. That's our position.

22 HEARING OFFICER COCHRAN: Okay. Thank you for that.
23 Anything else? Any final words?

24 Yes, Mr. Sarvey, as the maker of the motion, you get
25 the last say.

1 MR. SARVEY: Are we dealing with the motion right now
2 or just the application of Section 6, 2003?

3 HEARING OFFICER COCHRAN: The motion. We're
4 talking --

5 MR. SARVEY: Because I have other things to say about
6 that.

7 HEARING OFFICER COCHRAN: Please.

8 MR. SARVEY: But as far as 2003 (b) (3) says, "The
9 maximum gross rating cannot be limited by an operator's
10 discretion to lower the output of the turbine generator or by
11 temporary design modification have no function other than to
12 limit the turbine generator's output."

13 There's really no support for any position to lower
14 the output of these generators from 2.75. There's no support
15 in 2003. So I don't see how you can arrive there.

16 But I'd like to make some other comments, too, about
17 it, just the motion in general, not related to Section 2003.

18 HEARING OFFICER COCHRAN: Please go ahead.

19 MR. SARVEY: And they're related to the handout that
20 I gave you.

21 Before this application came before the Commission,
22 the city of Santa Clara issued its mitigated negative --
23 negative declaration for a portion of this project. The
24 Applicant has adopted the mitigated negative declaration as
25 Exhibit 3 in this hearing.

1 On page 164 of the handout I gave you, it provides
2 the project description. The project description states that
3 full build-out, the project will include 32, three megawatt
4 generators for backup capacity of 96 megawatts.

5 Now that's the initial project description that was
6 filed in the city of Santa Clara and that's in the negative
7 declaration.

8 When the project came before the Energy Commission,
9 suddenly the project generators were only rated at 70 percent
10 of their potential output to allow the 47 generators to come
11 in under the 100-megawatt Commission SPPE jurisdiction.
12 Arguments made to the contrary to Section 2003 of Title 20
13 that the data center itself cannot draw more than 100
14 megawatts of power from the grid or the backup operation and
15 somehow that allowed the Commission to evaluate this project
16 as an SPPE. But in fact, there's no way and no condition
17 which limits the load of the McLaren Data Center to 100
18 megawatts. There's evidence in the proceeding that the
19 McLaren Data Center will likely draw more than 100 megawatts
20 of power. Thank you.

21 HEARING OFFICER COCHRAN: Okay. I am going to --
22 because we've now sort of expanded beyond the 2003 question,
23 is there -- are there any other comments anyone would like to
24 make, either Staff or Applicant, in response to what
25 Mr. Sarvey just said?

1 MR. LAYTON: This is Matt Layton again.

2 We see no evidence that the Data Center can draw more
3 than 100 megawatts, I'm confused by that. I guess I do not
4 see the evidence in there and I don't know if Mr. Sarvey has
5 pointed us to it.

6 MR. SARVEY: Would you like me to?

7 MR. LAYTON: Sure.

8 HEARING OFFICER COCHRAN: Just -- let's -- what I'd
9 like to do is I'd like to get the opposing arguments and then
10 allow Mr. Sarvey your opportunity to then hone in on that.

11 MR. GALATI: I think first it's important the record
12 reflects that the project went through several iterations.
13 First, it was the 32 generators at the city. It is then was
14 expanded to 47, three megawatts. And due to efficiencies in
15 the design of the plan of the McLaren Data Center who is the
16 off-taker, the facility has been redesigned to have smaller
17 generators.

18 If the Committee were to use Mr. Sarvey's argument
19 that 2003 somehow applies and that an artificial cap by the
20 operator, the operator of the -- the generators is the
21 McLaren Data Center which draws the power similar to the way
22 the grid draws the power.

23 That is how it is operated and it is not turned on by
24 a power plant operator in the normal way to generate as a
25 call to deliver "X" amount of energy at a certain time. It

1 is connected and operated by the McLaren Data Center.

2 So this is not an artificial operation control, the
3 off-taker is dictating how much power it needs. That's why
4 we agree that the appropriate evaluation for jurisdiction is
5 what can the building demand of these backup generating
6 facilities? That's what Staff did, that's what we did when
7 we worked with Staff in looking at the Santa Clara project
8 campus where additional generators were being added, and
9 that's what should be done here.

10 We strongly disagree with characterizations that
11 Mr. Sarvey has pointed -- pointing at older documents trying
12 to convince the Committee that the generation that the
13 building could demand is more than 100 megawatts. It's not.
14 We can put on the -- we have people here to testify to that.

15 The document that we filed yesterday, I planned on
16 having it marked as Exhibit 30 as I put in the document. And
17 I have the witnesses here who will testify that it's their --
18 their testimony under oath. So we can rely on that, I can do
19 that now if you'd like to talk more about it from that
20 perspective.

21 But we believe that Staff did the right thing by
22 recognizing the uniqueness of a data center, the uniqueness
23 of generating facility that supports a data center, that is
24 the data center who dictates the generating capacity.

25 HEARING OFFICER COCHRAN: So usually when the

1 Committee tries to rule on motions that are before it, it
2 doesn't see the need for a great deal of testimony. What I'm
3 hearing is that there are fundamental factual determinations
4 that you're going to be asking the Committee to make in order
5 for us to resolve the motion.

6 So what I want to do is I want to stop this
7 discussion right now so that way we can have a clear and
8 robust discussion with whoever the witnesses need to be under
9 oath so that all of the facts could come in in the
10 appropriate way where it's actual testimony from the experts
11 to -- to us who need to make a decision on this.

12 And so I apologize for having gone so far afield, but
13 the more we've gone, the more it seems that we need to get
14 the real facts especially because it is now come down to a
15 question of whether there is evidence or is not evidence on a
16 particular point.

17 So we're going to suspend further discussion on this
18 motion to dismiss until we can get some of this -- this topic
19 discussed once the evidentiary hearing commences.

20 So what I'd like to do now is to do more about what a
21 prehearing conference does which is to talk about the
22 exhibits.

23 So I -- there are copies of the exhibit list
24 available. If anyone needs one, I have one. Don't all rush
25 to the podium.

1 Okay. So in order to conduct this proceeding
2 efficiently, we required any party seeking to participate at
3 this conference or present evidence or cross-examine
4 witnesses at the evidentiary hearing to file a prehearing
5 conference statement. And we received prehearing conference
6 statements from Staff, Applicant, and Helping Hand Tool, the
7 Intervenor.

8 So the first thing I want to point out is that Staff
9 and Applicant both identified the data clarification
10 questions and responses, TN224450. So who should really be
11 the sponsor of the data? So there was an e-mail sent from
12 Staff asking questions and then a document was created that
13 included the questions and the responses.

14 Do you guys care who sponsors that testimony?

15 MR. GALATI: We think --

16 HEARING OFFICER COCHRAN: I'm looking at --

17 MR. GALATI: We think staff should --

18 HEARING OFFICER COCHRAN: Okay.

19 MR. BABULA: -- we just -- I just didn't want to miss
20 it.

21 HEARING OFFICER COCHRAN: Okay. So then, on this --
22 on this sheet that TN224450 currently bears a 27. I am now
23 going to make it Staff's next in order which would make it
24 205.

25 MR. BABULA: Okay. So you're talking about we had

1 listed that in our prehearing filing conference statement as
2 201.

3 HEARING OFFICER COCHRAN: Oh, as 201. I'm sorry,
4 201. I'm sorry. You're right.

5 MR. BABULA: Right. Yeah.

6 HEARING OFFICER COCHRAN: So we'll now make that
7 Exhibit 201.

8 MR. BABULA: Okay.

9 HEARING OFFICER COCHRAN: Okay. We previously talked
10 about the Committee questions from August 28, 2018, as well
11 as the answers that we received. So I believe we now need to
12 make the question and the answers exhibits; is that correct?

13 And who -- so either each party can sponsor its own
14 response or they can be Committee exhibits. Whatever you
15 people think will be cleanest.

16 MR. BABULA: Well, this is for Staff because it's our
17 testimony, we'll sponsor it and I have it listed our next
18 exhibit will be 205.

19 HEARING OFFICER COCHRAN: Okay. And for the record,
20 that would be --

21 MR. BABULA: It's TN224637.

22 HEARING OFFICER COCHRAN: TN224637 is now identified
23 and marked for identification as Exhibit 2005 [sic].

24 MR. GALATI: I also was going to mark mine, would you
25 like me to make it 27 so we don't have a gap?

1 HEARING OFFICER COCHRAN: Yes, that would be great.

2 MR. GALATI: So it is TN224627 and we ask for that to
3 be marked as Exhibit 27.

4 HEARING OFFICER COCHRAN: Okay. And Mr. Sarvey, your
5 document is 224636. Shall we mark it as 305?

6 MR. SARVEY: Yes, please.

7 HEARING OFFICER COCHRAN: Okay. I also noticed in
8 your revised prehearing conference statement yesterday, you
9 had labeled TN224526 as 404. I assume you meant 304.

10 MR. SARVEY: Yes.

11 HEARING OFFICER COCHRAN: Okay. Are there any other
12 documents that have not been previously been identified that
13 need to be marked as exhibits?

14 MR. GALATI: None for the Applicant.

15 MR. BABULA: None for the Staff.

16 HEARING OFFICER COCHRAN: Okay.

17 MR. SARVEY: None.

18 HEARING OFFICER COCHRAN: So the next topic that we
19 usually talk about at prehearing conference are the areas in
20 dispute for the evidentiary hearing.

21 So far it appears that Mister -- well, Staff and
22 Applicant believe that we don't need an evidentiary hearing
23 on the topics, that they're not in dispute. Am I correct?

24 MR. BABULA: Correct.

25 MR. GALATI: Correct.

1 MR. BABULA: That is correct.

2 HEARING OFFICER COCHRAN: The Intervenor has
3 identified air quality, public health, environmental justice,
4 project description, and efficiency as being areas in
5 dispute.

6 Now, Mr. Sarvey, when Helping Hand Tools was granted
7 intervention status, it was limited to alternatives, air
8 quality, public health, biological resources, and
9 reliability. So is there any question or concern about that
10 with the parties?

11 MR. SARVEY: No, that's fine.

12 MR. GALATI: And with respect to the testimony
13 we've -- that Mr. Sarvey has filed is only on public health.

14 HEARING OFFICER COCHRAN: And I believe on air
15 quality.

16 MR. GALATI: So I don't know what the rest of the
17 dispute might be.

18 HEARING OFFICER COCHRAN: Okay. So who --

19 MR. BABULA: Let me just --

20 HEARING OFFICER COCHRAN: Sure.

21 MR. BABULA: -- chime in here.

22 So correct, yeah, I was going to object because he
23 did identify wanting to have cross-examination on the topic
24 of outreach, environmental justice which wasn't a -- as you
25 noted a topic that Helping Hands had intervened in.

1 HEARING OFFICER COCHRAN: Okay.

2 MR. SARVEY: Did you just say Helping Hand Tools
3 didn't list environmental justice in their prehearing
4 conference, is that what you just said?

5 MR. BABULA: I said that they didn't identify that as
6 a topic that they were going to intervene in so when a
7 Committee issued an order reciting the topics, environmental
8 justice was not one of them.

9 MR. SARVEY: I believe it was.

10 HEARING OFFICER COCHRAN: The order for --

11 Mr. Lee, could you pull up the order for intervention
12 on the docket, please.

13 We'll let the words of the order -- yes.

14 So -- and so what I'd like to note so that we can
15 focus this because at this point it's now 2:00 and we have
16 until about 5:00 today. I know that at least one person
17 needs to leave as close to 5 as possible.

18 One of the topics I would like to -- what I would
19 like to know is what are the specific areas of inquiry so
20 that we have a focus so that we know who needs to stay and
21 who can stay and watch if they'd like but can leave if they
22 don't feel the need to watch this drama unfold?

23 So can you provide for me, Mr. Sarvey, what specific
24 issues in air quality you would like to discuss?

25 MR. SARVEY: Well, I think all -- everything I've

1 said is pretty clear. I believe that the Applicant and/or
2 Staff should be modeling the emergency operations of this
3 project for the health impacts to the minority community.

4 I believe that obviously the project doesn't qualify
5 for SPPE treatment. And I think there's substantial evidence
6 that it's not speculative to conduct a operation -- or
7 conduct modeling of emergency operations of this project and
8 think it -- when you look at other data centers near this
9 project, they have been in fact limited in their normal
10 operations much less their emergency operations.

11 So those are the issues that I want to look at and
12 that other agencies are also like in Washington, they're
13 doing complete analysis of all the data centers failing at
14 once and all their backup generators coming on at once, to
15 determine if there really is a significant impact. And this
16 is not speculative because in fact, they've already had a 19-
17 hour outage in 2006.

18 So those are the types of things that I'll be looking
19 for.

20 HEARING OFFICER COCHRAN: So what I heard is that you
21 believe that we need testimony or information that models the
22 emergency operations of a data center and the health impacts
23 as well as the cumulative impacts of all data centers in the
24 area operating at once in the event of a catastrophic event.

25 You need to answer out loud. Sorry.

1 MR. SARVEY: Yes.

2 HEARING OFFICER COCHRAN: Thank you. Any -- and that
3 also then subsumes within it your concerns regarding public
4 health and environmental justice?

5 MR. SARVEY: Yes, it does.

6 HEARING OFFICER COCHRAN: And what -- and what about
7 project description?

8 MR. SARVEY: I think that project description has
9 probably been beat to death so I don't think we need to
10 follow up on that any further.

11 HEARING OFFICER COCHRAN: Although we did say that we
12 wanted to get back and talk about some of those factual
13 issues about 2003. So -- so the purpose of discussing
14 project description was in response to the motion to dismiss
15 and the applicability of Section 2003, correct?

16 MR. SARVEY: Yes.

17 HEARING OFFICER COCHRAN: Okay. And then what about
18 efficiency?

19 MR. SARVEY: Efficiency, I was concerned with the PUE
20 of the project. The Applicant's proposed 1.5 PUE for the
21 project.

22 HEARING OFFICER COCHRAN: Okay. So you'll see up on
23 the screen is Document Number 223291, I can read the number
24 in the URL, that this is the order that granted intervention
25 status to Helping Hand Tools. And as I said, it's related to

1 alternatives, air quality, public health, biological
2 resources, and reliability. So with that --

3 [Colloquy among the Committee]

4 HEARING OFFICER COCHRAN: Sorry about that, we were
5 having a colloquy up here among the Committee.

6 So how we're going to handle it is this way. Staff
7 put in a significant amount of effort and work and did in
8 fact provide analyses relating to environmental justice.

9 Mr. Sarvey, unfortunately because -- the whole
10 purpose of having an order for intervention and delineating
11 the topics is to avoid sort of late hits to the proponents of
12 the evidence. And so while we can't allow you to cross-
13 examine witnesses, we can -- you are entitled to comment on
14 those sections and make public comments.

15 And so for both environmental justice and efficiency,
16 I don't believe that we are going to be having testimony on
17 that unless Staff would like your environmental justice
18 and/or efficiency witnesses to speak for some reason.

19 MR. BABULA: I'd just like to comment and note that
20 if you look at what the schedule was for the cross-
21 examination, it wasn't even environmental justice, per se,
22 but outreach. So it's a very specific thing that again I
23 would say is outside the scope.

24 And unless the Committee has an interest in what was
25 done for CEQA outreach and clearinghouse and so forth, I

1 wouldn't have any need for any testimony on that.

2 HEARING OFFICER COCHRAN: I believe that the
3 Committee has the information that it needs knowing that
4 this -- that the initial study/mitigated negative declaration
5 went through the appropriate CEQA Clearinghouse process, was
6 available for that amount of time, and obviously we received
7 comments on it during the comment period. So I think that
8 the Committee has the information it needs regarding that.

9 So at this --

10 MR. BABULA: And then one last thing is that this
11 is -- just to remind folks, this is kind of the second
12 iteration because there was already a mitigated negative
13 declaration/initial study from the city of Santa Clara that
14 went through the same CEQA process. So there was also
15 notification on that thing.

16 HEARING OFFICER COCHRAN: And my understanding is
17 that the Applicant has also made another application to the
18 city of Santa Clara that is still pending on the data center
19 itself.

20 More importantly, and this is something that even I
21 have struggled with and I've been doing CEQA a long time, is
22 that today we're not deciding whether to approve the data
23 center and the backup generating facility. Instead, what
24 we're trying to determine is who among -- who among the city
25 of Santa Clara and the Energy Commission is the appropriate

1 place to determine and to approve and license the backup
2 generating facility.

3 So it's a little bit different than what I think most
4 people are used to in CEQA land where I'm making a
5 determination. The reason it gets a little confused and
6 clouded, I think, is because of the requirements of Public
7 Resources Code Section 25541 that says that the Energy
8 Commission can only grant this exemption if we find that
9 there are no significant environmental effects or significant
10 effects on energy resources.

11 And so it sort of muddies the CEQA waters for
12 traditional practitioners like me. So -- and so I would
13 remind you, too, that if there are still concerns, there will
14 be yet another process before the ultimate decision-making
15 body in the event that the SPPE is granted. Or in the event
16 that it's denied, then it will be an AFC before the Energy
17 Commission. So this is not the last bite of the apple is
18 what I would say.

19 MR. BABULA: Thank you for putting that out there.
20 And also want to just also focus the Committee on we're most
21 interested in getting the Committee the information you need
22 to make a decision. And so while we appreciate the dynamics
23 of having a hearing in this setting, ultimately, we want to
24 make sure you're getting what you need. And so I don't want
25 to spend time on areas that you already feel you have enough

1 information just because sort of something that was out
2 there. So we want to keep that focus.

3 HEARING OFFICER COCHRAN: Okay.

4 MR. GALATI: Ms. Cochran, I think to streamline, the
5 issues very specifically ought to be let's have some
6 conversation about how generating capacity is calculated.
7 That does also include something recently raised. Mr. Sarvey
8 used the term PUE and we'll define that and we certainly can
9 discuss it, I think that's important, it's not really
10 efficiency but it is something we can discuss.

11 And then when it comes to the broad scope of air
12 quality or public health, very specifically the complaints
13 are that cumulative impacts weren't done to determine health
14 impacts, not air quality. And health risk assessment wasn't
15 done for emergency operations.

16 That's the only testimony that has been filed. So I
17 don't have a witness here, for example, about other aspects
18 of air quality. We brought witnesses for health risk. And
19 we filed rebuttal testimony on health risk. And that we
20 think is the limited scope that the hearing needs to be
21 unless the Committee has some questions that spawn other
22 areas of air quality.

23 MR. BABULA: Right. And for Staff, we do have our
24 air quality team here and I can offer some - a short direct
25 to hopefully address some of the concerns. We can start that

1 off with that and then allow any cross as appropriate.

2 But we -- because we didn't have the testimony at the
3 time that we prepared our prehearing conference statements
4 from Helping Hand Tools, we weren't able to put into that
5 statement that we do have some direct we can do to focus in
6 on the issue of emergency generation.

7 HEARING OFFICER COCHRAN: Okay. Thank you for that.

8 So let's talk a little bit, then, about moving
9 forward to the evidentiary hearing in fairly short order
10 because as we indicated in the agenda for this and in the
11 notice of this today, that we were going to basically go from
12 the prehearing conference right to the evidentiary hearing.

13 So the Committee had signaled that we were going to
14 use an informal process. And the informal process is not the
15 traditional, you know, Perry Mason -- okay, I'm aging
16 myself -- LA Law, Boston -- I'm sorry what?

17 COMMISSIONER DOUGLAS: You're not, that's not
18 helping.

19 HEARING OFFICER COCHRAN: Okay, pick something, I
20 don't care.

21 MS. NELSON: Law and Order.

22 HEARING OFFICER COCHRAN: Law and Order.

23 UNKNOWN SPEAKER: Very good, yeah.

24 MR. BABULA: But that's all criminal.

25 HEARING OFFICER COCHRAN: I'm sorry?

1 MR. BABULA: It's all criminal.

2 HEARING OFFICER COCHRAN: Well, that's why LA Law was
3 good because it wasn't all criminal because they did --
4 anyway, again, I'm old.

5 UNKNOWN SPEAKER: I get it.

6 UNKNOWN SPEAKER: We're following along.

7 UNKNOWN SPEAKER: Yeah, this makes all sense to us.

8 HEARING OFFICER COCHRAN: In any event, it's not the
9 dynamic, you know, direct and cross-examination and everyone
10 objects to res gestae, which is never the answer.

11 And so what we usually do, is we are now going to an
12 informal process where we call panels and the panel sort of
13 talks it over and people can ask questions but it's not the
14 really formalized rules of evidence type of examination that
15 people are used to seeing on television.

16 Now I know that the Intervenor has objected to that,
17 asking that we instead using a formal procedure.

18 Are you still desirous of using a formal procedure
19 knowing that you will still be able to ask questions after
20 the panel has done its thing?

21 MR. SARVEY: Helping Hand Tools feels that if we're
22 going to use the informal procedure and you're not going to
23 allow us to speak to environmental justice, we just as soon
24 submit on the record.

25 HEARING OFFICER COCHRAN: Okay. Could you repeat

1 that one more time?

2 MR. SARVEY: Helping Hands Tools prefers if you're
3 not going to allow us to discuss environmental justice and
4 that we're not going to have -- we're just going to have
5 informal -- informal witness whatever you call that, we'd
6 like to just submit on the record. We don't think it's going
7 to be very fruitful.

8 HEARING OFFICER COCHRAN: Can someone, I'm still --
9 you'd like to just what? Submit on the documents?

10 MR. SARVEY: We would like to submit on the record.
11 We don't think there's any need for an evidentiary hearing if
12 we're not allowed to discuss environmental justice or
13 directly examine witnesses, there's really no purpose.
14 That's the way we feel.

15 HEARING OFFICER COCHRAN: Okay. To make -- to make
16 clear, you're still entitled to question the other members of
17 the panel because I understand, you're both the witness and
18 the representative. So you'll be in the panel and you'll be
19 able to have your discussion, okay, as it relates to
20 environmental justice, while you're not -- the Committee has
21 determined that because of the prior order limiting your
22 participation -- well, Helping Hand Tools' participation, we
23 can't -- we're not going to have cross-examination but you
24 may still make comments on that during the evidentiary
25 hearing.

1 Does that alter your position in any way?

2 MR. SARVEY: No, it does not.

3 HEARING OFFICER COCHRAN: Okay. I want to make sure
4 so that I understand very clearly. Are you saying that you
5 don't believe we need an evidentiary hearing at all, that
6 it's just going to be based on the documents submitted?

7 MR. SARVEY: If we're going to conduct it in this
8 format, I think we ought to just have one brief and just
9 eliminate the evidentiary hearing. I think there's enough
10 evidence here for us to make a decision.

11 HEARING OFFICER COCHRAN: Yes, Mr. Galati.

12 MR. GALATI: We have to have an evidentiary hearing,
13 I need to put my evidence in the record. I don't -- I think
14 that at the end of this discussion, you will agree with me
15 that we don't need briefs. And that's where we're headed
16 because we want to not turn this into an AFC proceeding, but
17 continue to have this be a CEQA analysis.

18 We're already doing a lot more than what CEQA
19 normally requires, so this idea brief and going back and
20 forth like we've done to delay the process, delay the
21 proposed decision is not something we support.

22 We think we can put on somebody very, very quickly,
23 answer a lot of the questions on the project description on
24 how it's calculated and why. You've already heard arguments
25 of what we think we should do. And then we could also -- I

1 can get them to sponsor like, for example, in Exhibit 27
2 which is not yet sworn and then I move it all into the
3 record. And then Mr. Sarvey wants to move his stuff into the
4 record, we need an evidentiary hearing to do so.

5 HEARING OFFICER COCHRAN: Thank you for that,
6 Mr. Galati.

7 Okay. On the briefing schedule, I think at this
8 point what might be helpful, the Committee has noticed that
9 we're going into closed section pursuant to the Bagley-Keene
10 section that allows us to deliberate on a matter before us.
11 I think it might be helpful to have a brief closed session so
12 that we can then formalize what's going to happen in our
13 evidentiary hearing that's coming up minutes from now.

14 So -- so I think that that's where we are in the
15 proceeding right now. So we're going to -- we're going to
16 take 15 minutes, we'll be back by 20 to 3. It's now 2:22
17 according to my clock.

18 And so we are -- we are off the record, we are in
19 closed section at this point.

20 (Off the record at 2:22 p.m.)

21 (On the record at 2:43 p.m.)

22 HEARING OFFICER COCHRAN: We have returned from
23 closed session and there is no reportable action. At this
24 point I believe we're going to adjourn the prehearing
25 conference and begin the evidentiary hearing.

1 So I think Mr. Galati helped kind of summarize where
2 we are but I would like -- so I think where we need to start
3 with is the very specific question of how to calculate
4 generating capacity. So if the witnesses -- strike that.

5 Let's do -- let's get the paper documents in.

6 So we have in front of us an exhibit list that we
7 modified during the prehearing conference. But now -- are
8 there additional exhibits that anyone would like to offer?
9 And if so, if you could tell me by TN and exhibit number what
10 you'd like to add.

11 And so I'm going to start with the Applicant because
12 their numbers come first.

13 MR. GALATI: I'd just like to have -- I'd just like
14 to have my witnesses sworn for purposes of authenticating
15 that Exhibit 27 which we just marked, is the actual testimony
16 since I was unable yesterday to get declarations filed for
17 that testimony.

18 HEARING OFFICER COCHRAN: Okay. So let's go ahead
19 and get your witnesses up here for that.

20 MR. GALATI: Can I conduct some limited direct just
21 to --

22 HEARING OFFICER COCHRAN: Yes, please.

23 MR. GALATI: Thanks.

24 If I could get -- if I could get these three sworn,
25 that'd be great.

1 HEARING OFFICER COCHRAN: Okay. Ready?

2 For witnesses who are going to verify, could you
3 please raise your right hand?

4 (Witnesses were collectively sworn.)

5 HEARING OFFICER COCHRAN: Thank you. If you could
6 all please state your name and spell it for the record.

7 MS. LIBICKI: Shari Libicki. First name is
8 S-h-a-r-i; last name is L-i-b, as in boy, i-c-k-i.

9 MR. MYERS: Spencer Myers; S-p-e-n-c-e-r,
10 M-y-e-r-s.

11 MR. STONER: Michael Stoner; M-i-c-h-a-e-l,
12 S-t-o-n-e-r.

13 HEARING OFFICER COCHRAN: Okay. Please proceed,
14 Mr. Galati.

15 MR. GALATI: Ms. Libicki, are you familiar with
16 exhibit -- what was been marked Exhibit 27 which is Vantage
17 Data Center's response to Committee questions?

18 MS. LIBICKI: Yes.

19 MR. GALATI: Do you adopt that document as sworn
20 testimony in this proceeding?

21 MS. LIBICKI: Yes.

22 MR. GALATI: Mr. Myers, same question. With respect
23 to Exhibit 27, do you adopt that as your sworn testimony in
24 this proceeding?

25 MR. MYERS: Yes.

1 MR. GALATI: Mr. Stoner, same question. Do you adopt
2 Exhibit 27 as your sworn testimony in this proceeding?

3 MR. STONER: Yes.

4 MR. GALATI: No further questions.

5 HEARING OFFICER COCHRAN: Thank you.

6 Are there any questions, concerns from the other
7 parties?

8 MR. BABULA: No questions from Staff.

9 HEARING OFFICER COCHRAN: Okay. So Exhibit 27 has
10 been marked. Staff, we talked about your Exhibit 205 which is
11 TN224637. I don't see where your folks signed it. Do you
12 want to do something similar to what Mr. Galati just did or?

13 MR. BABULA: We could do that. The other -- we have
14 the declarations and the resumes in there already.

15 HEARING OFFICER COCHRAN: Okay.

16 MR. BABULA: If you want to just use that with the --

17 HEARING OFFICER COCHRAN: Okay.

18 MR. BABULA: -- statement beginning that says that
19 this is the very first -- the top paragraph which says
20 testimony of.

21 HEARING OFFICER COCHRAN: Okay.

22 MR. BABULA: So if you find that's adequate.

23 HEARING OFFICER COCHRAN: Okay. So Exhibit 205 has
24 also been identified.

25 Mr. Sarvey --

1 MR. SARVEY: Uh-huh.

2 HEARING OFFICER COCHRAN: -- Exhibit 305.

3 MR. SARVEY: Yes.

4 HEARING OFFICER COCHRAN: Is this your testimony?

5 MR. SARVEY: Yes, it is.

6 HEARING OFFICER COCHRAN: And are you offering it as
7 testimony in this proceeding?

8 MR. SARVEY: Yes, I am.

9 HEARING OFFICER COCHRAN: So with that, we now have
10 exhibits marked as 1 through 27 --

11 MR. BABULA: I actually have one more.

12 HEARING OFFICER COCHRAN: I'm sorry. Go ahead,
13 please.

14 MR. BABULA: Jump in here. I think the -- let's see,
15 I'm looking at my exhibit list here.

16 So do we have -- just want to make sure you have
17 declaration -- 204, just for the record's clear, 204 is the
18 declarations and resumes that are in the record already for
19 Staff.

20 HEARING OFFICER COCHRAN: Okay. That you referenced
21 as --

22 MR. BABULA: Applying to --

23 HEARING OFFICER COCHRAN: -- to 205.

24 MR. BABULA: -- the response to the Committee's
25 questions, correct.

1 HEARING OFFICER COCHRAN: Are there any other
2 additions, subtractions, questions, comments, protests?

3 So then I'm going to admit all of the evidence unless
4 any of you have any objections.

5 MR. GALATI: I have an objection to Mr. Sarvey's
6 Exhibit 301 and 302 which have to do with matters taking
7 place in Washington based on irrelevant.

8 HEARING OFFICER COCHRAN: I think that because this
9 is such a looser process than quote, unquote "real court,"
10 we're going to overrule the objection as irrelevant.

11 The Committee understands that what may happen in
12 other states and in other jurisdictions isn't necessarily
13 binding on us, but it is some information that may be of use
14 to the Committee.

15 So any other objections to any other exhibits?

16 With that, Exhibits 1 through 27 -- I'm sorry, 29,
17 200 through 205 and 300 to 305 are admitted into evidence.

18 (Exhibit Nos. 1-29, 200-205, and 300-305
19 admitted into evidence.)

20 HEARING OFFICER COCHRAN: Now let's proceed to the
21 substance of the inquiry. And I believe that the first topic
22 that we were going to discuss is generating capacity.

23 And this is to follow on the discussion that we had
24 during the prehearing conference regarding Section 2003 of
25 Title 20 in California Code of Regulations which talks about

1 generating capacity in Energy Commission proceedings. I
2 believe it was up on the screen before, we can put it back up
3 if we think it's necessary.

4 So whoever's going to testify on that, if they could
5 step forward and be recognized.

6 MR. BABULA: So before that, I just want to get
7 clarification on whether -- so Staff's addressed this
8 question in our response to comment and we addressed it again
9 in the response to the Committee's question. So at this
10 point I'm not -- and then Matt Layton had, Mr. Layton had
11 also discussed the information earlier today. So I kind of
12 get a sense besides all that what else is necessary of the
13 Committee to make a decision on that issue.

14 HEARING OFFICER COCHRAN: I believe that when we were
15 discussing during the prehearing conference, obviously I
16 don't have the transcript in front of me. But we had talked
17 about some of the factual underpinnings. And so I want to
18 make sure that those facts are in evidence as opposed to
19 merely have been recited.

20 Mr. Layton, if I could get you to step up for just a
21 moment, please.

22 So we had a discussion previously and you taught me
23 some new vocabulary today that I will use which is axial flow
24 device.

25 Do you remember all of the discussion you had about

1 comparing and distinguishing from a reciprocating engine and
2 the calculation of generating capacity?

3 Do you remember that discussion?

4 MR. LAYTON: I do.

5 HEARING OFFICER COCHRAN: Is that your testimony on
6 the topic of generating capacity?

7 MR. LAYTON: That's some --

8 HEARING OFFICER COCHRAN: At least part of it, in
9 part.

10 MR. LAYTON: That's some of it, yes.

11 HEARING OFFICER COCHRAN: Okay. So --

12 MR. LAYTON: We'd be happy to answer any other
13 questions you might have.

14 HEARING OFFICER COCHRAN: Thank you. So does anybody
15 have any further questions for Mr. Layton on the comments
16 that he made earlier that he has now adopted as his
17 testimony?

18 MR. GALATI: None from the Applicant.

19 MR. SARVEY: None.

20 HEARING OFFICER COCHRAN: Okay. Is there anything
21 else that -- are there any other factual -- is there any
22 other factual information, Mr. Galati?

23 I'm going to turn to you specifically because you had
24 brought up some concepts about PUE and other things that I
25 think we wanted to have placed into the administrative record

1 on the evidentiary hearing.

2 So is there -- does Applicant or staff have any
3 witnesses or do you need to hear what Mr. Sarvey has to say
4 first?

5 MR. GALATI: No, we don't need to hear what
6 Mr. Sarvey has to say. I think he's already written it. We
7 have a response to that, though.

8 HEARING OFFICER COCHRAN: Okay. So.

9 MR. GALATI: We're happy to do now or.

10 HEARING OFFICER COCHRAN: Okay. So what I want to
11 do, though, is I want to get a quote "panel" together.
12 Whoever that panel might be to either hear the response, hear
13 from Mr. Sarvey, whatever, so that we can make sure that
14 they're all sworn and we have efficient testimony.

15 MR. GALATI: From the Applicant perspective,
16 Mr. Myers and Mr. Stoner are the Applicant's witnesses. Not
17 on the subject of air quality --

18 HEARING OFFICER COCHRAN: Right.

19 MR. GALATI: -- or public health, but just on this
20 generation.

21 HEARING OFFICER COCHRAN: Okay. And they were
22 previously sworn and they're still under oath. Okay.

23 Mr. Layton, I believe, is Staff's witness.

24 MR. BABULA: We have two others. And I can have them
25 come up and be sworn in.

1 HEARING OFFICER COCHRAN: Okay.

2 MR. BABULA: That would be Shahab Khoshmashrab and
3 Mr. Ed Brady.

4 And now we've got to figure out the mic situation
5 here. Probably -- and then Mr. Layton needs to be sworn in.

6 HEARING OFFICER COCHRAN: Okay. Mr. Sarvey,
7 Mr. Layton, Mr. Khoshmashrab. And I'm sorry, I didn't catch
8 your name.

9 MR. BRADY: Edward Brady.

10 HEARING OFFICER COCHRAN: Mr. Brady.

11 If you could all please raise your right hand to be
12 sworn.

13 (Witnesses were collectively sworn.)

14 HEARING OFFICER COCHRAN: Okay. The witnesses have
15 all been sworn, please go ahead.

16 Oh, if you could state your name and spell it for the
17 record.

18 MR. KHOSHMAHRAB: Shahab Khoshmashrab.
19 S-h-a-h-a-b, that's the first name. My last name is
20 K-h-o-s-h-m-a-s-h-r-a-b.

21 MR. BRADY: Edward Brady, spelled E-d-w-a-r-d,
22 B-r-a-d-y.

23 MR. SARVEY: Robert Sarvey. R-o-b-e-r-t,
24 S-a-r-v-e-y.

25 HEARING OFFICER COCHRAN: Okay. So who wants to

1 start?

2 Mr. Galati.

3 MR. GALATI: I'm just going to ask my panel whether
4 or not they have reviewed Mr. Sarvey's response to the
5 Committee questions and do they have any comments on that.

6 So you guys are free to go ahead and tell the
7 Committee what you think.

8 MR. MYERS: To the first question, yes, I have
9 reviewed it. And the first comment is the IT capacity or the
10 data center capacity is 69 megawatts. That's our program,
11 that's the capacity of what we're building.

12 To the comment of PUE, I forgot the gentleman in the
13 blue tie's name, but he referenced nameplate. When we design
14 our data centers, it's around what we call peak PUE which is
15 required by Code for sizing. Our peak PUE is 1.43, our
16 average or what we call annualized PUE is 1.25.

17 Additionally, we hold ourselves accountable to that
18 lower PUE because it translates into dollars. We guarantee
19 to our customers that they only have to pay the power for
20 1.3. Anything above that, we bear the cost. So we are
21 financially incentivized to keep that PUE as low as possible
22 for efficiency and for cost.

23 MR. GALATI: Mr. Myers, can you just explain what PUE
24 means?

25 MR. MYERS: In simple terms, the computer load or the

1 server load equals 1. The quantity above that is the amount
2 required to cool it. So the mechanical cooling is the rest
3 of the story above the 1. And so that's how we -- that in
4 layman's terms, that's PUE.

5 And if there's a desire for a more technical term, we
6 could have Mr. Orosco further define as required.

7 HEARING OFFICER COCHRAN: Pardon my ignorance but is
8 PUE an abbreviation for something? And if so, what?

9 MR. MYERS: Power utilization efficiency.

10 HEARING OFFICER COCHRAN: Thank you.

11 MR. MYERS: It's a benchmarking tool that's utilized
12 in the data center industry.

13 HEARING OFFICER COCHRAN: Thank you.

14 MR. GALATI: Mr. Myers, could you clarify the
15 discrepancy between -- in the portions of the revised
16 application? Mr. Sarvey has pointed out that there was a 74
17 megawatts as a critical IT and a -- he has referenced a PUE
18 of 1.5. Can you clarify what those are?

19 MR. MYERS: Actually, I would prefer to defer to
20 Mr. Stoner on that.

21 MR. STONER: So Michael Stoner again.

22 So the -- during the course of the project, the --
23 the design has been refined. And to that point originally
24 there were three megawatt generators that were considered and
25 we revised it and increased our efficiency reduced to 2.75.

1 As a part of that design, we also reduced the load in the
2 building. The buildings or the project is based on three
3 megawatt blocks. Three and six megawatt blocks and so we
4 took part of what was data center and turned into office and
5 other facilities for the customers. So the project is 69
6 megawatts is the IT load. And that was part of the overall
7 design.

8 The 1.5 reference PUE was a guideline, it was not the
9 specific design PUE. Again, it was revised as part of the
10 adjustment and the generator sizing and further refinement of
11 the design.

12 HEARING OFFICER COCHRAN: Okay. Thank you.

13 Does anyone else have any comments or testimony that
14 they -- I'm sorry, Mr. Galati, were you done?

15 MR. GALATI: Just wanted to tie up what that all
16 means.

17 Mr. Myers, maybe you can explain how those numbers
18 affect the maximum generating capacity of the McLaren backup
19 generating facility.

20 MR. MYERS: Sure. I will do my best.

21 When we were sizing our space for our customers,
22 we're doing this all for our customers. We're defining the
23 space and the capacity which we master planned for the 69
24 IT -- 69 megawatts IT load.

25 As we size our equipment to serve that, that's all

1 based on 100 percent rating, in terms of IT capacity. The
2 actual load that we've ever seen on any of our campuses never
3 reaches above 60 percent. So in terms of back to nameplate
4 versus actual use, the actual use is far less. In our case,
5 under 60 percent.

6 MR. STONER: And to add to that, when we talk -- this
7 is Michael Stoner. We talk the max PUE, the design around
8 the 69 megawatts times the max PUE is based upon the hottest
9 day in a 50-year average. And so it's designed around 100
10 percent load by the tenant, we've never seen above 60
11 percent, and on the hottest day in a 50-year period. And so
12 it is the maximum possible that could be generated is what is
13 -- and it translates to just under 98 megawatts.

14 MR. MYERS: And just for what it's worth, the reason
15 that we size for that worse case is because we have to pay
16 guarantees to our customers if for whatever reason we're not
17 able to serve their demand. So we're not able to size it to
18 what the average is because we offer a guarantee, it has to
19 be up to the assumed maximum even though it never is.

20 Some of you are lawyers. If you were not involved in
21 our industry, we could further reduce what we actually
22 provide because we know that no one ever actually gets to
23 that level, but because we have to pay guarantees, it
24 requires us to size appropriately even though it's never hit
25 in fact barely above half.

1 MR. GALATI: And lastly, what is the average PUE?

2 MR. MYERS: We say annualized, it's 1.25.

3 MR. GALATI: Does the Committee have any more
4 questions on those points?

5 HEARING OFFICER COCHRAN: Well I was going to turn
6 it -- I was going to turn it to the parties at this point,
7 any other panel members to see if they had any questions or
8 comments for Misters Myers and Stoner.

9 MR. SARVEY: Yeah, I'd like to call attention to
10 Exhibit 21, page 12 of 155 and ask you a question about that.
11 Looking at line 7.

12 MR. GALATI: I'm sorry, I'm going to try to get that
13 exhibit for them, can you say it again?

14 HEARING OFFICER COCHRAN: Just give me one minute,
15 I'll pull it up.

16 Mr. Sarvey, you said page 12?

17 MR. SARVEY: Page 12 of 155.

18 MR. GALATI: Ms. Cochran, can I call another witness
19 because we have the person who prepared that piece of the
20 document here, she's already sworn.

21 HEARING OFFICER COCHRAN: Certainly.

22 Okay. I think we're all on the page.

23 MR. SARVEY: Okay. It says there on line 7 that the
24 data center may drop to 74 megawatts critical and 99.8
25 megawatts total power from the grid

1 Is that an error?

2 MS. LIBICKI: Shari Libicki. Yes, it is.

3 MR. SARVEY: Okay. And what PUE were you using when
4 you arrived at 99.8 megawatts total power?

5 MS. LIBICKI: I wasn't using a PUE, per se, this was
6 actual information from Vantage. And it was information from
7 Vantage for a previous iteration of this project, not this
8 one.

9 MR. SARVEY: Is the 99.8 megawatts also an error?

10 MR. MYERS: . Yes.

11 MR. SARVEY: Can you correct it for the record,
12 please?

13 MR. MYERS: I believe we submitted this but it's --
14 yeah, yeah, the 98 -- 98.67.

15 MR. SARVEY: And that amount is correct?

16 MR. MYERS: Yes.

17 MR. SARVEY: 99.8 is correct? What's the right
18 number?

19 MR. MYERS: So if you're basing peaks of 69 megawatts
20 times peak PUE, which is 1.43 --

21 MR. SARVEY: Okay.

22 MR. MYERS: -- equates to 98.67. However, as I
23 previously stated, we hold ourselves accountable to the
24 annualized PUE because it's a financial benefit for us which
25 is 1.25 which further reduces that number to 86.25.

1 MR. SARVEY: Okay.

2 MR. MYERS: 69 times 1.25 equals 86.25.

3 MR. SARVEY: Thank you for that clarification.

4 HEARING OFFICER COCHRAN: Anything else?

5 MR. SARVEY: Do you have a margin of error on that
6 PUE calculations?

7 MR. MYERS: Not being an -- not being an engineer,
8 I'm not aware of one.

9 MR. SARVEY: Okay. Thank you.

10 MR. STONER: But to add that is again, it's based on
11 100 percent IT load, have never gotten above 60, 50-year
12 worse design day happening at that same time. And we're also
13 talking about two utility feeds from SVP dropping all
14 occurring at the same time.

15 So two lines from SVP dropping, 100 percent IT load,
16 and the 50-year -- the hottest day in 50 years all happening
17 at the same time to achieve that maximum.

18 MR. MYERS: And just one more comment. Because we
19 pass through the electrical cost to our customers, it's a
20 direct pass through, we don't put a markup on it, that's not
21 where we earn our money. We use revenue grade meters in all
22 of our systems and you can look online at their tolerance and
23 that's what we use to submit to our customers to prove their
24 portion of the bill. And that's the same data we use to make
25 sure we hold ourselves accountable. And we're very

1 interested in making sure we're not paying above the PUEs
2 that we're guaranteeing because again, it affects our bottom
3 line.

4 MR. STONER: And then further to add to that when we
5 talk about the hottest temperature over a 50-year period,
6 that occurs for an hour or two. So we're talking about all
7 of this happening, both SVP feeds dropping, 100 percent IT
8 load, the 50-year hottest day. And that occurs for about an
9 hour or two that temperature. All happening at that specific
10 time.

11 MR. MYERS: In other words, it'll never happen.

12 MR. STONER: And so, yes, back to the question, is
13 there a factor of safety? There's more than a factor of
14 safety built in the calculation.

15 MR. SARVEY: So should your testimony say that the
16 data center can drop only 60 megawatts? Is that your
17 testimony?

18 MR. STONER: No, that's not what I said. What we
19 said was the IT load was 69 megawatts.

20 MR. SARVEY: Thank you.

21 HEARING OFFICER COCHRAN: Anything further?

22 MR. LAYTON: This is Matt Layton. Since it was
23 offered up to an engineer, I'll second what they said that if
24 you read back at 2003, the reg 2003, it does talk about
25 average conditions. And one of the problems we have in

1 determining a generating capacity of a facility is it changes
2 minute by minute, day by day, depending on conditions,
3 depending on maintenance, depending on whatever that's going
4 on on the site that day. Maybe they're doing a -- refilling
5 a water tank, the fire water tank or something.

6 But the same thing is going to happen at this site
7 where servers are moved in and out of use, air conditioning
8 units are taken offline to be refurbished or something like
9 that. It's going to vary day to day. So Mr. Sarvey
10 attempting to come up with the peak one hour and apply it for
11 all 8,000 hours doesn't seem reasonable.

12 HEARING OFFICER COCHRAN: Okay. Thank you.

13 Anything else? Going once.

14 Mr. Babula, yes.

15 MR. BABULA: You're inferring anything else is --
16 yeah, you're just talking about this particular topic.

17 HEARING OFFICER COCHRAN: Correct.

18 MR. BABULA: Yeah.

19 HEARING OFFICER COCHRAN: Yeah. I'm speaking only
20 about this panel, generating capacity, PUE --

21 MR. SARVEY: One more question.

22 MR. BABULA: Okay.

23 HEARING OFFICER COCHRAN: Yes, Mr. Sarvey.

24 MR. SARVEY: Is that peak PUE of 1.43 guaranteed in
25 your contract with the data center?

1 MR. MYERS: State your question again, I couldn't
2 hear you.

3 MR. SARVEY: Is that peak PUE of 1.43 guaranteed in
4 your contract with the data center?

5 MR. MYERS: The guarantee we provide is actually 1.3.

6 MR. SARVEY: Uh-huh.

7 MR. MYERS: And the guarantee is if it's above the
8 1.3, we pay.

9 MR. SARVEY: So if it goes to 1.5, you pay?

10 MR. MYERS: If it goes above 1.3, we pay.

11 MR. SARVEY: Okay.

12 MR. MYERS: But as we further -- oh, as we previously
13 discussed, everything at 100 percent, the peak is only at
14 1.43. So that's the peak if every condition that won't
15 happen at the same time occurs. So.

16 MR. SARVEY: Thank you.

17 HEARING OFFICER COCHRAN: Last call. Okay. With
18 that, I'd like to thank the panel. And we'll now move on to
19 air quality.

20 MR. BABULA: Actually, we have -- so we -- I
21 thought -- my understanding was that you were ending the PUE
22 discussion of the --

23 HEARING OFFICER COCHRAN: Oh, okay. I'm sorry.

24 HEARING OFFICER COCHRAN: Oh there's more?

25 MR. BABULA: That was what the question was, I think

1 we have a little -- Matt was like -- Mr. Layton would like to
2 just -- little bit more to ensure that the information is as
3 clear as possible.

4 HEARING OFFICER COCHRAN: Okay. Sorry, my bad.

5 MR. LAYTON: I apologize.

6 HEARING OFFICER COCHRAN: No, that's my fault.

7 MR. LAYTON: This is Matt Layton again.

8 In 2003(b) (3) where Mr. Sarvey has made reference to
9 the maximum gross rating cannot be limited by an operator's
10 discretion or by temporary design basis modification.

11 We agree. But we have actually licensed power plants
12 in the state or done jurisdictional determinations where
13 there's been a physical modification that's been permanent to
14 that particular unit and that has been acceptable. Whether
15 it's been a governor on a combustion turbine here at
16 McClellan or when we did a Scattergood determination for --
17 excuse me, a jurisdictional determination on LADWP's
18 Scattergood plant, they were taking a limit and so they
19 physically cut some of the stops on the steam turbine -- this
20 is a 1950s vintage steam power plant that had a giant lever
21 that turned an additional -- as you rotated it, you hit
22 different points and pushed in pistons. They cut the piston
23 head off such that it couldn't be moved and therefore you
24 couldn't open up the valve anymore. It was a permanent
25 physical limit on that unit.

1 So I don't think Mr. Sarvey's reading that section
2 correctly because the Commission has and probably will again
3 be willing to place permanent modifications on facilities to
4 limit its operation.

5 HEARING OFFICER COCHRAN: Okay.

6 MR. BABULA: Can I --

7 MR. BRADY: And then one of the modification made in
8 advance and actually pending jurisdiction --

9 HEARING OFFICER COCHRAN: I'm sorry, Mr. Brady,
10 please restate your comment.

11 MR. BRADY: Yeah, I just wanted to -- I assisted in
12 writing the Scattergood jurisdictional review. And the --
13 the governing control of the system was done before the unit
14 was modified and put into operation. So it wasn't, you know,
15 on Monday we were running the plant, on Friday we decided to
16 put a governor on it. It was -- it was determined in the
17 beginning of the analysis that that would be a necessary
18 requirement.

19 MR. KHOSHMAHRAB: May I make one comment, please.
20 Shahab Khoshmashrab.

21 HEARING OFFICER COCHRAN: Certainly,
22 Mr. Khoshmashrab.

23 MR. KHOSHMAHRAB: I believe we covered it pretty
24 much, but just to make sure that how we do the -- perform the
25 capacity generation for this type of facility is really one

1 of the factors that we look at is what is the deliverable
2 amount of power output that goes out to you can call it the
3 end user or customer. So in the case of a -- in the case of
4 a typical power plant, that would be the grid. And that
5 would be the net generating capacity under annual average
6 ambient conditions on the continuous basis of operation, not
7 just one worst case but an average of those and which has
8 been consistently applied for years by us.

9 And so that principle still applies to data centers
10 and including McLaren. So. But in this case, the customer,
11 the end user is the building. The IT load which is the -- we
12 see it as the governing force behind, you know, the reasoning
13 for determination.

14 So in other words, we usually, after we do a
15 determination, we usually send a letter to the developer. In
16 that letter we say, well -- for example, let's say we find it
17 not to be jurisdictional, we explain that for the reasons
18 below, you know, you're falling beyond -- below 50 megawatts.

19 But at the end of that letter we always say if you do
20 make any modifications to this and if you change your project
21 in a way that will potentially put it above 50, this
22 determination is no good anymore. So.

23 The same thing with this project. It's a building
24 that's going to be built and that is what design is right
25 now. We don't know what's going to happen in the future.

1 HEARING OFFICER COCHRAN: Okay.

2 MR. KHOSHMAHRAB: So if that's helpful.

3 HEARING OFFICER COCHRAN: Yes, Mr. Sarvey, please.

4 MR. SARVEY: I'd like a question of Staff, please.

5 HEARING OFFICER COCHRAN: Uh-huh.

6 MR. SARVEY: Where in Title 20 or any regulations
7 does Staff find authorization to calculate maximum generation
8 based on a data center load? Is there -- am I missing
9 something? I haven't seen anywhere in the regulations. Is
10 this just an ad hoc regulation?

11 MR. LAYTON: You are correct. It's not in there.

12 MR. SARVEY: It's ad hoc. Thank you.

13 MR. KHOSHMAHRAB: It just refers to an electrical
14 generating facility. Correct.

15 MR. BABULA: I'd like to point out that the
16 regulation being silent on it doesn't mean that you can't
17 utilize other means in doing your calculation.

18 And I would like to ask Mr. Sarvey a question on this
19 topic. So.

20 MR. SARVEY: One second.

21 MR. BABULA: Right.

22 MR. SARVEY: I would object to that statement as
23 testifying, by the way.

24 HEARING OFFICER COCHRAN: Okay.

25 MR. GALATI: Mr. Sarvey, aren't you acting both as

1 witness and lawyer today?

2 MR. SARVEY: Yes, I am.

3 MR. GALATI: Okay. I just wanted to clarify that for
4 the record.

5 MR. SARVEY: I'll tell you when I'm speaking as a
6 lawyer.

7 MR. BABULA: So Mr. Sarvey, so we've articulated that
8 capacity -- or the generating capacity is not calculated
9 through -- can you hear me okay? Oh, okay.

10 So anyway, our testimony and all the information
11 we've provided, we've said you don't use nameplate capacity
12 simply multiplying by the number of generators or equipment
13 out there.

14 So is your position that that is the correct and only
15 way to do this is take the nameplate capacity and multiply it
16 by the number of generators and that's the number?

17 MR. SARVEY: My position is that's what your
18 regulations say.

19 MR. BABULA: That's my only question.

20 HEARING OFFICER COCHRAN: Okay. So to be clear, is
21 there anything else on generating capacity, PUE, not PUE,
22 regulations, facility load, anything of that nature? Is
23 there any further testimony that you believe the Committee
24 needs?

25 MR. BABULA: Nothing from Staff.

1 MR. GALATI: No testimony but I have one comment.

2 Can I make it?

3 HEARING OFFICER COCHRAN: Let me -- I want to

4 close --

5 MR. GALATI: Okay.

6 HEARING OFFICER COCHRAN: -- the panels if I can.

7 Mr. Sarvey, anything further in terms of evidence?

8 MR. SARVEY: No. Thank you.

9 HEARING OFFICER COCHRAN: Okay. So I'm going to
10 thank and excuse the panel. The evidence is closed.

11 You wanted to make a comment, Mr. Galati.

12 MR. GALATI: I just wanted to also point out to the
13 Committee that there are two projects that the Committee has
14 worked on, one that is considering and one that -- the
15 Commission has, excuse me -- where there's a spare turbine.
16 That turbine is not connected. They use that spare turbine
17 when the old turbine needs to be refurbished rather than do
18 it on site because the site is compact. They send it out,
19 put the new turbine, or the spare turbine which is exactly
20 the same in the place. Los Esteros does that and you have a
21 petition for amendment for Silicon Valley Power's project --

22 HEARING OFFICER COCHRAN: Uh-huh.

23 MR. GALATI: -- which is Don Von Raesfeld project
24 right now.

25 Now nowhere would the Commission add up three

1 turbines to say that's our jurisdictional determination
2 because only two can operate. We're saying the same thing
3 here because we can only generate electricity that the
4 building consumes. The building has been designed to only
5 consume so much on that worst case day that you defined.

6 There just simply no other way to look at it. The
7 warranties aren't important for purposes of jurisdiction.
8 How the facility operates whether one breaks and there's
9 three versus four in a train. None of that matters. What
10 matters is: what does the building require us to generate?
11 And that is very similar.

12 So I just wanted to make sure the Committee knew
13 that. And to me, this is a very simple issue and it's been
14 complicated by technical information that is not that
15 relevant.

16 HEARING OFFICER COCHRAN: Thank you. Anybody else?
17 Mr. Babula, Mr. Sarvey wish to make a comment?

18 MR. BABULA: Nothing further.

19 MR. SARVEY: Nothing further.

20 HEARING OFFICER COCHRAN: Thank you. So, let's move
21 on to air quality.

22 So I want to remind you we have three mic systems
23 today. So. And that makes for a fun time. So there's a
24 little black mic and what it does is it can cover about six
25 feet. So you don't need to move it very much when you're

1 sort of all together.

2 And then we have little microphones on stands that
3 are for the court reporter. Those are incredibly important
4 to make sure that the court reporter can make an accurate
5 record. Because obviously we've talked about a lot of facts,
6 numbers, et cetera today. And as the person who is going to
7 be writing something up, I'd like to make sure that I don't
8 have incorrect numbers moving forward.

9 And then finally, you have these large mics that
10 apparently amplify in the room. And so you need to make sure
11 that you're speaking into for sure the court reporter's
12 microphone and what's going out on WebEx. And if people in
13 the back of the room can't hear us, I'm sorry, we're doing
14 the best we can.

15 So with that in mind, could I have anyone who's going
16 to be a member of the panel please raise your hand if you've
17 not previously been sworn?

18 (Witnesses were collectively sworn.)

19 HEARING OFFICER COCHRAN: Okay. If you could all
20 please state your names and spell them for the court
21 reporter. And we'll start with Mr. Galati's team and move
22 around in a clockwise direction.

23 Even if you've already been sworn, please identify
24 yourself.

25 MS. LIBICKI: Shari Libicki. S-h-a-r-i,

1 L-i-b-i-c-k-I.

2 MS. RECORD: Hello? Oh.

3 COURT REPORTER: Doesn't have to be that close.

4 MS. RECORD: Oh, okay.

5 My name is Jacquelyn Record. J-a-c-q-u-e-l-y-n;

6 Record, R-e-c-o-r-d.

7 MS. QIAN: My name is Wenjun Qian. W-e-n-j-u-n,

8 Q-i-a-n.

9 MS. CHU: My name's Huei-an Chu. H-u-e-i, hyphen,

10 a-n. Last name C-h-u.

11 MR. BEMIS: And this is Gerry Bemis. G-e-r-r-y,

12 B-e-m-i-s.

13 HEARING OFFICER COCHRAN: And then of course

14 Mr. Sarvey.

15 So what I'd like to do is maybe focus our attention a

16 little bit on where the Committee sees the issue as being.

17 And that's not in derogation of anybody's right or ability to

18 ask other questions, to have other discussion, but I would

19 like to focus as much as possible.

20 So where the Committee sees the record at this point

21 is that Staff has done modeling for the testing operations

22 for the gen sets being used for this project. That the Staff

23 has not yet modeled, however, the emergency operation for --

24 the actual operating for those machines.

25 So obviously there is current information in the

1 record. Is there information in the record currently that
2 would allow you to estimate a load or impacts in the event
3 that an emergency operation were required?

4 MR. BABULA: So I propose to just query my panel on
5 that information.

6 HEARING OFFICER COCHRAN: Okay.

7 MR. BABULA: And then go from there on whether
8 there's a follow-up question or cross or if any of the other
9 parties have any questions.

10 HEARING OFFICER COCHRAN: Okay.

11 MR. BABULA: So I'm going to try to -- I may skip a
12 couple of questions that I had because you've narrowed it
13 down.

14 But I do want -- let's see, why don't we start
15 with -- so we don't waste time there.

16 Let's see, I think, is this one? Is the one going
17 out?

18 HEARING OFFICER COCHRAN: That's -- this -- this is
19 the WebEx mic.

20 MR. BABULA: Right. Well, they told me this isn't
21 working. Hello.

22 COMMISSIONER SCOTT: So there's no amplification in
23 the room because these aren't working very well.

24 MR. BABULA: And this isn't -- okay.

25 COMMISSIONER SCOTT: So you don't -- you just need to

1 make sure that the court reporter --

2 MR. BABULA: Right.

3 COMMISSIONER SCOTT: -- can hear you through her mic.

4 MR. BABULA: Right. I'm trying to --

5 (Multiple speakers talking over each other)

6 MR. BABULA: Just trying to pay attention to all the
7 technical stuff. It's beginning to be a challenge.

8 So I just want to start out, then, let's go with the
9 panel here. Okay.

10 So this first question I'm just going to ask and then
11 I'll have each of the panel members answer and then the rest
12 of them will just primarily be just one responder.

13 So have you reviewed the documents submitted by
14 Helping Hand Tools, which include the various Exhibits 300,
15 301, 302, 303, 304, which were submitted as part of
16 Mr. Sarvey's testimony.

17 So Ms. Record?

18 MS. RECORD: Yes, I have.

19 MR. BABULA: Dr. Qian?

20 MS. QIAN: Yes, I have.

21 MR. BABULA: Dr. Chu?

22 MS. CHU: Yes.

23 MR. BABULA: Mr. Bemis?

24 MR. BEMIS: Yes, I have.

25 MR. BABULA: Okay. Does the information in any of

1 the documents filed by Helping Hand Tools change your
2 analysis or conclusions in the initial study or response to
3 comments, Ms. Record?

4 MS. RECORD: No, they have not.

5 MR. BABULA: Dr. Qian?

6 MS. QIAN: No.

7 MR. BABULA: Dr. Chu?

8 MS. CHU: No.

9 MR. BABULA: Mr. Bemis?

10 MR. BEMIS: No.

11 MR. BABULA: Okay. Let's see. So I want to focus on
12 the NOx emissions. On page 5.3-9 of the initial study it
13 states that the maximum annual NOx emissions from the project
14 have been based on average daily and annual estimated
15 emission rate at 100 percent load assumed at 50 hours per
16 year per engine. Even though it is expected, the emergency
17 engines would typically only be operated for readiness
18 testing and maintenance purposes for five hours per year per
19 engine.

20 Why did you assume 50 hours per year per engine usage
21 when expected usage is only 5 hours per engine per year?

22 MS. RECORD: Yes. So on page 5.3-5, of staff's
23 initial study Exhibit 200 it states, "When permitting
24 emergency diesel engines, the Bay Area Air Quality Management
25 District, Bay Area AQMD, typically limits only emissions

1 resulting from nonemergency use. Since emergency use of
2 generators is not limited under Bay Area AQMD rules. These
3 diesel engines will be limited to 50 hours per year per
4 engine for maintenance and testing and reliability purposes
5 consistent with the Airborne Toxic Control Measure, ATCM, for
6 stationary toxic compression ignition engines. Section
7 93115, Title 17 of the CCRs, California Code of Regulations.”

8 And this is what staff evaluated in our initial
9 study.

10 MR. BABULA: Were the potential environmental health
11 impact assessed based on the 50 hours of operation per engine
12 per year not the expected five hours per engine per year?

13 MS. CHU: Yes. This is Huei-an Chu. All the health
14 risk assessment including cancer risk, chronic lung cancer
15 and acute lung cancer were all based on the operation of all
16 50 generators per engine per year for testing and
17 maintenance. So the total hours of assessment are 50 hours
18 per engine per year.

19 MR. BABULA: Will there be any -- will there be an
20 overall cap on the NOx emissions including from the diesel
21 generators?

22 MS. RECORD: Yes. So as stated on the initial study,
23 5.3-17, in order for the project to qualify for offsets
24 provided by the Bay Area AQMD small facility bank, the
25 project's total potential to emit, the PTE, would need to be

1 below 35 tons per year for nonemergency operations.

2 The project would take a limit in order to remain
3 below this Bay Area AQMD Rule 2-2-302 of 35 tons per year for
4 reliability and maintenance testing which would equate to
5 around 43 hours of operation per generator per year.

6 MR. BABULA: Staff stated in its response to comments
7 on page 9 that determining quantities of emissions or
8 potential impacts from emergency operations is too
9 speculative. The power outages are foreseeable, so what is
10 speculative?

11 MS. QIAN: While Staff could model the impacts during
12 emergency operations, Staff does not have the essential
13 information to conduct a meaningful analysis for emergency
14 operation. Such information includes hours of emergency
15 operation, if the operation is continuous, how many engines
16 would be running simultaneously at what load points, and
17 local meteorological conditions, background air quality
18 conditions. Because of all of these factors in combination
19 with what was said from SVP, Staff could not reasonably
20 predict under what scenarios would emergency operations
21 occur.

22 MR. BABULA: The Bay Area Air Quality Management
23 District has yet to issue an authority to construct. Is that
24 document necessary for you to complete your air quality and
25 public health analysis?

1 MS. RECORD: No, it does not. Commission Staff
2 worked with the Bay Area AQMD in the development of staff's
3 initial study. The quality and public health sections of the
4 initial study are independent of what the Bay Area AQMD would
5 do and are not contingent on a final ATC. If the exemption
6 is granted, the Bay Area AQMD would be working with the city
7 of Santa Clara on the final ATC permit.

8 MR. BABULA: So I can end it there. I do have some
9 questions about the Washington and some of the documents that
10 were submitted, but I'm not sure that the Committee would be
11 interested in pointing out some issues with those documents.

12 HEARING OFFICER COCHRAN: Let's wait and see, sir,
13 how it progresses.

14 I would like to ask a follow-up question at this
15 time.

16 MR. BABULA: Sure.

17 HEARING OFFICER COCHRAN: Doctor --

18 MS. QIAN: Qian.

19 HEARING OFFICER COCHRAN: Qian. Thank you.

20 So you said that Staff does not know the hours of
21 emergency operation, the continuous nature, the number of
22 engines running, the local meteorological condition -- easy
23 for me to say -- the background air quality conditions. And
24 I'm sorry, what was the other factor you mentioned?

25 MS. QIAN: The load points.

1 HEARING OFFICER COCHRAN: Load points. Okay.

2 In the opening testimony there was reference to a 19-
3 hour outage and how many engines were running for that.

4 MS. QIAN: There were only six engines running at
5 that event. And two of them only ran 7 hours, and 4 of them
6 ran 19 hours.

7 HEARING OFFICER COCHRAN: Correct.

8 MS. QIAN: Yeah.

9 HEARING OFFICER COCHRAN: So that gives you at least
10 some of the data points where you could say this would be an
11 emergency.

12 So what I understand the testimony being right now is
13 that you've modeled all of the testing that's going to be
14 required by BAAQMD, correct?

15 MS. QIAN: Uh-huh.

16 HEARING OFFICER COCHRAN: So you know that there is
17 the four-hour test and there is monthly reliability tests.
18 And you've calculated all of that using some set of
19 meteorological conditions, background air quality, et cetera,
20 load points, all of that.

21 But you've not done that, you assumed essentially
22 that there are zero hours of emergency operations; is that
23 correct?

24 MS. QIAN: We considered different scenarios for
25 emergency operation. We just feel that there are too many

1 uncertainties that Staff is not comfortable of come up good
2 assumptions of those uncertainties.

3 HEARING OFFICER COCHRAN: Okay. If the Committee
4 were interested in having that information say for -- let's
5 say for a 19-hour outage, would you be able to tell us today
6 what the potential pollutant load being creating by the
7 operation of all of the engines.

8 So let's assume that as Mr. Galati was talking last
9 time and both loops failed, that they had to provide all of
10 the power for the data center from these generators for 19
11 hours. Are you in a position today to tell the Committee
12 what that impact would look like?

13 MS. QIAN: As we stated in page -- on page 10 of
14 Staff's response to comments, the electricity service outages
15 would shut down other adjacent businesses as operations at
16 San Jose Airport could be curtailed during service
17 interruption. How exactly local and regional emissions and
18 the ambient air quality would change during such outages
19 while other existing sources are curtailed or not operating
20 is speculative.

21 HEARING OFFICER COCHRAN: Okay. Thank you.

22 Does anyone else --

23 MR. BEMIS: This is Gerry Bemis. I would also add
24 that choosing 19 hours is just as arbitrary as using any
25 other set of hours that because that one facility was out for

1 19 hours, 17 hours and 19 hours, doesn't mean that the next
2 outage would be 19 hours. Could be less, could be more.

3 HEARING OFFICER COCHRAN: Right. But --

4 MR. BEMIS: Just another example of an arbitrary
5 assumption.

6 MS. LIBICKI: And this is Shari Libicki. I do want
7 to note that for the health risk assessment, typically only
8 10 hours are required for testing and the health risk
9 assessment was done on 50 hours. So it effectively allows 40
10 hours for the health risk assessment for any other event that
11 might come up -- per generator.

12 MR. GALATI: Per year, right?

13 MS. LIBICKI: Per generator per year.

14 HEARING OFFICER COCHRAN: Okay. Sorry for that
15 interruption. Whoever would like to ask any questions,
16 please.

17 Yes, Mr. Sarvey.

18 MR. SARVEY: Any of the Staff, CEC Staff here work on
19 the Santa Clara Data Center?

20 MS. RECORD: No.

21 MR. SARVEY: None of you?

22 MR. BEMIS: Like I said, I supervised the person who
23 did.

24 MR. SARVEY: Okay. Thank you.

25 Now the Santa Clara Data Center was limited their

1 testing to 20 hours and they were limited to certain times of
2 the day. Can you tell me why the Bay Area Air Quality
3 Management made that limitation on them?

4 MR. BEMIS: You know, I think the Bay Area is on the
5 phone, maybe they can address the question.

6 HEARING OFFICER COCHRAN: Is the representative from
7 the Bay Area Air Quality Management District still available?

8 MS. HUSAIN: Yes.

9 HEARING OFFICER COCHRAN: Could you please raise your
10 right hand?

11 (Witness Ariana Husain sworn.)

12 HEARING OFFICER COCHRAN: Thank you. Could you state
13 and spell your name for the record, please?

14 MS. HUSAIN: Ariana Husain. A-r-i-a-n-a,
15 H-u-s-a-i-n.

16 HEARING OFFICER COCHRAN: Thank you, Ms. Husain.
17 Did you understand the question that was asked?

18 MS. HUSAIN: I did. I did not work on that project
19 myself. I believe we limited the hours in that situation due
20 to the health risk assessment for that project. So our
21 limitation of the hours to 20, was due to the risk assessment
22 -- the initial risk assessment for the project coming out as
23 not passing. And then we revised the conditions -- the
24 operating conditions so that the risk would be lowered.

25 HEARING OFFICER COCHRAN: Okay. Thank you. Does

1 that answer your question, Mr. Sarvey?

2 MR. SARVEY: Yes. I'd like to ask her one more if I
3 could, please.

4 HEARING OFFICER COCHRAN: Certainly.

5 MR. SARVEY: Are you familiar with the Microsoft Data
6 Center in Santa Clara?

7 MS. HUSAIN: I again did not work on that one, no.

8 MR. SARVEY: Okay. So you're not familiar with the
9 cancer risk that was estimated at 9,478 in a million?

10 MS. HUSAIN: No, I'm not familiar with that cancer
11 risk.

12 MR. SARVEY: Okay. Thank you.

13 MR. GALATI: Can I ask --

14 HEARING OFFICER COCHRAN: Mr. Galati.

15 MR. GALATI: Yeah. Can I ask some follow-up
16 questions on that?

17 HEARING OFFICER COCHRAN: Certainly.

18 MR. GALATI: Ariana, this is Scott Galati with the
19 Applicant.

20 That Microsoft 9,048 number cancer risk. Just to
21 refresh your memory, does that have something to do with the
22 screening tool?

23 MS. HUSAIN: I'm sorry, was that question directed to
24 me?

25 MR. GALATI: Yes.

1 HEARING OFFICER COCHRAN: Yes.

2 MR. GALATI: Does it refresh your memory that it's --

3 MS. HUSAIN: I could not hear the question.

4 MR. GALATI: Okay. Can you hear me now?

5 MS. HUSAIN: Yes.

6 MR. GALATI: Okay. Thank you. Ariana, this is Scott
7 Galati with the Applicant.

8 Does it refresh your memory if that 9,048 number for
9 Microsoft was related to the CEQA screening tool?

10 MS. HUSAIN: No. I don't know -- I don't know that
11 number at all, the 9,478. I'm not even -- I'm not really
12 sure where that came from.

13 MR. GALATI: Okay. The other question I have for
14 you. On the Santa Clara project where the maintenance and
15 testing hours were limited, the project -- the Bay Area Air
16 Quality Management District did not limit emergency
17 operations; is that correct?

18 MS. HUSAIN: Correct.

19 MR. BABULA: I actually have a question for
20 Mr. Sarvey.

21 MR. SARVEY: Follow-up question --

22 MR. BABULA: Oh, okay. Sorry about -- go ahead.

23 MR. SARVEY: -- for the Bay Area, please.

24 HEARING OFFICER COCHRAN: Sure. Go ahead, Mr. Sarvey
25 and then Mr. Babula.

1 MR. SARVEY: I'll pass on it, I'm sorry.

2 HEARING OFFICER COCHRAN: Okay.

3 MR. BABULA: Okay.

4 HEARING OFFICER COCHRAN: Mr. Babula.

5 MR. BABULA: We weren't able to find the 9,248
6 number.

7 MR. SARVEY: 478.

8 MR. BABULA: 478. Where -- in the materials you
9 submitted, I didn't see where that number came from.

10 MR. SARVEY: It's in the Applicant's testimony. It's
11 in -- I can find the exact place for you.

12 MR. BABULA: It's in the Applicant's?

13 MR. SARVEY: It's in the Applicant's testimony and
14 also pulled it off the Bay Area Air Quality Management
15 District's website, where they identify facilities and their
16 cancer risks.

17 It's in the Applicant's testimony as Exhibit
18 21 -- let's see, where are we at?

19 You're going to have to give me a minute to find out,
20 but I'll find out for you.

21 Okay. It's on Exhibit 21, page 59 of 155. It's in
22 the, let's see, page 60 of 155 is actually where it's at, top
23 line. It says Microsoft Corporation. And that number they
24 pulled off the -- I'm assuming they pulled that off the
25 BAAQMD's website because that's what BAAQMD lists, the health

1 risk from that facility as 9,478 in 10,000 -- I mean, in 1
2 million. Sorry.

3 MR. GALATI: Thank you, Mr. Sarvey. We actually have
4 the authors of that report there, we can describe that where
5 that number came from and what it means.

6 MS. LIBICKI: So this actually comes from a BAAQMD
7 CEQA screening tool which is an imperfect way of estimating
8 risks from existing facilities. And in fact, it's recognized
9 by the Bay Area Air Quality Management District that this
10 tool doesn't do such a great job. And as a result, on that
11 line, if you go all the way to the right, the Bay Area says
12 consider using HRSA values which cover all 26 engines, see
13 attached for emissions info. And that comes out to 11 in a
14 million.

15 And so at the Bay Area Air Quality Management
16 District recommendation, we used 11 in a million to
17 characterize the risk for that facility and not the 9,000
18 which was simply a screening tool error.

19 HEARING OFFICER COCHRAN: Anything further?

20 MR. SARVEY: I have a question related to that table
21 if it's appropriate to ask that now.

22 HEARING OFFICER COCHRAN: Absolutely.

23 MR. SARVEY: Also on that table you list the city of
24 Santa Clara Silicon Valley Power distance from receptor is
25 600 feet. It says that the screening level cancer risk is

1 421 in a million.

2 I didn't see that anywhere on your Table 15 when you
3 added up the cancer risks for the cumulative assessment. Is
4 that a mistake or?

5 MS. LIBICKI: It has to be within the 1,000-foot
6 buffer and that source was not.

7 MR. SARVEY: It says right here it's within 600 feet.

8 MS. LIBICKI: No, to the nearest receptor.

9 MR. SARVEY: Right.

10 MS. LIBICKI: That's different from being within
11 1,000-foot buffer of our source. That simply refers to that
12 source and its nearest receptor. That's a standard table
13 from the District.

14 MR. SARVEY: Uh-huh. So the 421 in a million cancer
15 screening risk from the point of maximum impact is 600 feet
16 away and that doesn't --

17 MS. LIBICKI: Correct.

18 MR. SARVEY: -- prompt you to include that or
19 evaluate that in your risk assessment?

20 MS. LIBICKI: So I have to reiterate how these tables
21 are used. They are highly conservative screening values.
22 And what -- in practice, the way that they're used is that if
23 the value itself is below the threshold considered to be
24 significant by the District, they are used as is. If the
25 values are greater than the threshold considered significant

1 by the District, then a more refined valuation is done.

2 These are simply screening values. And those
3 screening values are allowed by the Bay Area Air Quality
4 Management District to be discarded if they're outside of
5 1,000 feet for exactly that reason.

6 MR. SARVEY: And do you have a health risk assessment
7 for that city's -- Santa Clara Silicon Valley Power other
8 than just accepting the 421 cancer risk?

9 MS. LIBICKI: Again, according to the Bay Area Air
10 Quality Management District regulations on this type of
11 valuation, we are not required to do it.

12 MR. SARVEY: Okay. Thank you.

13 MR. GALATI: Just to be clear, the 600 feet is not
14 600 feet from this -- from our project, it's 600 feet to
15 their closest receptor, correct?

16 MS. LIBICKI: That's correct. And the 1,000 feet, it
17 doesn't mean it's 1,001 feet, it simply means it's outside of
18 the 1,000-foot buffer. I couldn't tell you as I sit here
19 exactly how far outside that is. It could be 2,000 feet, it
20 could be 3,000 feet.

21 HEARING OFFICER COCHRAN: Okay. Anything else that
22 anyone wants to say about air quality? I'm looking
23 specifically at Mr. Sarvey.

24 MR. SARVEY: I'd like to respond to that last
25 statement if I could, please. But it's going to take

1 [inaudible].

2 HEARING OFFICER COCHRAN: Now's the time.

3 Mr. Sarvey, can you tell us, is this document in the
4 record? And if so, where it can be found?

5 MR. SARVEY: Actually, the map itself is in the
6 record. The document I've altered a little bit to provide
7 some information to the Committee as to the three facilities
8 that surround the McLaren Data Center. And one is the
9 Silicon Valley Power, the other is the Santa Clara Data
10 Center, and the other one is the Microsoft Data Center.

11 And the Microsoft Data Center is in this area right
12 here. Silicon Valley Power is right here. And if this map
13 is to scale, Silicon Valley Power is probably maybe 400 feet
14 from the facility.

15 So I'm questioning the witness's statement that it's
16 over 1,000 feet from the facility and I'm asking that the
17 Energy Commission enter that into the record.

18 HEARING OFFICER COCHRAN: Okay. And you're offering
19 this as --

20 MR. SARVEY: As an exhibit, please.

21 HEARING OFFICER COCHRAN: Exhibit 306?

22 MR. SARVEY: Yes.

23 HEARING OFFICER COCHRAN: And did you prepare this
24 exhibit, Mr. Sarvey?

25 MR. SARVEY: Yes, I did.

1 HEARING OFFICER COCHRAN: Is there any objection?

2 MR. GALATI: Yes. There is -- there is -- the
3 objection is, is Mr. Sarvey qualified to be able to have made
4 a document such as this that includes the proper scaling?
5 This is something that's been dropped on us today.

6 MR. SARVEY: Actually, it's your map, Mr. Galati.

7 MR. GALATI: I don't have the ability to -- I don't
8 have the ability to check it. And it's exactly why we file
9 exhibits ahead of time. So I object to the exhibit coming in
10 the record, into evidence.

11 MR. SARVEY: It's his exhibit, I can give you where
12 it's located.

13 MR. GALATI: It's been altered, you said so yourself.
14 It's the alteration of that that I'm concerned with.

15 HEARING OFFICER COCHRAN: I'm afraid I'm going to
16 have to sustain that objection. This is exactly what
17 Mr. Galati said. This is -- this is not supposed to be
18 surprise. This is not supposed to be, you know, waiting till
19 the last minute. So. We're not going to accept Exhibit 306.

20 MR. SARVEY: May I ask a question on it since it's
21 their map?

22 HEARING OFFICER COCHRAN: Okay. And what exhibit of
23 Applicant's did this map come from?

24 MR. SARVEY: Excuse me, I'll have to find it. Didn't
25 think there'd be objection to presenting their own map so I

1 didn't really follow up on that.

2 Okay. Here it is. That is page 12 of 44 of
3 TN223769. I'll see if I can find it on the exhibit list for
4 you.

5 MR. GALATI: Do you know what exhibit number that is?

6 MR. SARVEY: That's what I'm looking for, Scott. I
7 don't have a team.

8 HEARING OFFICER COCHRAN: Exhibit twenty --
9 Exhibit 23, Revised NO₂ Modeling Report for McLaren Backup
10 Generating Facility.

11 MR. GALATI: What page is this?

12 HEARING OFFICER COCHRAN: I believe he said 12.

13 MR. SARVEY: Uh-huh. Twelve. No actually, it's 13
14 of 44, actually.

15 MR. BABULA: So while that's sort of happening, I'd
16 like to just say if the purpose of this map is to show that
17 there are other data centers around there, I don't think
18 anyone disputes that.

19 One of the things to remember is the Silicon Valley
20 Power's statements of the independence of these things to
21 each other. And so if the inference is just because they're
22 all there, they're all going to go on at the same time,
23 there's testimony in the record that indicates that that
24 isn't necessarily the case because of the way that these are
25 on the grid.

1 So I'm trying to get clarification or the purpose of
2 the map. If it's just to show there are other data centers,
3 I think that's already established in the record.

4 HEARING OFFICER COCHRAN: Well, let's ask Mr. Sarvey.
5 Mr. Sarvey, what's the purpose of the map?

6 MR. SARVEY: The purpose of the map as I said was to
7 inform the Committee of the Data Center and also Silicon
8 Valley Power. But now the purpose of the map is to
9 demonstrate with the Applicant's own map that the Silicon
10 Valley Power is not over 1,000 feet from the facility.

11 MR. GALATI: The map doesn't show that. How do I
12 know what is Silicon Valley Power? From this map, it's an
13 off-site building.

14 MR. SARVEY: It's that blue right there next to
15 Robert Avenue. The address is 560 Roberts Avenue -- Robert
16 Avenue. And if you take your scale, it's not even 200 meters
17 away.

18 Same with the Santa Clara Data Center. But you
19 looked through this entire thing, no one, not even your Staff
20 or the Applicant mentions Santa Clara Data Center in any of
21 the valuations. Cumulative, individual, anything. It's
22 never mentioned. The Commission just certified the Santa
23 Clara Data Center two or three years ago, it's in operation.

24 So I mean, I think there's a lot -- there's a lot of
25 things here that aren't being considered.

1 HEARING OFFICER COCHRAN: I have a question for the
2 Staff panel. And that is, can you cite to me somewhere in
3 either the initial study/mitigated negative declaration or
4 any of the testimony that Staff has submitted, where the
5 cumulative effects of these generators and the power plant
6 for Santa Clara Valley -- Silicon Valley Power has been
7 analyzed? Are you aware of where that has been discussed and
8 analyzed in the documents that we currently have?

9 MS. LIBICKI: So I apologize for the delay in getting
10 this information to you.

11 The issue is not whether the -- what is the risk
12 from -- what is the distance from the plant itself, but the
13 Bay Area sets the standard as the distance from the maximally
14 exposed receptor. And that's actually at a soccer field and
15 the distance between that source and the soccer field itself
16 is over 1,000 feet.

17 So if it helps a little bit. This is Shari Libicki
18 again. The way the Bay Area does a cumulative risk is that
19 they do a risk assessment with the facility at question
20 first, then they find the maximally exposed receptor from
21 that facility, and then the 1,000 feet limit is from that
22 facility itself. From, sorry, from that maximally exposed
23 receptor itself. Right? So the maximally exposed receptor
24 was on the other side of the facility and as a result, the
25 distance from that maximally exposed facility determines what

1 else around it is part of the cumulative risk assessment, and
2 that power plant was just outside.

3 MR. SARVEY: And which receptor are you speaking of?
4 The maximally exposed --

5 MS. LIBICKI: Receptor, that's correct.

6 MR. SARVEY: Not the residential but the --

7 MS. LIBICKI: The maximally exposed receptor, period.

8 MR. SARVEY: And you're saying that's more than 1,000
9 feet from --

10 MS. LIBICKI: That's correct.

11 MR. SARVEY: I'll find your map for you.

12 I have one more question. In your health risk
13 assessment, you don't include the emissions from the Caltrain
14 that passes right between the project. And can you tell me
15 why?

16 MS. LIBICKI: Could you specify where the Caltrain
17 is?

18 MR. SARVEY: Caltrain. In your testimony, you state
19 that you don't include the Caltrain emissions -- diesel
20 emissions in your health risk assessment. You eliminated
21 them. Do you recall that?

22 MR. GALATI: Mr. Sarvey, it would help us if you told
23 us what exhibit. Because you keep using the word testimony
24 and I have 30 exhibits --

25 MR. SARVEY: Okay.

1 MR. GALATI: -- and some of them are labeled
2 testimony.

3 MR. SARVEY: Sure.

4 MR. GALATI: And so she's thinking about maybe about
5 what she just wrote.

6 MR. SARVEY: Exhibit 21, page 29 of 155, your
7 testimony states, "Caltrain was not considered in this
8 cumulative assessment, as the trains will be electric by
9 project operation in 2020 so there will be no exhaust
10 emissions."

11 MS. LIBICKI: Okay.

12 MR. SARVEY: And in your testimony, you provide a
13 footnote at the bottom. And your footnote takes you to the
14 Caltrain electrification page. I want to offer that as an
15 exhibit, it's a footnote in your testimony.

16 Now under the section it says "Electrification," it
17 says that only 75 percent of Caltrain diesel service will be
18 electrified.

19 Do you read that there?

20 MS. LIBICKI: I apologize, I missed the question.

21 MR. BABULA: She said she missed the question.

22 MR. SARVEY: Oh, I thought she heard it.

23 You see that right there it says that only 75 percent
24 of Caltrain's diesel service will be electrified?

25 MS. LIBICKI: Yes, I do.

1 MR. SARVEY: So not 100 percent will be, correct?

2 MS. LIBICKI: Actually, I don't know what program
3 this refers to right now.

4 MR. SARVEY: Well, that's a footnote in your
5 testimony.

6 MS. LIBICKI: This is -- is this the entire website?

7 MR. SARVEY: This is the page that leads from the
8 footnote to your testimony, this is the page that comes up.

9 MS. LIBICKI: So again from the maximally exposed
10 receptor, it is over 1,000 feet.

11 We have been working with Caltrain on its
12 electrification and modernization and have taken this
13 approach towards numerous evaluations in the Bay Area and
14 have never had it questioned. That being said, it is too
15 distant from the receptor in question to be relevant.

16 MR. SARVEY: Okay. Thank you.

17 MS. RECORD: This is Jacquelyn Record. I would like
18 to respond to the Committee's question about cumulative.

19 HEARING OFFICER COCHRAN: Yes.

20 MS. RECORD: So on -- in our initial study,
21 page 5.3-20, part C, there is a specific question that says,
22 "Would the project result in a cumulatively considerable net
23 increase?"

24 And then what Staff used to determine that -- so any
25 project that's already there is considered as part of the

1 background. So what we did in working with the Applicant is
2 that we actually ended up using newer background data. So
3 from January 2013 to December 2017. And that is supposed to
4 show the background that's already going on with all those
5 projects that are already there.

6 When we asked the Bay Area about new and foreseeable
7 projects, we usually request for over five tons of any
8 criteria pollutants and then we combine that into the
9 modeling. And we didn't get any.

10 HEARING OFFICER COCHRAN: Okay. Thank you.

11 Oh, Dr. Chu.

12 MS. CHU: And this is Huei-An Chu. And also in the
13 same document on page 5.3-21, we also address the community
14 risk impacts and this is our cumulative risk assessment.

15 And our conclusion is that because this project
16 emissions will be less than the BAAQMD CEQA guideline
17 criteria for contribution to any potential the first
18 cumulative air, how it's faced the impact from the
19 contractual operation, the project will not contribute to any
20 potential -- for the first cumulative air impact sensitive
21 receptors.

22 Therefore, we cannot [inaudible] assess cumulative
23 impact is not necessary. No project will not result in a
24 cumulative considerable contribution to health risk.

25 HEARING OFFICER COCHRAN: Thank you.

1 Any further discussion, questions?

2 Mr. Sarvey, I'm looking at you specifically.

3 MR. SARVEY: I was still looking for the map to
4 demonstrate that the maximum impact is not exactly where it's
5 being testified to. So if we could hold off on that for a
6 little while, I would appreciate that if I can look at this a
7 little more. But we can move on to something else.

8 HEARING OFFICER COCHRAN: Okay. Is there -- are
9 there any other topics in air quality?

10 MR. SARVEY: I have more questions, yes.

11 HEARING OFFICER COCHRAN: Please.

12 MR. SARVEY: Let's see. So in Exhibit 21, page 4 of
13 155 it states Applicant -- the Applicant has accepted a limit
14 on average aggregate operating hours for the generators.
15 What is -- what is the limit on average aggregate operating
16 hours that you've accepted?

17 MR. GALATI: Could you -- could you state the
18 citation again. Exhibit 21, what page?

19 MR. SARVEY: Exhibit 21, page 4 of 155.

20 MR. GALATI: Four?

21 MR. SARVEY: 4 of 155, yeah.

22 MS. LIBICKI: So the limit -- this is Shari
23 Libicki -- the limit on average operating hours is an overall
24 cap that effectively limits operating hours but it's a
25 function of both load and hours. So the hours per se are not

1 limited, it's the limitation is on NOx emissions which has an
2 effective limit on hours of operation.

3 MR. SARVEY: Do you have an estimate of how many
4 hours that would be?

5 MS. LIBICKI: It's wholly dependent on load.

6 MR. SARVEY: Okay. Are those limits in your current
7 permit being processed by BAAQMD?

8 MS. LIBICKI: I'm sorry, your question again?

9 MR. SARVEY: Are those operating limits in your
10 current permit that you're having processed by BAAQMD?

11 MS. LIBICKI: So BAAQMD does not issue an authority
12 to construct until the CEQA process is complete.

13 MR. SARVEY: I understand. But in your application
14 to them, do you -- have you accepted this 35 tons of NOx or
15 is that just something that's unofficial?

16 MS. LIBICKI: We anticipate that there will be a
17 35 -- we have asked for a limit to that effect and we
18 anticipate that that will be the limit.

19 MR. SARVEY: Can you provide that information for the
20 record so we can have that?

21 MR. GALATI: She just did.

22 MR. SARVEY: No, no, I want the document, sir.
23 Has BAAQMD approved your current permit?

24 MS. LIBICKI: As I said, the BAAQMD doesn't allow the
25 issuance of an ATC until the CEQA process is complete.

1 MR. SARVEY: Does the 35-ton per year of NOx
2 emissions limit apply to emergency operations as well?

3 MS. LIBICKI: It does not.

4 MR. SARVEY: It does not?

5 MS. LIBICKI: It does not.

6 MR. SARVEY: Okay. Thank you.

7 Okay. In Exhibit 21, page 23 of 155, your testimony
8 states that CO modeling used maximum one-hour and eight-hour
9 emissions --

10 MR. GALATI: I object again to exhibits being
11 identified as testimony. So we can keep it clear, the
12 testimony is what we file the opening testimony and rebuttal
13 testimony and things we've done here.

14 MR. SARVEY: Uh-huh.

15 MR. GALATI: So just refer to an exhibit because when
16 you say it's in your testimony, it's like as if she's
17 testified to --

18 MR. SARVEY: No, I said Exhibit 21, didn't you hear
19 me, Scott?

20 MR. GALATI: You also said in your testimony.

21 MR. SARVEY: I said in Exhibit 21, page 23 of 155. I
22 can't be much clearer than that.

23 HEARING OFFICER COCHRAN: Please continue,
24 Mr. Sarvey.

25 MR. SARVEY: Okay. Your testimony says that CO

1 modeling use maximum one-hour and eight-hour emissions for
2 emergency generator use and that you modeled emergency
3 operations; is that correct?

4 MS. LIBICKI: I'm sorry, can you tell me what the --

5 MR. SARVEY: Page 23 of 155.

6 HEARING OFFICER COCHRAN: Are you looking at source
7 parameters, Mr. Sarvey? I mean, where on the page are you?

8 MS. LIBICKI: Are you referring to the emergency
9 generator use that's in the last part of the sentence?

10 MR. SARVEY: No, I'm referring to the fact that --
11 that your testimony states that you modeled CO emissions from
12 emergency generator use. Is that true or?

13 MS. LIBICKI: I just want to make sure I understand
14 what you're saying. You're referring to that last sentence
15 in the paragraph that begins with italics "concentrations";
16 is that correct?

17 MR. SARVEY: I'm just asking you a question of
18 whether you modeled CO emissions from emergency use of the
19 generators.

20 MS. LIBICKI: Again, I want to make sure that we're
21 talking about the same paragraph. Are you referring to
22 emergency generator use at the end of the paragraph that has
23 the italics "concentrations"?

24 MR. SARVEY: Scratch the first question, let me ask
25 the second question.

1 Did you model emissions from emergency operations, CO
2 emissions from emergency operation for this project?

3 MS. LIBICKI: So --

4 MR. SARVEY: Your testimony said you did, but I'm
5 just verifying that you did.

6 MR. GALATI: I'm going to object. I'm reading the
7 exhibit, not the testimony, the exhibit under a paragraph
8 that I think he's talking about and it doesn't state that.

9 So it's one of the reasons why we have an informal
10 process because I can do the same thing to Mr. Sarvey and it
11 would waste a lot of time. Maybe we have Mr. Sarvey testify
12 to what he thinks is wrong and what should have been done as
13 opposed to cross-examining somebody again at hundreds of
14 pages in the record. So I would object to this line of
15 questioning and ask Mr. Sarvey to make an offer of proof as
16 to what he's actually saying.

17 MR. SARVEY: Okay. What I'm saying is is everybody's
18 saying that it's speculative to model emergency operation of
19 this project. In fact, the Applicant modeled emergency
20 operations for CO emissions because they're required to
21 regulatory and it could be done for any of the pollutants.
22 That's what I'm trying to say.

23 And I'm just asking the Applicant, your testimony
24 says you modeled CO emissions, did you or did you not for
25 emergency generation? That's all I'm asking, it's a simple

1 question.

2 MS. LIBICKI: So let me go back to the sentence.

3 It says, "CO modeling used maximum one-hour and
4 eight-hour emissions from emergency generator use."

5 The entity that -- that is being used is referred to
6 as an emergency generator, that's what we refer to it as.

7 And that's why it says from emergency generator use. Not
8 emergency generator use in an emergency, but emergency
9 generator use.

10 MR. SARVEY: So the testimony is you've never modeled
11 emergen -- emissions, CO emissions from emergency genera --
12 for the operation -- for the project operating in emergency
13 mode. That's the question.

14 HEARING OFFICER COCHRAN: I believe that the document
15 speaks for itself and the Committee is capable of reading it
16 and the words are what the words are, that's why they're
17 written.

18 MR. SARVEY: That's a pretty simple question I think,
19 though.

20 HEARING OFFICER COCHRAN: Well, I don't think you're
21 going to get -- I don't think you're going to get an answer.

22 MR. SARVEY: I'm not going to get a yes or no?

23 HEARING OFFICER COCHRAN: I don't think you can get
24 it --

25 MR. SARVEY: I think it's pretty critical to what

1 we're talking about here.

2 HEARING OFFICER COCHRAN: If you can answer.

3 MS. LIBICKI: To me, this is a semantic issue. If
4 the emergency generators are used, we modeled it. To what
5 purpose they were used was irrelevant.

6 HEARING OFFICER COCHRAN: So whether for testing or
7 because of an emergency, you simply modeled the exhaust
8 coming from the gen set?

9 MS. LIBICKI: That's correct.

10 HEARING OFFICER COCHRAN: Does that answer your
11 question, Mr. Sarvey?

12 MR. SARVEY: No, I'm asking, did she model all 47
13 generators emitting CO at one time under emergency operations
14 of the facility?

15 MR. GALATI: No.

16 MS. LIBICKI: So there's actually two pieces to that
17 question.

18 MR. GALATI: Yes. Object that it's compound.

19 MS. LIBICKI: Yeah. Piece number one is did we model
20 all 40 generators and often if we have a model that is going
21 to pass easily using all 40 generators, it's actually much
22 easier to model all 40 at once. Because if you pass with all
23 40, then an individual generator also passes. So it's a
24 simpler modeling exercise. So sometimes and in fact twice in
25 this evaluation we did model all 40 generators at once

1 because it was easy to show that it passes for a single
2 generator, it's easier than modeling each generator
3 individually.

4 So we did twice model all 40 generators at once as a
5 screening evaluation on how one generator operates. However,
6 that is not necessarily for or not, period, for intended to
7 reflect emergency use.

8 MR. GALATI: Just to clarify the record, when you say
9 40 generators, you mean the 47, correct?

10 MS. LIBICKI: I'm sorry, yes, 47. Thank you.

11 MR. SARVEY: I'd like to make one more attempt at
12 this if I could, please. And --

13 HEARING OFFICER COCHRAN: Please.

14 MR. SARVEY: It's, the quote would be Exhibit 21,
15 page 22 of 155. And this is what the testimony states. It
16 says, "The CO concentration analysis is conservative in that
17 it assumes all 50 emergency generators are in use at the same
18 time during the worse meteorological conditions for the
19 respective averaging periods."

20 MS. LIBICKI: That doesn't change my response.

21 MR. SARVEY: Okay. Nothing further on that one.

22 Okay. According to your testimony in Exhibit 21,
23 page 24, you state that these exposed populations include
24 residential and recreational receptors in a nearby soccer
25 field.

1 Are you aware that that soccer field is an indoor
2 soccer field?

3 MS. LIBICKI: Yes.

4 MR. SARVEY: Okay.

5 MR. GALATI: I'm going to object to this. And I'm
6 going to object for the following reasons. Committee gave
7 notice this was going to be an informal hearing, and
8 Mr. Sarvey had the ability to write down this as testimony of
9 what should have been done and he hasn't.

10 And what he's doing at this moment, and I'll go ahead
11 and say it on the record because I know what he's doing.
12 He's creating a very large record making it very difficult
13 for you to have to write this decision.

14 Mr. Sarvey had every opportunity, he filed comments
15 and he filed opening testimony, and he didn't file opening
16 testimony complaining about any of this. He didn't file
17 rebuttal testimony complaining about any of this and he's
18 trying to do on cross what he should have done on direct with
19 his own testimony. I object.

20 HEARING OFFICER COCHRAN: I appreciate your
21 objection, Mr. Galati. Unfortunately, because we are in our
22 not normal regulatory process, and we are in a standard sort
23 of CEQA process, this happens at city council meetings and
24 board of supervisors meeting all the time where the
25 document's been out, the staff report's been out, people have

1 had an opportunity to comment and unfortunately CEQA says you
2 get to continue to comment.

3 MR. GALATI: This --

4 HEARING OFFICER COCHRAN: And so --

5 MR. GALATI: But I'm objecting to cross-examining of
6 another witness. He had an opportunity to comment. And if
7 he wants to stand up and take the microphone and comment for
8 the five minutes that he gets at planning commission, he can.

9 MR. SARVEY: It's actually in my testimony, Scott.

10 HEARING OFFICER COCHRAN: So is there a way to speed
11 this up, Mr. Sarvey? I don't want to short-circuit you.

12 MR. SARVEY: I -- I --

13 HEARING OFFICER COCHRAN: Is there something more
14 that -- that you can point us to or can you quickly tell me
15 sort of where you're going with this? I understand that it's
16 very easy to --

17 MR. SARVEY: Where I'm going with it, as I've
18 explained previously, everyone's saying it's infeasible and
19 it's not possible to model the emergency operations of this
20 facility, and the Applicant has done that with CO. And it's
21 in his testimony --

22 MR. GALATI: We object to that --

23 MR. SARVEY: -- it's in my testimony --

24 MR. GALATI: -- no one has said it's infeasible.

25 HEARING OFFICER COCHRAN: Let -- let -- let him

1 finish, please. Go ahead, Mr. Sarvey.

2 MR. SARVEY: It's in their testimony, it's also in my
3 testimony in the last Exhibit 305, page 3 -- page 4, excuse
4 me. So.

5 I could tell that we probably ought to just cut this
6 off because it's just getting hostile and there's no reason
7 to be that way so let's just cut it off here.

8 HEARING OFFICER COCHRAN: We do -- the Committee is
9 interested in hearing your comments, is interested in having
10 your questions answered. And even though it's informal,
11 there is -- there are still questions allowed to be asked
12 between the panel members. And so please feel free to
13 continue to ask your questions.

14 But I would also remind you that this witness may or
15 may not have prepared the document that you're asking about.
16 And if they did that, then Mr. Galati is objecting to your
17 characterization of this is her testimony. I mean, perhaps
18 the question would be if she prepared this document.

19 MR. SARVEY: Did you prepare the document?

20 MS. LIBICKI: This document was prepared under my
21 direction.

22 MR. SARVEY: Thank you. No further questions. I
23 don't want this to be a hostile hearing so I'm just going to
24 let it go.

25 HEARING OFFICER COCHRAN: Okay. Is there anything

1 further on the topic of air quality?

2 MR. BABULA: I have a follow-up question. Just to
3 clarify, there was some discussion of the soccer field and to
4 Staff. Did we -- is the soccer field a sensitive receptor,
5 was that considered in our analysis?

6 MS. CHU: This is Hueu-an Chu. Yes, we do -- we did
7 consider the soccer field as a sensitive receptor.

8 MR. BABULA: And that was used for purposes of public
9 health?

10 MS. CHU: Yes.

11 MR. BABULA: Thank you.

12 HEARING OFFICER COCHRAN: Anything else? Air
13 quality, public health because we sort of blurred it in all
14 of this discussion.

15 Are there any final remarks anyone would like to --

16 MR. BABULA: Yes, we have some --

17 HEARING OFFICER COCHRAN: I'm sorry.

18 MR. BABULA: -- final remarks.

19 HEARING OFFICER COCHRAN: I should have known,
20 Mr. Layton.

21 MR. LAYTON: This is Matt Layton. I'm dying to
22 testify in air quality, it's been too long.

23 Really what didn't come up when SVP, the Silicon
24 Valley Power representative was on line, is the outage in
25 2016 over Memorial Day. It was on the 60 kV system. A guy

1 wire came off and wrapped itself around the transmission line
2 and took the line down. What also failed, it was a N plus
3 one, plus one, was the breaker. The loops, we talked about
4 the loop flow --

5 HEARING OFFICER COCHRAN: Uh-huh.

6 MR. LAYTON: -- the breaker failed. So this was an
7 unusual outage. And again, you don't get to 99.985
8 availability by having that repeat. They -- they did say
9 that was an outage, it was unusual. They don't expect it to
10 happen again. So we still think that the outage --
11 likelihood of an outage is very low.

12 And again, Staff has not said it's infeasible, Staff
13 said the results aren't really useful because they're not,
14 you know, garbage in, garbage out. So you can model anything
15 you want but, again, the inputs are just too speculative to
16 allow for productive discussion of what the results mean.

17 HEARING OFFICER COCHRAN: Thank you. Anyone, anything
18 else?

19 MR. GALATI: I have one follow-up question.

20 Mr. Bemis, would you say that the health risk
21 assessment, considering it looked at 50 hours of operation
22 annually when most testing is done significantly below that
23 is conservative enough to have covered the kinds of
24 emergencies you can foresee?

25 MR. BEMIS: I think it has, yeah. The -- the

1 Applicant chose to do 50 hours I believe because the ATCM
2 limit is 50 hours per year for all operations regardless of
3 what the operation -- purpose of that operation is. And
4 that's what the review is based upon.

5 HEARING OFFICER COCHRAN: Mr. Sarvey, do you have
6 anything further?

7 MR. SARVEY: No. No, thank you.

8 HEARING OFFICER COCHRAN: Mr. Babula?

9 MR. BABULA: Nothing further.

10 HEARING OFFICER COCHRAN: Going once. Mr. Myers?

11 MR. MYERS: No. The only thing on reliability. In
12 terms of reliability, SVP spoke to how their system's
13 designed, but we've also elected to have three transformers
14 on site for concurrent maintainability. That's a choice of
15 ours, so it just speaks to another layer of reliability or
16 redundancy in the system that multiple upon multiple failures
17 would have to occur.

18 HEARING OFFICER COCHRAN: Okay. Anything else? We
19 have moved all of the exhibits in, correct? Nothing further.

20 Then I'm going to declare the evidentiary hearing
21 closed. The evidentiary record is closed.

22 At this time, I don't believe that the Committee
23 expects or requires any briefing, but you are all free to
24 submit a final statement, closing argument, anything like
25 that. . If you wish to do so, please do so within a week

1 from today. Because there are now time limits in the
2 regulations as to how soon we need to move this forward. And
3 I have some writing to do.

4 So if you're going to try to inform the conclusions
5 the Committee reaches, the sooner we can get your
6 information, the better.

7 At this time, we need to take public comment, as
8 distinct from anything else we've done within the evidentiary
9 hearing?

10 Does -- are there any members of the public who would
11 like to submit a public comment? I know the public advisor
12 is here. Has anyone given you the magic blue card,
13 Ms. Avalos? That doesn't mean we're -- we would like to hear
14 whatever public comment people would like to make.

15 Yeah. Members of the -- on WebEx, participants on
16 WebEx, if there's anything you'd like to say, please let us
17 know. Everyone's unmuted, you're all free to walk about the
18 country.

19 Okay. Seeing no takers. All right.

20 COMMISSIONER DOUGLAS: I'd like to thank everybody and we are
21 adjourned.

22 (Thereupon, the Hearing was adjourned at
23 4:25 p.m.)

24 --oOo--

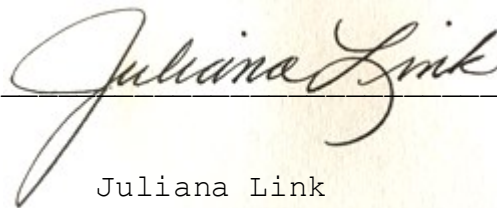
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REPORTER' S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 2018.

A handwritten signature in cursive script, reading "Juliana Link", is written over a horizontal line. The signature is in black ink and is positioned to the left of the typed name and ID number.


Juliana Link
CER-830

TRANSCRIBER'S CERTIFICATE

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September 2018.



Jill Jacoby
Certified Transcriber
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