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

In the Matter of:)
)
Application for a Small Power Plant)
Exemption for the:)
) Docket No. 17-SPPE-01
MCLAREN BACKUP GENERATING FACILITY)
PROJECT)
_____)

COMMITTEE STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION

THE WARREN-ALQUIST STATE ENERGY BUILDING

ART ROSENFELD HEARING ROOM - FIRST FLOOR

1516 NINTH STREET

SACRAMENTO, CALIFORNIA 95814

WEDNESDAY, OCTOBER 10, 2018

10:00 A.M.

Reported by:
Peter Petty

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Janea Scott, Commissioner, Associate Member

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Matthew Coldwell, Adviser to Commissioner Scott

Jennifer Nelson, Adviser to Commissioner Douglas

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HEARING OFFICER

Paul Kramer

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Michael Stoner, Lake Street Ventures

Shari Libicki, Ranboll

INTERVENORS

Robert Sarvey, Representative for Helping Hand Tools

INTERESTED PARTIES

Ariana Husain, Bay Area Air Quality Management District (BAAQMD)

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Applicant:

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P R O C E E D I N G S

1
2 OCTOBER 10, 2018 10:02 a.m.

3 COMMISSIONER SCOTT: All right, well good morning
4 everyone and welcome to our Status Conference for the
5 McClaren Backup Generating Facility. We will start with
6 introductions. I'm Janea Scott. I'm the Associate Member on
7 this case. Next to me, to my left are my advisers, Rhetta
8 deMesa and Matt Coldwell. To my right is our Hearing
9 Officer, Paul Kramer. And to his right is Jennifer Nelson,
10 the Presiding Member's Adviser. And next to Jennifer is
11 Kristy Chew who is the Siting Adviser to the Commissioners.

12 And now let me turn it to introductions in the room
13 and we'll start with the Applicant, please.

14 MR. GALATI: Scott Galati representing Vantage for
15 the McLaren Backup Generating Facility.

16 MR. MYERS: Spencer Myers, Senior Director of
17 Construction with Vantage Data Centers.

18 MR. STONER: Michael Stoner, with Lake Street, a
19 consultant to Vantage Data Centers.

20 COMMISSIONER SCOTT: Good morning, and now to the
21 staff please.

22 MR. BABULA: Jared Babula, Staff Counsel.

23 MR. PAYNE: Leonidas Payne, Project Manager. And
24 we've got a cast of celebrities and experts behind us.

25 COMMISSIONER SCOTT: Good morning. And to our
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1 Intervener, please?

2 MR. SARVEY: Robert Sarvey for Helping Hand Tools.

3 COMMISSIONER SCOTT: Good morning.

4 And I'm looking at the list of participants on the
5 WebEx. It does not look like we have anyone from state,
6 federal, local or tribal officials. But if you are on the
7 phone, on the WebEx and would like to introduce yourself,
8 please go ahead and speak up. You're unmuted on our end, so
9 we can hear you.

10 (No audible response.)

11 Okay. Hearing none, with that I will turn this
12 over to Paul Kramer.

13 HEARING OFFICER KRAMER: And to be clear, I am not
14 Susan Cochran, but I am her Supervisor. And she
15 unfortunately had an emergency this morning that's prevented
16 her from being here, so I'm stepping in to assist the
17 Committee so that we can go forward and do what we can with
18 regard to this matter.

19 Our first order of business is going to be a
20 Committee closed session. But before I do that in case
21 there's somebody who wish to make a public comment who cannot
22 be with us later, either here or in the room or on the
23 telephone, if you want to make your public comment now we'll
24 take those. And then we'll adjourn to our closed session.

25 So does anyone in the room want to make a public comment? Is

1 there anyone on the telephone?

2 (No audible response.)

3 Okay. So the Committee is going to recess to a
4 closed session. Rather than make you sit around and keep
5 waiting for us to come back and not knowing when that may be,
6 we'll be back at no earlier than 10:45 this morning. That's
7 about 40 minutes from now. And then we will continue with
8 the rest of the Status Conference.

9 So thank you. We're off the record.

10 (The Committee adjourned into closed session at
11 10:05 a.m.)

12 (The Committee reconvened from closed session at
13 11:19 a.m.)

14 HEARING OFFICER KRAMER: We're back on the record
15 at about 11:19 a.m. The Committee met in closed session and
16 I guess actually I'll report out now. Well, actually I'll
17 wait, but we will -- just to set your own expectations we
18 expect to go back into a closed session after we complete the
19 discussions today. And we'll not really expect to report
20 anything out of that second closed session. So you can stick
21 around if you want, but we're not likely to have anything
22 further. Anything after that would come in the form of some
23 kind of written decision or order.

24 We thank the parties for their filings in response
25 to the Committee's orders asking that questions about the air

1 quality analysis and about the determination of the
2 generating capacity. And first we want to ask the parties to
3 respond to this question, and that is, we are currently
4 viewing what you filed as in the nature of argument. And
5 this will help also address Helping Hand Tools' motion to
6 strike the testimony. But we are wondering if a party feels
7 that anything that they have said in those written materials
8 is anything more than argument, and therefore needs to be
9 introduced into the record as evidence?

10 We'll begin with the Applicant. Do you understand
11 the question?

12 MR. GALATI: Yes, I do. And that's exactly why I
13 filed it the way I filed as the Commission Order said that it
14 might open the evidentiary record at this Status Conference.

15 As we started writing the argument I started to
16 realize that, while we have described, for example,
17 redundancy and the Commission asked for "are there devices?"
18 when I had the witnesses available at the Evidentiary
19 Hearing, they could have under oath explained some factual
20 distinctions that may not be in the record. So what I did is
21 rather than put that argument in my brief, or my issue
22 statement and then try to mark that, because that would
23 include a bunch of argument, I split out two pieces, which
24 were expert opinion specifically factually oriented to answer
25 the specific questions that the Committee asked. So I also

1 have all of my witnesses here should somebody want to talk to
2 them.

3 So the first one was for Question 3. You asked if
4 there was a technology or a device that could limit the
5 generating capacity. We hadn't got into that kind of detail,
6 so I had that put in testimony. I would like that marked and
7 put into the record, because I think it's helpful and it is
8 not argument. It is facts.

9 Second, you asked for an explanation of mitigation
10 for NOx. And again, that goes beyond argument. What we did
11 is we put in there and described for you how the Bay Area Air
12 Quality Management District offsets these emissions.

13 I think that those are both factual statements.
14 And therefore to be perfectly technical about it, we filed
15 them as testimony. And we filed it ahead of time, so that
16 all the parties could see that it was testimony and it was in
17 response to the fact that the evidentiary record could open.
18 So we also requested that -- well, I don't believe that you
19 need to mark it to review it and I don't believe you need to
20 take judicial notice, just out of precaution we put the
21 Executive Director's jurisdictional determination. And if
22 you want to mark that, that could be marked as well and
23 entered into evidence.

24 So we have one other document. Again, you asked
25 about how you could limit the generating capacity. We also

1 put in a document, which was our Commercial Agreement with
2 the Silicon Valley Power. And we put in a letter that was
3 received after this that talks about the City's commitment to
4 put a condition on the project. We think all of those things
5 are testimony, are exhibits, and should be put in the
6 Evidentiary Record. And the entire issue statement should be
7 considered like a brief or argument. That's how we prepared
8 it.

9 So I would move those four documents could be put
10 into the record as exhibits.

11 HEARING OFFICER KRAMER: Okay. Let's hear from the
12 other parties first before we discuss that. Staff?

13 MR. BABULA: So for starters staff agrees with Mr.
14 Galati's proposal to put those materials into the record.

15 As for our submission, it pretty much summarized
16 and cited to sections of our other filings and so most of
17 that would already be in the record. We did attach the
18 August 25th letter, which I think is the same letter that Mr.
19 Galati is referring to. And so I don't know if you want the
20 letter as an exhibit item or just attached in reference,
21 because it's already it's already in Mr. Galati's materials.

22 HEARING OFFICER KRAMER: So, are you saying that
23 yours is in the nature of argument, basically then?

24 MR. BABULA: Well, correct. I mean, we cite we
25 would -- we have factual information in our statement, but

1 that information's already in the record.

2 HEARING OFFICER KRAMER: Okay. Thank you.

3 Mr. Sarvey?

4 MR. SARVEY: I, similarly to staff we put our
5 argument in. We didn't provide any testimony. Had we known
6 there was a testimony being proffered here, and we would be
7 allowed to offer some, we would have prepared testimony in
8 alternatives. We also would have prepared testimony in air
9 quality.

10 The Committee's order didn't solicit any additional
11 testimony, didn't announce an Evidentiary Hearing. And the
12 Committee in the Status Conference Hearing Order asked for
13 the parties' positions and that's what staff and I have
14 provided. To now allow additional testimony in the record,
15 without the other parties having an opportunity to provide
16 their testimony, is prejudicial to Helping Hand Tools. And
17 to allow the Applicant to enter additional testimony into the
18 record without an announced Evidentiary Hearing isn't
19 administratively proper and an abuse of discretion.

20 The letter that they're referring to from the
21 previous Executive Director, the Hearing Officer told them to
22 include that as an exhibit at the Evidentiary Hearing, and no
23 party proffered it. So I would object to any evidence being
24 admitted at this point. I would not have any objection to it
25 being considered argument, but it's not evidence. It should

1 not be considered in the decision. And like I said it's
2 prejudicial to do so. Thank you.

3 HEARING OFFICER KRAMER: So you did see the
4 statement in the notice of this Status Conference that the
5 Committee might reopen the evidentiary record; did you not?

6 MR. SARVEY: I did see that statement, but I didn't
7 see any statement proffering additional testimony. And I
8 didn't see any statement in there saying we're going to have
9 an Evidentiary Hearing on any testimony submitted. What the
10 Applicant submitted was on Friday. We've had little chance
11 to review it and no chance to respond. I believe it's
12 prejudicial to enter it into the record at this point.

13 HEARING OFFICER KRAMER: Okay. How much time would
14 you need to prepare and file your responsive testimony?

15 MR. SARVEY: A week to ten days would be adequate.

16 HEARING OFFICER KRAMER: Staff did you plan to -- or
17 would you be desirous of any time to respond to the
18 Applicant's testimony?

19 MR. BABULA: I don't think any additional time is
20 needed. What they submitted isn't anything that is
21 unexpected. The contract with Silicon Valley Power is what
22 it is and part of that is to respond to a question. I don't
23 think any additional time is needed for what's basically some
24 minor refinement type information in response to these
25 questions.

1 HEARING OFFICER KRAMER: Mr. Sarvey?

2 MR. SARVEY: The addendum to the Silicon Valley
3 Power Authority Agreement that limits the project to 100
4 megawatts was executed on September 4th, 2018. So that was
5 after the Evidentiary Hearing.

6 HEARING OFFICER KRAMER: Okay.

7 MR. GALATI: So with, with what Mr. Sarvey just
8 said, is that testimony or is that argument? I mean it's a
9 new fact, right?

10 HEARING OFFICER KRAMER: It is apparent on the
11 document's face, I would gather.

12 MR. GALATI: Right, really what we're doing though
13 is following the letter of the law. When you include
14 something in writing that is introducing another fact, I
15 could painstakingly go through Mr. Sarvey's filings after
16 Evidentiary Hearing, and show you that he introduces new
17 facts over and over again. It's not -- he might call it
18 argument. He might put it in an argument. But the right way
19 to have done it was the way that the Commission, in my
20 opinion, thought might happen by asking that we might turn
21 this into a reopen evidentiary record was, when you provide
22 something in response to a question, and it is factual it's
23 got to come in the form of testimony. And that's why we did
24 what we did, certainly not to cause a delay and no one is
25 deprived of an opportunity here.

1 If I would have said those same things in the
2 brief, in the issue statement, the only thing that would be
3 wrong with doing that is it includes some factual testimony
4 that should come from someone's mouth other than mine. And
5 that's what we did, which I think is fair. And we shouldn't
6 be penalized for seeing that and doing it appropriately. Mr.
7 Sarvey doesn't need opportunity to respond to the testimony.
8 He's already responded to the questions. He chose to do it
9 without any expert testimony.

10 (Pause for colloquy off record.)

11 HEARING OFFICER KRAMER: Okay. Mr. Sarvey, we are
12 -- the Committee is going to -- well first let me step back.
13 Obviously, Mr. Sarvey objects to the entry of exhibits and
14 we're going to need to give them numbers in a minute. But
15 staff, do you object to the entry of the Applicant's exhibits
16 as Mr. Galati has described them?

17 MR. BABULA: No.

18 HEARING OFFICER KRAMER: Okay. Mr. Sarvey, we are
19 prepared today to let you ask questions of the Applicant's
20 witnesses. However, we are not willing to extend the
21 opportunity to continue to discuss the old evidence and this
22 new evidence beyond today's hearing. So are you ready to --
23 or?

24 MR. SARVEY: I did not anticipate an Evidentiary
25 Hearing. I did not come prepared for an Evidentiary Hearing

1 and, no, I'm not ready.

2 HEARING OFFICER KRAMER: Let me ask you this, have
3 you even read the materials that they filed?

4 MR. SARVEY: I have briefly reviewed it, yes.

5 HEARING OFFICER KRAMER: Okay. And you saw the
6 Committee questions and you responded to them in your Issue
7 Statement?

8 MR. SARVEY: Yes, I did.

9 HEARING OFFICER KRAMER: Okay. Well, Mr. Sarvey,
10 then what we will do is let you -- you can respond in writing
11 with written evidence, if you choose, by a week from today,
12 to that testimony.

13 So Mr. Galati, let's get to the nuts and bolts of
14 giving these things exhibit numbers. And I apologize. In
15 preparing this morning when I knew I was going to be
16 substituting for Ms. Cochran, I didn't bring an exhibit list
17 with me. So if you can to read into the record the TN
18 numbers and then the corresponding exhibit numbers that you
19 would like them to have. --

20 MR. GALATI: I'm happy to do so. Exhibit 30, which
21 is our next in line would be Executive Director's
22 Jurisdictional Opinion issued to Vantage for its Santa Clara
23 Campus on August 25th, 2017. That is Transaction Number TN
24 224884.

25 HEARING OFFICER KRAMER: And go ahead with the
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1 rest.

2 MR. GALATI: The next would be Exhibit 31, the
3 Supplemental Testimony of Michael Stoner and Spencer Myers,
4 TN 224896.

5 HEARING OFFICER KRAMER: You can keep going.

6 MR. GALATI: Yeah. I'm just trying to make sure I
7 --

8 HEARING OFFICER KRAMER: Oh, okay.

9 MR. GALATI: Exhibit 32 is the Supply Agreement.
10 And I'd like to correct the record. It wasn't entered into
11 September of 2018. It was entered in 2017. No addendum to
12 it. It is Exhibit 32, docketed October 4th, TN 224882.

13 Exhibit 33 is a letter from Silicon Valley Power.
14 This is the letter that imposes the condition through the
15 City approval. That is TN 224883.

16 And the last would be the supplemental testimony of
17 Dr. Shari Beth Libicki, responding to air quality. That
18 would be Exhibit 34 and that was TN 224895.

19 HEARING OFFICER KRAMER: Okay. And the Applicant
20 has moved those. The Committee is going to reopen the record
21 to receive these, consider receiving these exhibits.

22 Any objection from staff?

23 MR. BABULA: No objections.

24 HEARING OFFICER KRAMER: And Mr. Sarvey, I'm
25 presuming you're objecting on that?

1 MR. SARVEY: I object.

2 HEARING OFFICER KRAMER: Okay. We will take those
3 exhibits into evidence, admitted as of today.

4 (Applicant's Exhibit Nos. 30-34 admitted into
5 evidence.)

6 HEARING OFFICER KRAMER: With regard to 1.1, I'd
7 ask a question of the parties. It appears from the issue
8 statements that the Applicant calculated the project load,
9 the actual load from the servers and the air conditioning
10 etcetera, as 97.4 megawatts. And we didn't see the math on
11 that, but that was at page 11 of -- I'm sorry, page 12 of the
12 Issue Statement, I think it was. Yes.

13 And then staff in their issue statement, on page 7,
14 said the maximum building load was 94.41 megawatts. Can
15 anybody reconcile those two?

16 MR. GALATI: I can provide you a framework for
17 that. There are several ways to look at what would be the
18 maximum generating capacity, using the one hour of the last
19 50 years, assuming that hour occurs. And assuming that there
20 is 100 percent load from the critical IT, which is what the
21 maximum design basis is. And, of course, there's lots in the
22 record that those will never be achieved.

23 The way you could calculate that is simple. You
24 could add up the critical IT, which is the amount of server
25 load. And then you could calculate what the mechanical load

1 of the building is to keep those servers cool and to provide
2 lights, elevators, other things on the mechanical building
3 load.

4 A simplified method for doing it is to use a factor
5 called a PUE, which is defined as the --

6 MR. MYERS: Power efficiency.

7 MR. GALATI: Yeah, power utilization efficiency,
8 right?

9 MR. MYERS: Equivalent efficiency.

10 MR. GALATI: Yeah, equivalent efficiency. When you
11 take the critical IT load and multiply it by 1.43 the max
12 that you can get on that one hour is 98.67. If you don't use
13 the PUE and you add up all the different little mechanical
14 loads as you anticipate them, that's how it comes out to
15 97.4. So the PUE is a simplified method that probably has
16 some rounding off associated with it. And we used the PUE in
17 our calculation here, as well as we used the 97.4 that staff
18 used with calculating all the different points.

19 The point is whether we use it at 98.67 or 97.4, we
20 don't believe that in any way, shape or form, the project can
21 go above 100. So what we did is we did a bunch of different
22 calculations for you here, showing you lots of different ways
23 you could look at it. We think the best way to look at is
24 the building load at the data center, since it has those
25 devices associated with it. So worst-case scenario, we

1 thought that on that one hot hour it would be, let's just
2 round up, use the PUE, it's 98.67.

3 HEARING OFFICER KRAMER: Say, 98.?

4 MR. GALATI: Let me look at the actual doc. I
5 believe it's 98.67.

6 HEARING OFFICER KRAMER: Because that's a new
7 number to me.

8 MR. SARVEY: Mr. Kramer, can I make a comment?

9 HEARING OFFICER KRAMER: Hold on a minute.

10 MR. GALATI: In the transcript, the hearing
11 transcript? We testified that it was 69 megawatts and the
12 worst PUE peak for that one hour was 1.43. That's in the
13 record already.

14 In the testimony of Michael Stoner and Spencer
15 Myers, you see the worst-case day full customer load on page
16 2. Worst case day full customer load at max 69 megawatts,
17 plus the 29.67 megawatts, which is the 0.43. That gives you
18 98.67 on that worst hour. You see the annualized average is
19 86.25 and that's at full customer load. And then you see the
20 expected customer load of -- which brings the project to
21 51.25 megawatts. Those are all using the PUE method for
22 calculating mechanical load instead of breaking up all the
23 little mechanical loads and adding them together.

24 HEARING OFFICER KRAMER: Okay. So --

25 MR. GALATI: To help the Committee that's on page
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1 23 of 49 of our issue statement, the .pdf version. It's if
2 you look at the .pdf it's 23 of 49. It's page 2 of the
3 project description supplemental testimony. It's in bold and
4 italics at the bottom of the page.

5 HEARING OFFICER KRAMER: Okay, so let me see if I
6 understand it then. So the actual load of the machinery
7 whether it's the air conditioners, elevators, servers is 69
8 megawatts.

9 MR. GALATI: No. That's the load of just serving
10 the customers' servers.

11 HEARING OFFICER KRAMER: Right. But then there are
12 --

13 MR. GALATI: That's the maximum if it's fully
14 loaded and every server is operating and then there's no more
15 leasability, it would be 69 megawatts at critical IT load.
16 That's the customer load. No building load. No lights, no
17 air conditioning.

18 HEARING OFFICER KRAMER: And so then the PUE is
19 accounting for the inefficiency of the generators or?

20 MR. GALATI: No, the PUE is a measurement of the
21 efficiency of the building to actually provide mechanical
22 load of cooling, lights. And if you take the load you're
23 serving and you multiply it by 1.43, to get the total load at
24 a snapshot in time, both the customer load and the cooling
25 and lighting load.

1 HEARING OFFICER KRAMER: I see. Okay, so 69 for
2 the servers and other equipment. And then the 29.67 is to
3 cool all that?

4 MR. GALATI: It's to cool it and light it and all
5 that, on that hottest hour in the last 50 years. And full
6 customer load, which in our record we show that that
7 Vantage's experience is they're able to maintain consistently
8 a 60 percent load of customer load. Because typically a
9 customer will buy more than they need, and they've never
10 exceeded 60 percent.

11 HEARING OFFICER KRAMER: So they buy servers that
12 sit there basically nearly in sleep state, so they're not --

13 MR. GALATI: I'll let Mr. Myers can describe that.

14 MR. MYERS: Think of it as extra space, capacity,
15 and also their own inability to use everything that is
16 available to them. Just like there's space in this room,
17 they're not able to fully utilize all the power that is
18 available to them that's leased, because they physically
19 can't accommodate their own needs within that constraint to
20 do it. So it becomes a physical impossibility for them to
21 use all of the power that they lease, but yet they still are
22 required to reserve that. And that's just the metric of how
23 we sell our space is the power.

24 HEARING OFFICER KRAMER: Okay, but if they could
25 sometime, somehow get it to 100 percent you would be able

1 to serve it?

2 MR. MYERS: That is our guarantee, yes. But it has
3 never occurred.

4 HEARING OFFICER KRAMER: Yeah, websites tend to
5 crash when they hit that...

6 MR. MYERS: Correct.

7 HEARING OFFICER KRAMER: Yeah, I've got you.

8 MR. MYERS: And we have to pay credits, but again
9 never occurred.

10 HEARING OFFICER KRAMER: Okay. So then --

11 MR. MYERS: And as -- I apologize -- as we've
12 submitted our device the building load management system
13 prevents that. And if they did exceed or get to -- I mean
14 you have to have the cooling there to be able to accommodate
15 it, so it cannot happen.

16 HEARING OFFICER KRAMER: Okay. Mr. Sarvey, you had
17 a comment or a question?

18 MR. SARVEY: No, I had a comment. This
19 demonstrates exactly what I'm saying, why you can't allow the
20 Applicant to decide what the generating capacity of this
21 project is. Only the Applicant knows what it is. Staff has
22 a different number. The Applicant's got four different
23 numbers. That's why we use Section 2003, so it can be
24 consistent. That's why we use a consistent method of
25 measuring generating capacity.

1 Here, we're relying on the Applicant's word that
2 this is what it is. But we have no idea. Staff can't
3 compute it themselves, so you don't have independent
4 verification. So this is why we need to stick with 2003.

5 HEARING OFFICER KRAMER: Okay.

6 Staff, do you have a perspective on the difference
7 between the two numbers?

8 MR. LAYTON: This is Matt Layton with the Energy
9 Commission. I think the three numbers are fine. We, in
10 talking to the Applicant, we came up with 94.41 based on the
11 critical load and the cooling. Again, these are average
12 conditions. I think Mr. Sarvey is looking for unrealistic
13 specificity that doesn't really bring anything to light. I
14 think the three numbers, all less than 100, are reasonable.

15 And again for the data center I think people really
16 need to think about data centers. They have redundancy. So
17 therefore, physically they're designed to limit how much
18 electricity they can put through, what they can carry in the
19 way of data servers, what they can cool. And so I think as
20 described this is less than 100 megawatts of load and
21 therefore the generators can't generate more than 100
22 megawatts.

23 That is the -- what we're trying to decide is what
24 is the generating capacity of the back end of this data
25 center. And we think it's less than 100. Is it 94.41,

1 94.42? I don't care. It's a temperature difference of one
2 day versus the next day. And we try to come up with an
3 average set of conditions, for the average day, for the
4 average parasitic loads or the average data center loads.
5 And we arrive at a number. We've continued to think that, or
6 recommend to the Committee that it's less than 100. Three
7 numbers are all reasonably calculated. And I think are all
8 correct.

9 MR. BABULA: And if I could just add? I'd say
10 there's a hesitation, at least in this questioning, to use
11 the building load as a factor in determining the capacity.
12 But and because there's no regulation that specifically
13 addresses it there seems to be this hesitation. But you
14 remember there's all types of decisions that either staff or
15 the Commission make, that aren't dictated by regulation. For
16 example, thresholds of a significance, allocation of funding,
17 business meeting schedules, approval of contracts, approval
18 of compliance reports by the compliance manager, all these
19 things are discretionary.

20 And so the key factor is as long as the decision is
21 not arbitrary and capricious, and is supported by substantial
22 evidence, the Commission can move forward. And then with
23 silence in 2003, about the components of data centers that
24 are unique, the Commission's free. As we articulated in our
25 reply that you can utilize the information from the parties

1 and make a decision, but there's certainly substantial
2 evidence to support in the record a finding that the
3 megawatts are under 100.

4 MR. GALATI: May I add one point?

5 HEARING OFFICER KRAMER: Mr. Galati?

6 MR. GALATI: Yes. If the Commission wanted to use
7 nameplate then the Commission ought to understand the
8 redundancy that's built in and not count the redundant
9 generators. In the same way that you wouldn't count the
10 redundant turbine or a spare turbine that is not connected
11 and is not going to operate.

12 So remember what happened here. Last year,
13 Vantage, when they first learned about the Energy Commission,
14 because they didn't know about the Energy Commission, they
15 didn't go forward with their project. They came to the
16 Energy Commission and requested a 1234 Jurisdictional
17 Determination. And during the discussions with staff, on
18 that Jurisdictional Determination, staff asked us how do the
19 generators work, what's the peak rating, what's the
20 continuous rating, how much redundancy, are you planning them
21 all at once, are they going to be done in phases? And we had
22 all of this discussion. The five ways or the four ways that
23 we identified ways to look at this project on generating
24 capacity in our issue statement were the four ways that we
25 discussed with staff.

1 Staff then took that under advisement and issued an
2 Executive Director's Determination under 1234. Building load
3 is the way to calculate generation. We than relied on that
4 and filed this SPPE Application focusing on building load and
5 showing them what the building load was.

6 And I just want to keep pointing out the following
7 fact. That one hour in the last 50 years, with full load, is
8 an instance in time that we believe will never happen. But
9 for commercial reasons, we have to be prepared for it. All
10 other times what we expect this project to get to when we
11 have leases on all of the space is 51 megawatts. So we are
12 talking about this opportunity that could exist after the
13 double loop system fails, the transformers fail, the
14 dedicated substation which they paid to build to make sure we
15 never have to use the generators and it all happens at one
16 time. And then, to use name plate capacity all 12 redundant
17 generators would have to break. That's what the Commission
18 is trying to think they should base generating capacity on,
19 as opposed to what this project is likely to generate ever
20 during an emergency.

21 And if the Commission is still not very comfortable
22 with that you certainly can rely on the fact that the City of
23 Santa Clara is going to put a condition, in the approval
24 conditions that says you cannot design or operate this
25 building to take more than 100 megawatts without coming to us

1 and going back to the Commission.

2 To me, there is a belt and suspenders approach
3 here. We believe building demand makes the most sense,
4 because it's real. It's accurate. And it doesn't mean what
5 we forecast the building demand is. It means what can the
6 building actually take. And we now know that that's limited
7 to 100 megawatts. So the project will never generate more
8 than 100 megawatts. In fact, it will probably generate 51
9 megawatts during an emergency at its worst day. That's the
10 bottom line.

11 HEARING OFFICER KRAMER: And that 51 megawatts
12 would be to power the servers and the cooling, everything?

13 MR. GALATI: Correct, because our experience has
14 been, and they've been operating data centers for several
15 years and certainly the last ten in the Santa Clara region in
16 their V1 through V6 campuses. And the most that they've ever
17 seen from a customer load, even when it's fully leased, is 60
18 percent of the capacity for that room. So if they leased
19 everything out, they'd probably get 60 percent of the
20 critical IT, times that building load, the average building
21 load of mechanical load to cool those servers. It would
22 still be 51 megawatts. And that's why we think we're here.

23 We also think, look the Executive Director made
24 this Jurisdictional Determination, and we relied on it. We
25 think the Commission ought to defer to their staff who really

1 gave this a lot of thought and considered all of these
2 options, as did we.

3 HEARING OFFICER KRAMER: Mr. Sarvey?

4 MR. SARVEY: I'd like to clarify a couple of
5 things. First of all the letter that they're referring to,
6 from the Executive Director, did not deal with this project.
7 It dealt with their Vantage No. 5, which is currently at 90
8 percent lease. That's very important, because they don't
9 have a specific letter from the Executive Director about this
10 project.

11 Now, I've put in the record and I'm going to say a
12 dirty word, Santa Clara Data Center, and the Santa Clara Data
13 Center's located across the tracks from this project. And in
14 the Santa Clara Data Center the Applicant cited 32 2.25
15 megawatt backup diesel generators. In that proceeding, and
16 Commissioner Douglas is familiar as she was the Presiding
17 Member, the Applicant claimed the Energy Commission didn't
18 have jurisdiction, because the maximum load of the data
19 center was 49.1 megawatts. Now that might sound familiar.
20 The Executive Director at the time, Melissa Jones, sent a
21 letter to Santa Clara Data Center, which I've asked official
22 notice of and I do have copies here -- if we're going to
23 start entering things into the record, I'd like enter it into
24 the record -- told Santa Clara that it was irrelevant what
25 the load of the building was. They told them that you've got

1 32 backup diesel generators at 2.25 megawatts, therefore your
2 load is 72 megawatts and you are subject to Energy Commission
3 jurisdiction.

4 The Energy Commission exercised their authority by
5 saying, "We're using name plate capacity to make this project
6 subject to SPPE. The Santa Clara Data Center was then
7 processed and approved under the generating capacity
8 determination and received a Commission determination based
9 on the 32 generators being 72 megawatts.

10 It isn't much different than what happened here.
11 What happened here is they have a jurisdictional letter about
12 some other data center that they were planning on building.
13 They do not have a jurisdictional letter related to the MGBF.
14 Whereas the Santa Clara Data Center, that Applicant, if you
15 go through with this I mean that would be extremely
16 prejudicial. I mean that would be an abuse of discretion for
17 you to say, "You made them do an SPPE when their building
18 load, as they're trying to measure it, it was 49.1. But you
19 said no, no, no, we're going by the name plate generation."
20 And now you're going to turn that around and let this
21 Applicant slide in under 100 and not do an AFC, which they
22 should be doing. And which Melissa Jones told them they
23 should be doing, because of the environmental impacts of 47
24 diesel generators.

25 So that would be inconsistent. It would also be an
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1 abuse of discretion if you allowed that.

2 MR. GALATI: May I respond to that?

3 HEARING OFFICER KRAMER: Go ahead Mr. Galati.

4 MR. GALATI: First of all, the issue -- so let me
5 get this right. Mr. Sarvey's argument is you should rely on
6 a 2008 Executive Director's decision that applied to Santa
7 Clara, but you shouldn't rely on last year's decision about
8 V4 and V5 with this client who also talked to them about
9 McLaren at the time. We didn't ask for a Jurisdictional
10 Determination on McLaren, because the Commission told us how
11 they would look at the data center in our discussion with V4,
12 V5 and V6.

13 In Santa Clara, while it's interesting that Mr.
14 Sarvey would say that there was this dispute on how to
15 calculate the generating capacity, the dispute in Santa Clara
16 and the Jurisdictional Determination, was 16 of them were
17 already there and they were only adding 16. Should you take
18 these 16 and add them to those 16 as one project? That was
19 the dispute that was addressed in the Jurisdictional
20 Determination.

21 In addition, if that client wasn't mine, if they
22 disputed that, they could have appealed that. They chose not
23 to. I don't know why. We went and had open conversations
24 with the Commission and the Commission basically told us to
25 calculate it this way. And we did.

1 We think you should rely on that. We think that
2 the Santa Clara hearing is a red herring. We think that it's
3 not specific to the project. We think that -- who knows if
4 the Commission staff has learned more about data centers in
5 the last ten years, but at some point in time the Commission
6 might have made jurisdictional determinations that are
7 inconsistent with each other. At this point, we relied on
8 the one that they made for us.

9 HEARING OFFICER KRAMER: Okay. Let me ask, is that
10 Santa Clara letter in the docket of this proceeding?

11 MR. GALATI: Yes, it is. Mr. Sarvey asked for
12 judicial notice of that letter.

13 MR. SARVEY: It's not in the docket at this point.

14 MR. GALATI: You docketed it. You docketed it.

15 MR. SARVEY: It's not in evidence, excuse me. It
16 is docketed and I asked for official notice. I have copies
17 here if you'd like to put it in evidence.

18 MR. GALATI: We have no objection to you putting it
19 in evidence.

20 HEARING OFFICER KRAMER: Okay, what would Mr.
21 Sarvey's next exhibit number be?

22 MR. SARVEY: 306.

23 HEARING OFFICER KRAMER: Okay. Well Mr. Sarvey,
24 we're going to leave it to you to docket it.

25 MR. SARVEY: It's already docketed.

1 HEARING OFFICER KRAMER: So do you have --

2 (Alarm sounds briefly.)

3 HEARING OFFICER KRAMER: Okay. So I'm informed
4 it's TN 224602, 682. Okay. All right, so then that -- is
5 there any objection to the receipt of that document into
6 evidence?

7 MR. GALATI: None.

8 MR. BABULA: No objection.

9 HEARING OFFICER KRAMER: Okay. So then so far we
10 have received and admitted into evidence new Exhibits 30
11 through 34 and 306.

12 (Intervenor's Exhibit No. 306 admitted into
13 evidence.)

14 MR. GALATI: And lastly --

15 MR. BABULA: If we're adding Mr. Sarvey's thing,
16 will he consider removing his objection of the Applicant's
17 documents, then?

18 MR. SARVEY: No. I asked for official notice of
19 mine. I'll accept official notice if I have to accept the
20 Applicant's documents.

21 HEARING OFFICER KRAMER: Either way, it's in the
22 docket. And so to the extent it's relevant the Committee
23 will consider it and can refer to it. You probably should
24 have negotiated before you accepted it, Mr. Babula.

25 MR. BABULA: I'd still accept it.

1 MR. GALATI: Lastly, I'd just point out to the
2 Committee that if staff had told us that we were going to be
3 -- that generating capacity was calculated this way, we'd
4 probably be in a different process and so here we are over
5 nearly a year later, relying on that Director's
6 determination. Yeah, I read Santa Clara. And I knew what
7 Santa Clara was about and really the issue that we came to
8 the staff and said was with V4, V5 and V6 those weren't all
9 planned as one campus.

10 We saw what happened in Santa Clara, which was
11 planned as one campus. But they built half of it first and
12 then had to be told by the District to come to the
13 Commission. That the District wouldn't issue the air
14 permits, because adding all those generators together and not
15 just the 16 that they were proposing, but the 16 they already
16 built. And they came, not aware that they had to do that.
17 And that was what the Jurisdictional Determination really was
18 about, was when you plan them altogether the Commission is
19 really consistent about when something is a project and when
20 something is two projects.

21 So we know we were planning McLaren and after
22 learning about the Commission, that's when we told them about
23 McLaren. And when they told us how to calculate the
24 generating capacity for 4, 5 that's what we did for McLaren,
25 so there was no need to go back. If we didn't agree with it

1 or we didn't accept it, we would have filed an appeal, as you
2 can, under the Jurisdictional Determination. But we did
3 agree with that and it was based on the discussion of every
4 one of the methods you see identified in our Issue Statement.

5 So this wasn't simple. And the project wasn't
6 designed to avoid Energy Commission jurisdiction. It was
7 designed first. Then we were told what to do. It made sense
8 to us. And we did it.

9 HEARING OFFICER KRAMER: Okay. Thank you.

10 MR. LAYTON: Mr. Kramer? This is Matt Layton.

11 HEARING OFFICER KRAMER: Go ahead.

12 MR. LAYTON: I helped craft the Santa Clara letter
13 and I think we are inconsistent. That being said, I think I
14 was wrong in Santa Clara. I don't know how to do data
15 centers. I'm not a data center expert, but I've learned a
16 lot. And now staff strongly recommends that load is a way to
17 make a determination of generating capacity for data centers.
18 That's what we've done on Vantage 4, 5. That's what we
19 recommend on McLaren as well. If we went back and looked at
20 Santa Clara, we might come to the different conclusion.

21 HEARING OFFICER KRAMER: Okay. Thank you.

22 MR. LAYTON: I don't think Santa Clara had much
23 bearing on this, because I don't think it was precedential or
24 even presidential, to quote Mr. Trump.

25 HEARING OFFICER KRAMER: Well precedents can be
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1 overruled as well, so.

2 MR. SARVEY: Excuse me.

3 HEARING OFFICER KRAMER: Okay.

4 MR. SARVEY: Mr. Kramer?

5 HEARING OFFICER KRAMER: Anything more on the
6 generating capacity issue? Did you have something, Mr.
7 Sarvey?

8 MR. SARVEY: I just want to make one statement that
9 the Santa Clara decision is different, because number one the
10 Commission determined use Section 2003. And they also
11 processed the application, so the application was
12 adjudicated. This V5 letter that they have proffered, there
13 was no adjudication, there was no intervenor scrutiny or any
14 kind of scrutiny on it. So this Santa Clara letter is pretty
15 solid. And if you were -- what you have is that you don't
16 have a regulation here that addresses data centers. And I
17 think everybody in the room would agree with that.

18 But if you have a regulation that's ambiguous and
19 then you interpret it two different ways you're really
20 opening yourself up for the superior court to overrule you.
21 And I don't think you want to be in that position. I think
22 AFC is the proper way to go with this project at this point.

23 HEARING OFFICER KRAMER: Okay. We had one more
24 question relating to the air quality mitigation, I guess, you
25 could call it. We'll start with Mr. Galati. In the Staff

1 Issue Statement at page 10 staff says that the Applicant is
2 proposing to accept a NOx limitation for reliability and load
3 testing and maintenance activities at 35 tons per year, which
4 equates to about 42 hours of operation at full load. Is that
5 correct?

6 MR. GALATI: Yes. That is correct and I'll let Dr.
7 Libicki explain.

8 HEARING OFFICER KRAMER: And so that's going to get
9 you into the air quality offset bank from the District and
10 that will qualify you?

11 MS. LIBICKI: That's correct.

12 HEARING OFFICER KRAMER: And then you'll obtain
13 those offsets, so that you'll be offsetting the potential
14 emissions?

15 MS. LIBICKI: That's correct.

16 HEARING OFFICER KRAMER: Court reporter, do you
17 have her information? Okay. Thank you.

18 That was the simple question. Does anyone else
19 wish to comment about that?

20 MR. BABULA: No comments. I just want to let you
21 know that I believe someone from the Air District is on the
22 phone, in case the Committee has any questions for her.

23 (Off mic colloquy.)

24 HEARING OFFICER KRAMER: Okay. I'm guessing that's
25 probably Ariana Husain. I don't think we have any questions,

1 but are you that person?

2 MS. HUSAIN: I am, yeah.

3 HEARING OFFICER KRAMER: Well, let me just ask you
4 then. So your understanding is that this project will be
5 accessing your offset bank to offset their NOx emissions; is
6 that right?

7 MS. HUSAIN: Yes.

8 HEARING OFFICER KRAMER: Okay. Thank you.

9 Okay. So we have finished answering our questions.
10 Do the parties wish to say anything in closing? We'll begin
11 with the Applicant.

12 MR. GALATI: Just that we think that you have the
13 ability to grant an SPPE to this project. We'd like you to
14 do so quickly. We've been delayed in our construction. We
15 would like to be on the Business Meeting for November 7th.

16 When we first laid out this schedule, we were
17 hoping to be on in October. And as you know, the data center
18 buildings are being constructed now, so if -- we think that
19 this has been thoroughly vetted at a level that might even be
20 more than -- certainly more than would require by a simple
21 CEQA analysis. And remember that the City of Santa Clara had
22 already done an Initial Study and Mitigated Negative
23 Declaration for this project when it had slightly less
24 generators. It has been redesigned and that's when it came
25 back to the Energy Commission.

1 So we ask for a quick decision to grant this SPPE
2 that acknowledges that Vantage basically did the right thing
3 here. So that's where we are. We've given you everything
4 else. We hope you've read it all. Thanks.

5 HEARING OFFICER KRAMER: Okay. Staff?

6 MR. BABULA: I would concur with what Mr. Galati
7 said. And just to acknowledge that this has been a pretty
8 detailed and thorough analysis with the -- not only did we
9 have the Initial Statement or the Initial Study, but we also
10 responded to comments from Mr. Sarvey and others who had
11 submitted comments. And then we had the questions from the
12 Committee before the Evidentiary Hearing that we responded
13 to. Then we had the Evidentiary Hearing. And then we had
14 response to these additional questions.

15 So I think the record is very thorough and covers
16 everything for the Committee to move forward with a decision.
17 Thanks.

18 HEARING OFFICER KRAMER: Mr. Sarvey?

19 MR. SARVEY: I don't have anything to say about
20 generating capacity. I think we beat that pretty much to
21 death, but there's some interesting statements in the staff's
22 latest submission.

23 And in staff's latest submission, they finally
24 clarified that CO emissions were evaluated with all 47
25 engines running at once for 50 hours. They modeled emergency

1 operations of this project for 50 hours for CO, which was
2 something I was trying to elicit at the Evidentiary Hearing.
3 But now staff stated it, so I appreciate that.

4 Therefore, the staff and Applicant's assertion that
5 NO2 emissions from emerging operation cannot be modeled,
6 that's inaccurate. They did it with CO. They can do it with
7 NO2 and they must. So if CO emissions can be modeled with
8 all engines operating at 50 hours under all meteorological
9 conditions, there's nothing preventing staff or Applicant
10 providing a one-hour NO2 analysis for this project using the
11 same methods.

12 Staff's NO2 analysis, they admit they only modeled
13 one generator at a time, not all 50 running at one time.
14 That's very important, because if you have all 50 of those
15 generators emitting NO2 at one time you're likely to have a
16 violation of the one-hour NO2 standard.

17 The Applicant's trying to excuse themselves from
18 that modeling saying that they're complying with the CEQA
19 requirements of the Bay Area Air Quality Management District.
20 But that's not what we're here for. We're not here for laws,
21 ordinance, regulations and standards. We're here to find out
22 if there's a significant impact from this project. And in
23 fact, there's a minority population 400 feet from this
24 project. And I think it's extremely important that we've
25 proved that there is no impact to the NO2 standard from this

1 project with all 50 engines running at one time in emergency
2 operation.

3 You'll notice even in normal operation when they're
4 just testing these engines, you'll notice I've entered things
5 into the record, which show even under normal operation they
6 have to limit the hours of operation. And in the Santa Clara
7 Data Center they actually made them put SCR on the project to
8 reduce NOx emissions. This may be what the Bay
9 Area does to this project. I don't know. But that's not
10 what you're operating on. You're operating on what they're
11 telling you and they're refusing to model 50 hours of
12 emergency operation for NO2. And that's just absolutely
13 essential. We have a minority population 400 feet from this
14 project, so they need to have consideration. Thank you.

15 HEARING OFFICER KRAMER: Will the Applicant and the
16 staff respond to that?

17 MR. GALATI: Thank you very much. That's new stuff
18 that we are having to address. Remember, we didn't say you
19 can't model it for NO2. What we told you is that information
20 is not going to be useful for you. We told you the
21 information is not going to be useful to you, because that
22 sort of refined modeling would require a lot of other input
23 that we can't predict.

24 We also told you and showed you that the emergency
25 operations are very, very unlikely and rare. And you could

1 rely on that fact alone. In addition, you could rely on
2 Santa Clara if you like. You didn't model emergency
3 operations in Santa Clara either. And when it
4 comes to Mr. Sarvey introducing evidence that somehow
5 somebody made Santa Clara put SCR on, that's not in the
6 record. That's just his statement. What is in the record is
7 that they used SCR. We don't know why they did. The point
8 is we have used SCR in our projects, in Washington. And we
9 voluntarily did it. And we found that it didn't work. And
10 we asked for them to relieve us of our obligation to put it
11 on and that jurisdiction said "sure," because it actually
12 increased pollution for the kinds of generators that we're
13 talking about here.

14 The idea that you have to model every possible
15 scenario you can dream up is not CEQA. And that is what
16 you're doing here. What you should be doing is using some
17 reasonable non-speculative evaluation. So let's just
18 remember what would have to happen for all 47, not 50
19 generators to operate.

20 First of all, all 47 generators would never operate
21 at full load. So if there's any generators that would
22 operate at full load, take out the 12 redundant. All 35
23 generators operate at full load, 12 generators have failed.
24 There is an outage. That outage is prolonged. It's the
25 hottest day of the year, hottest hour of the last 50 years,

1 both loops have failed. The substation has failed. Now, if
2 you were to really want to dig in and model what would happen
3 there, tell me what other facilities would not be operating
4 that are currently in part of background now. What would we
5 take out?

6 Because it wouldn't make sense that all the other
7 facilities could be operating during such an emergency right,
8 with the general power plants, the cars, the trains, all of
9 those other things that are affected by this outage as well.
10 That's what we're trying to tell you is you can model
11 anything. But the fact of modeling something that doesn't
12 give you any useful information is exactly the kind of
13 speculation CEQA prohibits.

14 Nevertheless, what you have in Dr. Libicki's
15 testimony is that even if we encountered a 19-hour, which is
16 the worst possible case scenario that has been identified so
17 far, emergency outage, the project would not contribute to a
18 violation and a significant impact for NOx. That's in the
19 record. It's in her testimony. And that's the only evidence
20 that you have in front of you. The rest of this is just pure
21 speculation.

22 So, again the fact that CO was modeled for 50 hours
23 is because it's a screening tool. If there'd been a
24 violation, there would have been refined modeling. But there
25 wasn't. So we think that again this is a red herring to bog

1 down into specifics that you don't need for a decision,
2 especially since the project's never going to operate with 47
3 generators at one time. We know that.

4 HEARING OFFICER KRAMER: Anything from staff?

5 MR. BABULA: Just a couple of things, so yeah Mr.
6 Sarvey's statement that the Bay Area Air Quality Management
7 District, who hired SCR in Santa Clara? Santa Clara's Final
8 Decision is already in the record. In that case, they had
9 volunteered that that as a project feature, so they came in
10 with that as what they were going to do in the project. And
11 then as Mr. Galati stated about having to take the SCR off,
12 that's in the record too. Because Mr. Sarvey filed Exhibit
13 304, which is -- or it's Exhibit 301, Revised Health Impact
14 Assessment. That revised health impact is to assess the
15 assessment of taking the SCRs off the Vantage facility in
16 Washington, because of what Mr. Galati said. And so it's a
17 little misleading to say that it's required to have SCR.

18 And in fact we could ask the Air District what
19 their plans are, because again ultimately we're not approving
20 this project. It's going to go back to the City and the Air
21 District will be involved.

22 HEARING OFFICER KRAMER: Ms. Husain, did you have
23 any comment on that question?

24 MS. HUSAIN: Just in terms of whether we require
25 SCRs, it's based on a best available control technology

1 threshold. And in the case of the Vantage application that
2 was submitted to us, it's not submitted for the full 47
3 generators. It's for only the ones they intend to install
4 immediately and based on those we are not requiring SCRs to
5 be installed.

6 HEARING OFFICER KRAMER: Okay, thank you.

7 All right, Mr. Sarvey?

8 MR. SARVEY: I'd just like to ask staff if Santa
9 Clara Data Center has removed their SCR? They should know
10 that.

11 MR. BEMIS: This is Gerry Bemis from the staff.
12 Could you repeat your question?

13 MR. SARVEY: I was just asking whether Santa Clara
14 Data Center has removed their SCR and it didn't work?

15 MR. BEMIS: As far as I know they have SCR on. I
16 inquired with the District yesterday. There's another
17 representative. It's not this one, but it's Tamiko and she
18 told me that they do have SCR on them.

19 MR. SARVEY: Thank you.

20 HEARING OFFICER KRAMER: Okay. I think that does
21 it for the parties' statements, closing statements. So we
22 will close the record again and take this under submission.

23 The next item under on the agenda is public comment
24 where members of the public or other interested persons may
25 speak up to three minutes on a matter relating to this

1 proceeding. Do we have anyone in the room who wishes to make
2 a public comment? Anyone on the telephone?

3 (No audible response.)

4 HEARING OFFICER KRAMER: Okay. Hearing none, we'll
5 close public comments.

6 Before we go into our second closed session, I can
7 report out from the first one that the Committee has -- well
8 and actually after hearing the discussion today, the
9 Committee is overruling the Motion to Dismiss that's been
10 pending for quite a while. But we will address the
11 jurisdictional issue that the Motion to Dismiss goes to,
12 which is whether this is more or less than 100 megawatts in
13 the Committee's proposed decision or recommended decision to
14 the full Commission.

15 There was a Motion to Modify the Schedule also
16 filed at about the time of the Motion to Dismiss, which is
17 basically raising the same issue. And that we will also
18 overrule or deny, along with the Motion to Dismiss.

19 And then Mr. Sarvey's or Helping Hand Tools' recent
20 Motion to Strike the Testimony of the Applicant, that is also
21 denied. And as you heard earlier we actually admitted
22 Exhibits 30 through 34 into the record.

23 So we are going to go into closed session. As I
24 said earlier we're not expecting to make any reports out of
25 the closed session. Anything that the Committee has to say

1 will come either in the form of further written orders that
2 will be filed in the docket, or more likely a proposed
3 decision on the SPPE. You're welcome to stick around if you
4 want. We're not going to pick a particular report out time,
5 because we're not expecting to say anything. But we will
6 keep the WebEx open and I will come back to report that we
7 have finished the closed session, when we have in fact
8 finished it.

9 So did you want to make any remarks?

10 COMMISSIONER SCOTT: No.

11 HEARING OFFICER KRAMER: Okay. So with that we are
12 going back into closed session. Thank you all.

13 MR. GALATI: Thank you.

14 (The Committee adjourned into
15 closed session at 12:24 p.m.)

16 (The Committee reconvened from closed
17 Session at 12:55 p.m.)

18 HEARING OFFICER KRAMER: This is Paul Kramer,
19 reporting back at 12:55, that the Committee has concluded its
20 closed session and as predicted has nothing to report. So
21 this Status Conference is adjourned. Thank you.

22 (Adjourned at 12:55 p.m.)

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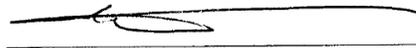
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REPORTER' S CERTIFICATE

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 25th day of October, 2018.



PETER PETTY
CER**D-493
Notary Public

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 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 25th day of October, 2018.



Myra Severtson
Certified Transcriber
AAERT No. CET**D-852