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In the Matter of: )
Joint Committee Conference - )
Walsh Backup Generating )
Facility & Sequoia Backup )
Generating Facility )
______________________________ ) Docket No. 19-SPPE-02

COMMITTEE CONFERENCE AND ORDERS ON HEARINGS

SANTA CLARA CENTRAL PARK LIBRARY
MARGIE EDINGER COMMUNITY ROOM
2635 HOMESTEAD ROAD
SANTA CLARA, CALIFORNIA

WEDNESDAY, FEBRUARY 26, 2020
12:30 P.M.

Reported by:
Bridgette Rast
APPEARANCES

COMMITTEE MEMBERS
Karen Douglas, Lead Commissioner
Patty Monahan, Associate Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harlan, Advisor to Commissioner Douglas
Ben De Alba, Advisor to Commissioner Monahan
Jana Romero, Advisor to Commissioner Monahan

HEARING OFFICERS
Susan Cochran, Hearing Officer
Galen Lemei, Hearing Officer

CEC STAFF
Leonidas Payne, Project Manager
Lisa DeCarlo, Staff Counsel

APPLICANTS
Scott Gallati
Joe Hubbard
Robert Sarvey

ALSO PRESENT
Karen Quist, Bay Area Air Quality Management District
Wendy Stow, Silicon Valley Power, Santa Clara Electric Utility

PUBLIC COMMENT
Frank Biehl, Santa Clara and San Benito Counties Building and Construction Trades Council
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COMMISSIONER DOUGLAS: I’d like to welcome you.

This is a Joint Committee Conference regarding the applications for small powered plant exemption for the Walsh Backup Generating Facility and the Sequoia Backup.

This is the Joint Committee Conference regarding the applications for a small powered plant exemption for the Walsh Backup Generating Facility and the Sequoia Backup Generating Facility. The Energy Commission has assigned a Committee of two commissioners to conduct each of these proceedings. I'm Karen Douglas, the presiding member of both Committees.

Patty Monahan who’s here to my right is the associate member of both Committees. With that, I'll introduce some of the people here today. Kourtney Vaccaro is my advisor. And when he comes in the room, Eli Harland is also my advisor.

To my -- let's see, to my immediate right is our hearing officer, Susan Cochran. Is your advisor here?

HEARING OFFICER COCHRAN: She's on the -- on the WebEx.
Commissioner Douglas: Okay. So, Commissioner Monahan's advisor, Jana Romero is listening by WebEx.

And is Galen here? Galen Lemei, hearing officer for the Sequoia SPPE application. I should have said Susan Cochran is the hearing officer for the Walsh SPPE application.

So with that, let me ask the parties to introduce themselves and their representatives. Starting with the applicants -- starting with the Sequoia applicant.

Mr. Gallati: Scott Gallati, representing CyrusOne who is owner of the Sequoia project.

Ms. Long: I’m Marcella Long. I’m an architect for the CyrusOne as well.

Commissioner Douglas: Thank you. And now we ask for the applicant for the Walsh project to make introductions.

Mr. Hubbard: Joe Hubbard, Senior Director, Design for Digital Realty.

Commissioner Douglas: Super, thank you.

Mr. Gallati: Scott Gallati, representing Walsh.

Commissioner Douglas: All right, thank you.

And Staff for the Walsh project.
MR. PAYNE: Hi, this is Leonidas Payne, I'm the Staff project manager on both Sequoia and Walsh but I've got different counsels depending on the project. So we'll start with Walsh because he's here.

MR. BABULA: This is Jared Babula, the Staff counsel for Walsh.

MS. DECARLO: Lisa DeCarlo, Energy Commission Staff counsel for Sequoia.

COMMISSIONER DOUGLAS: All right. Thank you very much.

And now I will ask the Interveners if they're present to introduce themselves. So let’s start with the Walsh Interveners. Is Helping Hand Tools here?

HEARING OFFICER COCHRAN: Are they online?

COMMISSIONER DOUGLAS: Oh, okay. We're working on unmuting the lines. I can't see that.

HEARING OFFICER COCHRAN: Can you also display who's online for right now? Please.

MS. VACCARO: Everyone is --

COMMISSIONER DOUGLAS: Let me ask, is Helping Hand Tools represented on the call? Could you speak up if you're on the phone?

HEARING OFFICER COCHRAN: I am not seeing those names, Commissioner Douglas.

COMMISSIONER DOUGLAS: Are they unmuted?
HEARING OFFICER COCHRAN: Everybody is unmuted --

COMMISSIONER DOUGLAS: All right.

HEARING OFFICER COCHRAN: -- except those who muted themselves it looks like.

COMMISSIONER DOUGLAS: I'll keep asking for Interveners and Robert -- California Unions for Reliable Energy also admitted for Walsh, are you on?

All right. And for Sequoia, Robert Sarvey has filed a petition to intervene, are you on?

MR. SARVEY: I'm on but I can barely hear you guys, you're just going in and out. The telephone is pretty much unusable right at the moment.

COMMISSIONER DOUGLAS: All right. So you can't hear well but you're on.

MR. SARVEY: I'm on but I can barely hear you guys. You're just breaking in and out.

COMMISSIONER DOUGLAS: All right. Well, we'll work on the audio issues.

And my advisor pointed out, Robert Sarvey is admitted, and CURE filed the petition to intervene.

CURE, are you on? They weren't on before.

HEARING OFFICER COCHRAN: Let’s check again for Helping Hand Tools.
COMMISSIONER DOUGLAS: All right. Helping Hand Tools, are you on the phone?

All right. At this point, I'm going to ask if there are any federal government agencies on the phone but not in the room. Could you speak up and identify yourselves?

Are there any officials representing Native American tribes, or are there any local government officials from county or local jurisdictions not in the room?

All right. Still on the phone here, what about any state agencies?

Okay. So at this point -- so Mr. Sarvey, are you able to hear? Are things any better?

MR. SARVEY: Things are better now. Thank you.

COMMISSIONER DOUGLAS: Excellent, I'm glad to hear that.

All right. So we'll refocus to in the room now. Are there any representatives in the room from federal, state, local, or tribal government agencies? If you could just come forward to the microphone and introduce yourselves, that would be great.

MS. QUIST: My name is Karen Quist.

COMMISSIONER DOUGLAS: I think it's not turned on. There’s a button on the front, on the top.
MS. QUIST: My name is Karen Quist and I'm with the Bay Area Air Quality Management District. I'm the program engineer for Sequoia.

COMMISSIONER DOUGLAS: Thank you.

MS. STOW: I'm Wendy Stow with Silicon Valley Powers in Santa Clara Electric Utility.

COMMISSIONER DOUGLAS: All right. Thank you. Anyone else? All right.

Commissioner Monahan -- oh, would you like to say a few words? All right.

Okay, I will now turn the proceeding over to the Hearing Officer Susan Cochran, who will discuss the general background for small power plant exemptions and lead the discussion on the Walsh application.

After we have finished the Walsh application discussion, we will turn the proceeding over to Hearing Officer Galen Lemei to lead the discussion on the Sequoia application.

HEARING OFFICER COCHRAN: Thank you and welcome. Can everyone hear me?

Mr. Sarvey, can you hear me?

MR. SARVEY: Yes, I can.

HEARING OFFICER COCHRAN: Okay. You are currently unmuted. If I start getting noise from background, I'm going to mute you again, but I will
unmute you when it's time for our participation. Is that okay? Is that okay, Mr. Sarvey?

MR. SARVEY: I can't hear you again.

HEARING OFFICER COCHRAN: As close as I can to the mic. Can you hear me now?

MR. SARVEY: Barely.

HEARING OFFICER COCHRAN: Okay. Is this better, Mr. Sarvey?

MR. SARVEY: Yeah, that's a little better.

HEARING OFFICER COCHRAN: Okay. So currently you are unmuted, try and keep background noise to a minimum if possible, please, so that we can keep you unmuted.

So the Committee’s issues save the date memo today's joint conference on January 8, 2020 in Walsh and on January 10, 2020 in Sequoia. Formal notice of today's Committee Conference was provided on February 14, 2020.

Because this is a conference on two separate applications, we will be conducting it a little differently from our normal Committee Conference process.

First as Commissioner Douglas indicated, I will brief you what a small power plant exemption, SPPE, is and outline some of the rules applicable to Energy Commission proceedings like these SPPE applications.

After I complete that overview, the public advisor will

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discuss opportunities for public participation in the application proceedings.

After the introductory information applicable to small power plants generally, we will then hear from the Applicant and Staff on the specifics of the two applications. We will first hear about the Walsh application. After that overview is complete, we will then hear about the Sequoia application. During these application specific discussions, the Committee and the parties will then discuss the schedule and other topics regarding the SPPE.

The Committees have also included the ability to have a closed session. We will decide whether that is necessary after we hear the presentations.

So let’s talk about small power plant exemptions. The Energy Commission -- now left the clicker.

UNKNOWN SPEAKER: I'll do it for you.

HEARING OFFICER COCHRAN: I had the clicker in my hot little hand. No, I got it.

Where would you like me to point the clicker?

Technical difficulties.

Perfect. Thank you.

The Energy Commission has the exclusive authority to consider and ultimately approve or deny
applications for the construction and operation of
thermal power plants that will generate 50 megawatts or
more of electricity. The law allows the Energy
Commission to grant an exemption to this authority if a
project will generate between 50 and 100 megawatts. This
exemption is known as the small power plant exemption.
The Energy Commission consists of five members.
Commissioner Douglas is the presiding member of the
Committee and Commissioner Monahan, the associate member
were appointed by remaining commissioners to conduct
proceedings on these SPPE applications.
The granting of an SPPE is governed by the
Warren-Alquist Act, the statute authorizing the Energy
Commission and granting its jurisdiction. To grant an
SPPE, the Energy Commission must make three distinct
determinations. The proposed power plant has a
generating capacity of up to 100 megawatts. No
substantial adverse impact on the environment will result
from the construction or operation of the power plant,
and no substantial impact on energy resources will result
from the construction or operation of the power plant.
In addition to the Warren-Alquist Act’s
requirements about environmental and energy resource
impacts, the Energy Commission must also analyze
the -- an SPPE under the California Environmental Quality Act, CEQA. The Energy Commission is the lead agency for SPPEs. In reviewing an SPPE, the Energy Commission considers the whole of the action. For the Walsh and Sequoia applications, the whole of the action means not just the backup generators but also the data centers they support, and the other project features you'll hear about such as substations and landscaping.

It is important to note that the Energy Commission’s decision to grant an SPPE does not approve the project. Instead, once granted, an exemption from the Energy Commission’s power plant licensing process, a project proponent would then seek permits and licenses that are required from other local agencies, in these SPPE proceedings, the City of Santa Clara and the Bay Area Air Quality Management District. Those agencies will also conduct any other necessary environmental analysis as responsible agencies under CEQA.

Today's conference is one of several public events that will extend over the next several months. At these events, members of the public can provide comments on the -- on the two projects. This Committee will eventually hold evidentiary hearings on each of the applications. These evidentiary hearings are part of the adjudicative process the Energy Commission is required to
follow in considering SPPE applications. Similar to a trial, the Energy Commission resolves the issue of whether to grant an exemption by reviewing evidence submitted by the parties. In all SPPE proceedings, there are at least two parties, the applicant requesting the exemption and the Energy Commission Staff performing the initial environmental analysis.

The Energy Commission’s regulations also allow members of the public to become parties to its proceedings. We refer to these folks as interveners. Interveners have the right to present evidence, both documents and testimony, to question other parties’ witnesses, and to challenge other parties’ evidence. The deadline to request to become an intervener is March 6 for the Sequoia application. The deadline for the Walsh application is March 30.

After the evidentiary hearing is complete, the Committee will prepare its proposed decision. The proposed decision will include the Committee’s analysis of the project under both the Warren-Alquist Act and CEQA as I have just described. The proposed decision is then considered by the Energy Commission at a public hearing. The Energy Commission can adopt, modify, or reject the proposed decision.
As I mentioned, the Energy Commission’s process for SPPE applications is an adjudicative one. The Energy Commission’s regulations and state law require that we ensure a fair process for everyone who participates in the proceedings. One of the ways we do this is through the ex parte rule. What this means is that parties in a proceeding and interested persons outside of the Commission, that is the general public, are prohibited from communicating with presiding officers about anything that may be in controversy or in dispute unless there has been a notice or opportunity for all parties to participate in the communication.

So you may be asking yourself, what is a communication? Communications include voicemail messages, text messages, e-mails, letters, telephone calls, and in-person discussions. Essentially any form of communication.

And then you may be asking yourself who is a presiding member? In these proceedings, the presiding members are the commissioners. Both Commissioner Douglas and Commissioner Monahan, as well as the other members of the Energy Commission, the hearing officers for each of the proceedings. For me, I'm the hearing officer for Walsh. Mr. Lemei is the hearing officer for the Sequoia application. Ex parte communications are also prohibited.
with individuals assisting the presiding officers, which
in this proceeding includes anyone serving as an advisor
to the commissioners and any attorney or other experts
assisting the Committee or Commission in the proceeding.

At this point we will pause for the public
advisor’s presentation. The public advisor will now
outline how her office can help members of the public
participate in these proceedings.

MS. GALLARDO: Good afternoon, can you hear me?

This is Noemi Gallardo, the public advisor at the
California Energy Commission. We're just waiting for my
presentation to pull up.

Thank you for your patience. So I'm here today
for the purpose of helping inform the public about how to
navigate SPPE proceedings and to be able to participate
in them. And specifically for today it is the Walsh and
Sequoia data centers.

This is important because the proceedings can
seem like a long and winding path, but we are here to
assure you that the Public Advisor’s Office can guide you
as needed throughout this path. So my presentation will
go over a little bit about the public advisor, outreach
we have conducted, parties involved, how to participate
in the proceedings, how to obtain information, and
overall contact information to get a hold of the Public Advisor’s Office.

So a little bit about the public advisor. This is a statutory ruling mandated role. It does require that the public advisor be a licensed attorney nominated by the Energy Commission and appointed by the Governor. The duties include helping the public understand the CEC process fees, assisting the public to participate in proceedings, recommending to the CEC, approaches to engage the public, ensuring timely notices to the public, identifying missing stakeholders and helping conduct outreach to them, and assisting with access to language services and reasonable accommodations. And I will point out that we did not receive any requests for language services or reasonable accommodations for this status conference.

And the main -- the main message to walk away with in terms of the Public Advisor’s Office is that we are a bridge between the CEC and the public and you can always contact us. We are here to serve and guide. Our contact information is publicadvisor@energy.ca.gov or you can reach us at 916-654-4489.

So Susan covered information about the parties involved so I will just highlight that we do focus on interested parties and this is any person who the CEC
finds and acknowledges as having a real and direct
interest in the proceeding. So we often will call them
stakeholders.

And I wanted to just go over a little bit about
the public outreach that was done for the Walsh and
Sequoia small power plant exemptions. So we posted a
status conference ad both in English and in Spanish in
the San Jose Mercury News. We informed the public about
the status conference through CEC LISTSERVs. We did
follow up e-mails and calls to parties who we thought
would be interested and within a 12-mile radius of the
data centers.

So these parties included local and state
elected representatives, Air District officials, chambers
of commerce, local schools, places of worship, community-
based organizations, environmental and social justice
advocates, environmental health groups, asthma clinics,
daycare centers, soccer clubs, and parks and recreation
departments. The CEC's Cultural Resources Division also
contacted California Native American tribes associated
with the project area and the CEC's STEP Division
contacted residents within 1,000 feet of the project
site.

Now in regards to how to participate in SPPE
proceedings. So one of the informal ways to do this is
to sign up for project listers so you can receive e-mail
notifications. The Walsh Data Center has a particular
LISTSERV and so does the Sequoia Data Center, which I've
posted here. And we will be docketing these -- this
presentation so you have access to that information if
you look for it.

You can attend events just like any other
events that the Energy Commission has. You can come in
person, you can join remotely, and you can also share
comments during the public comment period. You can also
ask the public advisor to relate the comments for you.
And you can submit written comments to the docket.

And I want to point out that for today, we do
have blue comment cards that I am showing to the folks in
person here that you can fill out if you'd like to make a
comment today during the public comment period. And
folks on the phone, I think we will have a chance
for -- for you to comment as well if anyone joins us from
the public.

I want to note that the comments made as a
member of the public are considered by the committee and
the Staff. The comments inform the record but
the -- they are not considered evidence and they are not
sufficient to support a CEC decision.
And as Susan also went over, there is a formal way to participate in these SPPE proceedings, and that is to become an intervener. So I will just focus here on the difference between an intervener versus a member of the public. An intervener can testify at hearings, present evidence and witnesses, object to other parties’ evidence, and cross-examine other witnesses. And because a testimony is given under oath, it is afforded more weight than public comments when facts are being considered.

And here I just posted ways that you can obtain more information about the SPPE proceedings and material associated with the Walsh and Sequoia in general.

And this final slide has all the information about how to contact the public advisor. Advisor is spelled incorrectly. We do know how to spell but we are human, make errors sometimes so please forgive that. And that concludes my presentation.

HEARING OFFICER COCHRAN: Thank you, Ms. Gallardo.

Now that the overview of SPPEs generally has occurred, and before we discuss the specifics -- thank you so much. And before we discuss the specifics of each project, easy for me to say, are there any public comments or questions on --
Before I get to public comment, I do want to clarify one thing, that currently the environmental review documents for both the Sequoia application and the Walsh applications are in process. So -- for -- because it is a CEQA process, your comments are important and do carry more weight -- well different weight, than they would in an adjudicative process. So it gets very complicated when we're dealing with both CEQA and our adjudicative process. But your comments are -- do matter to us and that's why we value public participation and we respect them and treat them with the weight and deference that we give them as required by law.

Any questions?

So again, now that the specifics of SPPE's generally have been covered, is there any public comment on the general SPPE process? Any questions?

Okay. So now we're going to turn to the Walsh Backup Generating Facility. And the first item is -- we will allow the applicant to present an overview of the Walsh application.

And as Ms. Gallardo indicated, this presentation, this PowerPoint presentation and her PowerPoint presentation will be docketed in each proceeding.
Mr. Gallati, I will remind you that if there is a PowerPoint presentation that you are providing, that you will need to docket that in the respective dockets.

Thank you.

MR. GALLATI: Just for the record, this has already been docked. This hearing officer, this was docked with the original status conference and so, it’s got a transaction (indiscernible).

HEARING OFFICER COCHRAN: Okay. Thank you.

MR. GALLATI: Okay.

MR. HUBBARD: All right. So again introducing, Joe Hubbard, (indiscernible) Digital Realty and senior director of Design. Our Walsh building, proposed building, is a four-story building, 435,000 square feet total.

Okay. We good now? Okay.

So again, I’ll back up. So our Walsh Avenue proposed project is a four-story data center project grossing 435,000 square feet. Attached to that, as part of the 435 is a three-story office portion. Our anticipated maximum critical power load is going to be 52 megawatts, which equates to just under 99 megawatts of generation backup power required to support that in the event we lose utility power.
So looking at the site plan, orientation on Walsh Avenue is to the bottom of the plan, the front of our building where the office portion faces plan south. There is a onsite Silicon Valley substation to the east. And our generation which are 32, 3-megawatt engines double stacked around the plan north side of the exterior of the building.

Anything?

Status -- status for this project right now is we did receive project clearance Committee approval. We have plans. We’re ready for permit for both the site development, the shell development, and the office portion.

We do have FAA approval as well for this project given our location, just west of the San Jose airport. So we do have that in hand, approval.

So, again, we’re permitting. Because of this, we’re still -- the City of Santa Clara is not proceeding with any design reviews as of yet, pending CEQA’s completion and completion of this process where jurisdiction is back to them.

Any question?

HEARING OFFICER COCHRAN: I do have one question. I’m sorry. When you said the 52-megawatt
critical load, is that both the IT load and the ancillary support for the air conditioning, et cetera?

MR. HUBBARD: No, ma’am, that’s strictly IT load.

HEARING OFFICER COCHRAN: Okay. Thank you.

And now I will turn to Staff. If you could discuss the status of the environmental review of the Walsh application.

MR. PAYNE: Sure thing. Leonidas Payne for Staff.

We don’t have any specific presentation materials. The only thing I’m relying on here is the information we just docketed recently in our status report. I’ll give you a key overview of where we are at with our documents.

So we -- make sure I have the dates right because I have three of these projects running through my head at any given time. We very recently published our initial study for Walsh. That happened on February 18th. The comment period we set for that for CEQA comments is March 23rd of this year. We set that a few days beyond what would normally be a 30 day just to make sure anything that happens with the State Clearinghouse. And this one might have fallen on a weekend as well, we tend to bump it a few days just to make sure anything like
that, we’re covered for the 30 days. So the 23\textsuperscript{rd} is the CEQA commenting deadline.

As far as the initial study itself, we did our standard analysis covering all of the technical areas that we cover according to Appendix G of CEQA. I won’t list the 21. We also do an analysis of environmental justice because that’s our own policy.

For this particular project, we only had one technical area in which we identified mitigation measures. That was biological resources. We got acceptance from the applicant that they were willing to -- to do that mitigation and also acceptance from the city, which we put in this in appendix in our document showing that they were willing to monitor and do any necessary follow up with that mitigation measure once this goes to local permitting.

So from our perspective, this one is ready to go for us to get public comments, do the evidentiary hearings, and eventually get to the decision point. So we’re primarily just waiting to hear the -- we know the basic parameters of how that will go based on a earlier document we got from the Committee on how the proceeding milestones would be spaced 7 days here, 14 days here, et cetera. But we’re waiting for the specific dates so that we can plan our attendance at those.
And we’re available to answer any questions.

HEARING OFFICER COCHRAN: I now ask if our Interveners are on the phone yet. And that would be for the Walsh proceeding. That would be Helping Hand Tools and California Unions for Reliable Energy.

Do they have any comments they’d like to make at this time? Any other (indiscernible), I just want to make sure that they’re not -- okay.

So in preparation for today’s conference as Mr. Payne mentioned, we asked the parties to submit status reports and we got status reports from both the Applicant and Staff. Based on a review of those statements, I do have a couple of permitter questions and then we’ll talk what everybody is always most excited about, which is schedule.

Current on Staff, you filed a revised notice of intent to adopt the Initial Study Proposed Mitigated Negative Declaration, which I am going to call the ISPMND. You filed a revised notice on February 20.

Does that effect the review dates that you submit of March 23?

MR. BABULA: I’m not clear what -- this is Jared Babula. I’m not clear what revised notice you’re referring to.
HEARING OFFICER COCHRAN: There’s a -- there’s
a revised notice in the docket that supersedes the
original postdate of the notice of intent to adopt. And
it makes some reference to changes before publication or
mailing, which is why I brought it up. Because I
didn’t -- I wanted to make sure it wasn’t going to affect
the comment period.

MR. PAYNE: I -- I think I remember what that
is now, and it was to make sure that we got information
associated with this meeting included in some of our
documents. So there was no change to comment periods.
We -- the timing of these, it’s such that we didn’t know
if we should be talking about public commenting
opportunities in the future or in the past.

So I think that that’s what we -- we caught
that and wanted to make sure it wasn’t -- that it was
clear for the record.

HEARING OFFICER COCHRAN: We appreciate that.
I just wanted to make sure that it wasn’t going to impact
your comment period.

MR. HUBBARD: Uh-uh.

HEARING OFFICER COCHRAN: Thank you.

MR. HUBBARD: Thanks for reminding me about
that fun part of doing this right at the last second.

HEARING OFFICER COCHRAN: That’s okay.
And then, Staff, I would also request that once you’ve received the notice of completion and environmental review document transmittal from the Clearinghouse, if you will docket that. Because it has a nice -- it shows exactly when it was received and how long we had the comment period for and to whom they sent the notice with State Clearinghouse.

MR. PAYNE: Yes, of course.

HEARING OFFICER COCHRAN: Thank you so much.

So now let’s talk about schedule.

The committee filed a scheduling order for the Walsh application on January 20, 2022 (sic). And this slide shows two-thirds of that schedule. You’ll see that it talks about the fact that there have already been filings, and as Mr. Payne described it, we set milestones. In other words, seven days after this, five days after this.

In its status report, the Applicant stated that it agreed with the recently published ISPNMD and requested that the Committee hold a joint prehearing conference and evidentiary hearing. I’d like to hear from the parties on the pros and cons of having both of those events on a single day.

MR. GALLATI: I’ll go first. I’ll go first since I’m the one requesting it.
The comments that people file, and we have an Intervener that is active in filing comments, they very much look like the testimony. In fact, the last proceeding, there was some concern whether something was a comment or testimony. The purpose of a prehearing conference is to identify issues that we have and to identify how long of a hearing we need and what resources we need.

My experience is that these facilities, the issues are very narrow. They are not broad. They don’t take multiple days of evidentiary hearing. And, in fact, I suspect that Staff would support being able to not have a hearing. We could probably go, unless somebody files something that’s in disagreement with the ISPMND, we’re in complete agreement with each other. We can stipulate and get the hearing done very, very quickly without any live testimony. So I think the only live testimony that we’re going to have is going to be because an intervener requests it.

Certainly the Commission has been through this process twice now on the kinds of issues that are being raised, and we think that we can streamline that process very, very quickly relying on how the Committee has decide -- how the Commission has decided in prior
projects, on methodology and things like that that
generally take a long time.

So because of that, I don’t believe that we
need to plan for the evidentiary hearing in the same way
that you would in a complex project, and therefore we’d
ask for the prehearing conference to be scheduled and
then that will help set the order that we just go
directly into evidentiary hearing.

We’ve done this on some very complicated cases
in power plant world. And where we’re at now is
we’re -- you’ll see this project and the next project be
saying the same thing is that they’re both ready for the
city to issue the permits. That’s all that needs to
happen. They’ve done everything they can up to the --
the permit issuance, which means they need the Energy
Commission document. Sooner they can get the Energy
Commission document, the sooner they can begin
construction.

So we ask for places where we don’t believe
that there’s any rights lost and we’ve done it in the
past, and we think that it makes sense to do that here.

HEARING OFFICER COCHRAN: Staff?

MR. BABULA: This is Jared Babula.

Staff agrees with what (indiscernible) said
that two things can be combined. It’s important to
remember and realize that in developing the initial study for the Walsh project, Staff has the experience now of the McLaren project, Laurelwood, and working with Sequoia. And so we took the lessons from those other projects and looked at how the decisions were crafted and what information the Committee needs and ensured that we had a robust discussion in our initial study that takes in all the prior history and knowledge.

And so we feel that the Walsh initial study is very detailed and hits all the critical concerns that the Committee has had in the prior cases, and that we’re in a much stronger position to have the evidentiary hearings be much simpler because all the issues have been addressed, all the key governmental agencies have been contacted. We have -- we worked with the FAA on the airport stuff. We worked with Silicon Power to get the liability updated information there. So I think all that prework, it has helped, and will help in streamlining the rest of this process.

HEARING OFFICER COCHRAN: Okay. Thank you.

Again, I would ask if Interveners are on the line -- Raj, maybe if we can unmute everyone to make sure that -- sometimes have called in late.
We’re going to unmute everyone to see if any --
if either Helping Hand Tools or California Unions for
Reliable Energy have joined us.

And while we are unmuting everyone, can we make
sure that people are still able to hear what we’re
broadcasting? A transcript of this hearing will be
available later, but it’s always nice to make sure that
you can hear it concurrently, especially because we do,
as I said, have an open CEQA comment period.

Again, looking for -- I’m going to try to turn this on again. Bear with me.

CURE and/or Helping Hand Tools, if you are on
the line, please let us know if you’d like to comment on
the discussion we just had about scheduling in this
proceeding, specifically a joint public hearing and
evidentiary hearing. Prehearing conference, I’m sorry,
evidentiary hearing.

CURE and/or Helping Hand Tools.

Can everyone hear me online? Can anyone hear
me online?

UNKNOWN SPEAKER: Yes, I can hear you
(indiscernible).

UNKNOWN SPEAKER: We can hear you.

MS. COCHRAN: Okay. Thank you. Okay. Let’s
mute everyone again so we don’t get the feedback.
I did not hear anything from CURE or Helping Hand Tools on this. Again, we’re still fairly early in the public review process for the ISPMND for the Walsh application. So at this point I think the best I can say is that the Committee may be issuing an updated scheduling order or providing notice of future events, such as the prehearing conference and evidentiary hearing maybe a little later after we’ve seen whatever comments may be coming in on the ISPMND.

With that, before moving on to the Sequoia application, are there any public comments on the Walsh application?

Ms. Gallardo.

MS. GALLARDO: Hello. Can you hear me? Yes, we do have a comment from Frank Biehl of the Santa Clara and San Benito Counties Building and Construction Trades Council.

Frank, you can come up.

MR. BIEHL: Thank you for the opportunity to provide comment today. I’m Frank Biehl, I’m representing the Santa Clara and San Benito Counties Building and Construction Trades Council. We have 24 affiliated trade unions representing over 30,000 union members in Santa Clara and San Benito County.
We speak in favor of the proposal that is put before you today, in favor of the date exemption that is being requested.

Thank you.

HEARING OFFICER COCHRAN: Thank you.

Was that the only blue card? Okay.

Now that we have discussed the Walsh application, I am now going to turn over the proceeding to Hearing Officer Galen Lemei for the Sequoia application.

I’m sorry. Is there anyone online?

Sorry. Thank you.

So I was mistaken. I forgot that we had said that we were not going to start the Sequoia until 2:00. So it’s now 1:15, so we’re going to take a 45-minute break after we see if there’s any public comment on the Walsh application.

Again, we’re going to unmute everyone.

So I’m going to turn my mic off and see if there is any public comment on the Walsh application.

Anyone at all on the Walsh application on the phone?

Okay, seeing none, we are now at a break until 2:00 when we will start the Sequoia Backup Generating Facility presentation.
Thank you.

(Off the record at 1:20 p.m.)

(On the record at 2:04 p.m.)

HEARING OFFICER LEMEI: We are reconvening. I am Hearing Officer Lemei. It sounds unduly formal, but here we are.

So we are reconvening with our discussion of the Sequoia project, having already covered the Walsh project, as well as general matters pertaining to both proceedings.

I want to do a quick check and make sure that everyone is here. I see Applicant and Applicant’s counsel. Do you want to introduce yourselves?

MS. LONG: Marcella Long, the project architect for project Sequoia. I’m representing CyrusOne.

HEARING OFFICER LEMEI: And I see Applicant and Applicant’s counsel. Would either of you like to -- or sorry, Staff. Staff. Staff. Staff and Staff’s counsel.

MR. PAYNE: Leonidas Payne again, representing Staff for Sequoia.

MS. DECARLO: Lisa DeCarlo, Energy Commission Staff counsel.

HEARING OFFICER LEMEI: Excellent.

Intervenors. Mr. Sarvey, are you on the
line? Mr. Sarvey, if you are on the line --

MR. SARVEY: (Indiscernible.)

HEARING OFFICER LEMEI: Sorry?

MR. SARVEY: Hello?

HEARING OFFICER LEMEI: Mr. Sarvey, I hear you.

Can you hear me?

MR. SARVEY: Hello?

HEARING OFFICER LEMEI: Yes, hello.

MR. SARVEY: Yes, I can.

HEARING OFFICER LEMEI: Excellent. All right.

MR. SARVEY: I can hear you.

HEARING OFFICER LEMEI: Perfect. So we are --

we are back. We have both members of the Committee

present, Commissioner Karen Douglas and Commissioner

Patty Monahan. And I will proceed with the discussion of

the Sequoia project.

So Applicant.

MS. LONG: So I’m Marcella Long. The Sequoia

project is an 85-foot tall, four story, 703,000 square-

foot data center. It’s centrally located on a site on

2600 De La Cruz, adjacent to the airport, San Jose

airport. And at full buildout it will house a total of

11 data halls with a critical load of 67.5 megawatts, and

that’s critical IT load only.

The building is designed in steel structure,
precast and curtain wall. It has shading devices, and those are the images that you guys can see there. So if you just keep moving down, there’s a bird’s eye view of the building on the site. And then one more down you can see a site plan. Or we might have to zoom out.

There’s -- right now we have received approval from the planning committee. We’re currently in end of plan check waiting for the CEC to be released so that we can get a permit issued. And we’ve also received approval from the FAA on that end as well.

HEARING OFFICER LEMEI: Does anybody have any questions?

Hearing none.

Any questions from any members of -- okay, no questions from us.

Staff, could you please comment on the environmental review on Sequoia from your perspective?

MR. PAYNE: Will do. Leonidas Payne for Staff.

And (indiscernible) a separate presentation I’m referring to information that we included on our status report that we docketed prior to this meeting.

The key information that I wanted to get out there is that our publication date for our initial study.

For Sequoia it was January 23rd of 2020. And our CEQA comment period is set to run out on February 28, 2020,
which is this Friday. So that’s important for folks in
the public to know that this is the last week for
submitting comments.

Similar to what we did on Walsh, we bumped that
out a little bit to make sure that anything associated
with the State Clearinghouse notification of agencies,
everyone got their 30 days. And I would also note that
we also bumped it out to make sure that it was after this
particular event so that the public could provide comment
today.

The document itself was an initial study which
covered the 21 technical areas that we cover and all that
all derived from CEQA Appendix G. We also cover
environmental justice as part of our analysis, it’s
agency policy.

There were two areas in this particular project
where we identified mitigation measures. Those were in
biological resources and geology soils. The geology
soils one in particular involved paleontological
resources. Those mitigation measures were agreed to by
the Applicant and we got a letter from the city accepting
responsibility for those once that -- this goes to them
if it is exempted.

So that’s basically the story on the analysis.
We’re, at this point, just waiting for the specifics
about the dates for the remainder of the proceeding events so we can prepare. And we’d be happy to answer any questions that you have.

HEARING OFFICER LEMEI: Thank you -- thank you, Staff. Thank you -- thank you, Staff. I feel like the microphone is not picking me up.

So just noting, briefly -- I guess before I move to that, I’ll -- so I’ll just pause for a moment and check in with the Intervener in this case, Mr. Sarvey. I have not -- I’m not aware of any status reports from you. Did you have any comments on the proceeding from your perspective at this time?

MR. SARVEY: Well, I’m having a really hard time with the phone connection, it’s cutting in and out but as far as proceeding goes, I do have a motion to compel the Applicant to respond to steps Data Request 12 through 14. That’s the only thing I have going right now in terms of status.

I’m working on filing my comments on ISMND, and anticipate they’ll be ready by Friday.

HEARING OFFICER LEMEI: Very much appreciate that.

So moving on, then, to the issues discussion. There are two matters pending before the -- before the Committee at this time. The first is, we do have a
petition to intervene from the California Unions for Reliable Energy. The deadline to respond -- the petition to intervene put the Commission’s regulations in the absence of an order from the Committee varying from that is February 28th, also this Friday. To date, there have no comments on the record in response to that petition to intervene.

I will just ask. Is -- is CURE participating in this proceeding remotely? I’m not hearing an affirmative response, so. So I’ll repeat the question. Is CURE participating in this proceeding remotely?

All right. Not hearing from CURE, but know that your petition to intervene is before us.

Second, we do have the motion that Mr. Sarvey referenced. Unless the timeframe is modified by the Committee, then responses to that would be due -- will be due on -- by March 6th.

I will note that we do have a response from Applicant in the record of the proceeding. Up to this point, we do not have a response from Staff.

So that takes us to scheduling. So thank you for advancing those slides.

The Committee filed a scheduling order for the Sequoia application on January 29th. That is, or at least relevant portions thereof, are currently on the screen.
As in Walsh, Applicant’s status report for this proceeding proposed having the joint prehearing conference and evidentiary hearings together. I guess, just as a -- I’ll just allow you the opportunity if you have anything to add to the discussion that already took place in Walsh. Interested in hearing from the Applicant and from Staff, and from the Intervener in this case about that.

MR. GALLATI: I don’t -- I don’t have anything else to add. But once we’re done with the schedule, could we go back to the motion?

HEARING OFFICER LEMEI: Yes, we can.

MS. DECARLO: Staff does -- Staff does not have -- this is Lisa DeCarlo for Energy Commission’s Staff counsel.

We don’t have any objection to combining the prehearing conference and the evidentiary hearing as long as the proposed schedule goes somewhat according to the proposal where there is a sufficient amount of time between the filing of the prehearing conference statement and the hearing date so that Staff has a good awareness of what subject areas parties want to actually dive into evidentiary hearing is about.

HEARING OFFICER LEMEI: So Staff is more concerned about the prehearing conference statements than
the prehearing conference itself?

MS. DECARLO: The identification of what areas, yeah, are likely to be subject to evidentiary hearing.

Historically, I think that committees have been pretty open if a party has identified an area for a deep dive in evidentiary hearings. We’ve been pretty willing to entertain that. So my assumption is that whatever is identified in prehearing conference statement, unless there’s a valid reason for objecting, would likely entail an evidentiary hearing.

HEARING OFFICER LEMEI: All right. Thank you for that.

Mr. Sarvey, do you have anything on the schedule that you would like to add at this time?

MR. SARVEY: Of the Commission.

HEARING OFFICER LEMEI: Mr. Sarvey, I’m so sorry.

MR. SARVEY: I will be relegating with comment --

HEARING OFFICER LEMEI: Mr. Sarvey, I’m so sorry.

MR. SARVEY: So.

HEARING OFFICER LEMEI: Mr. Sarvey, we just got you unmuted. I am so sorry. Can you please start over?

MR. SARVEY: You bet. Sure. I don’t have an objection to having a prehearing conference on the same...
day but in the past, I’ve submitted testimony as being accepted as expert testimony. But recently the Commission has relegated me to comment. So I anticipate that it’s going to be a pretty heavily contested evidentiary hearing. I’m probably going to go back to my own method of dragging expert witnesses, Applicants, Staff, since my testimony is not considered expert. So I anticipate it’s going to be very vigorous.

So I will -- either way, you can do it either way you want to do it.

HEARING OFFICER LEMEI: Thank you for that, Mr. Sarvey, we do appreciate hearing your perspective on that.

So I’ll just say that the Committee is working to work out the details and establish dates for the prehearing conference and evidentiary hearing, and once those dates are established, then the -- the prehearing conference statements flow from that. At this time, we’re working to adhere to the schedule as -- as proposed. We hope to get -- get a notice or dates posted, or an updated schedule soon.

Mr. Gallati, you wanted to go back and say a few words about the pending motion.

MR. GALLATI: Yes.

HEARING OFFICER LEMEI: I’m sorry. The pending
motion to compel filed by Mr. Sarvey.

MR. GALLATI: Correct. Mr. Lemei, one of the
things that you said was that you had not yet received a
response from Staff. Don’t believe the Committee needs a
response from Staff. If Staff wants to, there’s no
motion compelling Staff to do anything.

There’s a motion compelling us to prepare a
cumulative impact analysis. I’ve already responded to
that. I’m ready to submit on the writings, and we’d love
to have a ruling on that without having an opportunity
for another hearing. Or, I’m prepared to argue it today
would the Committee entertain that.

As you know, the Committee regulations, unless
the presiding member makes an exception, doesn’t allow a
moving party to reply to a reply.

So all the documents are in front of you right
now and obviously Mr. Sarvey knows his motion, he made
it. We would like a quick ruling from you. We worry
that when the rulings get moved to after you hear
evidentiary hearings, it delays the evidentiary process.
It delays the potential decision, so we’d ask you to
either consider that, either today, or I’m happy to
submit from the writings. Don’t believe we need a
hearing to argue it.

HEARING OFFICER LEMEI: Just a clarifying
question. I understand your position that Staff doesn’t have an obligation, from your perspective, to respond to that motion, is it your under -- you’re not suggesting that Staff, that it wouldn’t be appropriate for Staff to respond if they wish to.

MR. GALLATI: No. If they wish to. But I think the Committee could also -- then in that case, I’ll ask for an order shortening time so that I can get a ruling on that rather than waiting for Staff to respond to something that may be helpful but I don’t think it’s necessary for the Committee to rule.

HEARING OFFICER LEMEI: I will turn to Staff and ask if you have any comments on the motion for Mr. Gallati’s position on the motion.

MS. DECARLO: We agree --

HEARING OFFICER LEMEI: I’m sorry. Hold up. Hold up.

To clarify, we’re asking the procedural question, not asking you to respond to the merits of the motion but regarding the question of do you intend to respond? Do you object to an order shortening time? On the -- those are the questions.

MS. DECARLO: We would certainly be available to respond if the Committee would like Staff’s input or opinion on the necessity of the original information.
requested and the substance of Staff’s completed analysis as projected in the, or as included in our initial study. We are certainly available to provide that information.

We agree with Mr. Gallati that the motion, that Sarvey’s petition to be denied on procedural grounds, and additionally, we would proffer that it should be denied on substantive grounds because the information initially requested is not fundamentally necessary for -- for the analysis. We can certainly provide that in more detail in a response if the Committee would like.

With regard to the motion to shorten time, if that’s a motion shortening time for Staff to provide their response, I would have concerns about that.

HEARING OFFICER LEMEI: So my -- I believe the Committee would appreciate Staff’s response as you describe.

And in terms of then the question of the timeframe for that response, I understand your -- if I’m understanding you, you would object to Mr. Gallati’s request that the Committee shorten time for Staff’s response.

MS. DECARLO: Sorry, I’m just looking at the calendar just to find out how much time we have. Because initially Staff’s response would be getting into a lot of the substance of the Air Quality
Analysis, and I do think we want to make sure that we do a thorough and clear job of explaining that. And it -- just from a short calculation, we have what, that would be nine days, including two weekend days. That might be too short of a time. Anything less than that to provide something that has gone through full review at the Energy Commission before being published.

HEARING OFFICER LEMEI: Okay. So you are not objecting to the time that would be established by regulation in the absence of an order of the Committee, which is March 6th.

MS. DECARLO: Correct.

HEARING OFFICER LEMEI: Okay. Mr. Sarvey, do you have any comments on the procedural questions that we are discussing with respect to your motion?

MR. SARVEY: No. I don’t have any comments at all. Prepared -- prepared move at any time.

HEARING OFFICER LEMEI: Thank you, Mr. Sarvey.

My apologies. Mr. Gallati.

MR. GALLATI: I’m just going to withdraw my request for order shortening time after hearing Staff’s explanation that they would be providing a substantive response and not simply a procedural response that the motion was the wrong way to go about this.

HEARING OFFICER LEMEI: Understood. Okay. So
we -- I think that we have covered the procedural aspects
of Mr. Sarvey’s motion. At this time, the Committee is
not ordering a departure from the timeframe established
by the regulations for the parties to respond. In this
case, Staff is the only party with an outstanding -- at
this time, Staff is the only party that has not responded
to the motion.

All right. I think that covers what we needed
to cover from the Committee’s perspective.

At this time we’d like to move to public
comment on the Sequoia application for a small power
plant exemption starting with people in the room.

MS. GALLARDO: Yes, this is Noemi Gallardo,
public advisor for the Energy Commission. I would like
to introduce Frank Biehl of the Santa Clara and San
Benito Counties Building and Construction Trades Council.

MR. BIEHL: Thank you. Speaking once again
today on a different issue but saying the same thing,
basically.

I’m Frank Biehl, representative of Santa Clara
and San Benito Counties Building and Construction Trades
Council. We represent 24 different affiliated Trade
Unions with over 30,000 members in Santa Clara and San
Benito County.

We are supportive of this particular project
that is in favor -- before you today, and we hope that
you grant an exemption that they’re requesting.

Thank you.

HEARING OFFICER LEMEI: Thank you, Mr. Biehl.

No other comments from parties in the room?

Seeing none.

Move to those participating remotely.

We are -- we should be unmuted.

Is there anyone participating by WebEx or via
telephone that would like to make a comment at this time?

Hearing none.

Okay. No. I thought I heard somebody.

Okay. Hearing none, I think we can close the phone
lines.

So the next item on the agenda is if the
Commission wishes to adjourn to closed session.

The Committee is not -- the Committee is not
adjourning to closed session at this time. So I will
turn it over to Commissioner Douglas to make closing
comments.

COMMISSIONER DOUGLAS: All right. Thank you,
everybody.

I just wanted to say a couple things in
closing. First off, I’d like to thank the library for
hosting these meetings and the City of Santa Clara. It’s
great to be here. We wanted to hold a proceeding in the
local area and we combined the two cases and, you know, I
think it was valuable to do that and we appreciate the
support, particularly from the library in being able to
do this.

So thank the parties. We’ll look forward to
your response to motion, Staff, you know, and we have
taken everything that we’ve heard under submission and
we’ll move expeditiously and finalize the schedule. So I
think that’s all I wanted to say.

Commissioner Monahan?

COMMISSIONER MONAHAN: Yeah, just thanks to
everybody for participating. Actually, we used the
location to be able to go and visit the sites, which was
very helpful from my perspective. So look forward to the
next steps in this process and to moving as expeditiously
as possible to make the decision.

HEARING OFFICER LEMEI: All right. Thank you
all so much for being here and for helping to make this a
successful joint conference.

The joint conference is adjourned.

(Thereupon, the Joint Conference
was adjourned 2:30 p.m.)

-- o O o --
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 notary public and 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 2nd day of June, 2020.

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of June, 2020.

_________________
Myra Severtson
Certified Transcriber
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