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In the Matter of:

Application for Small Power Plant Exemption for the Sequoia Data Center Docket No. 19-SPPE-03

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MOTION TO COMPEL

BY INTERVENOR ROBERT SARVEY

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

WEDNESDAY, MARCH 11, 2020
2:00 P.M.

Reported by:
Martha Nelson
APPEARANCES

HEARING OFFICER
Galen Lemei

COMMISSIONERS
Karen Douglas, Presiding Member
Patty Monahan, Associate Member

ADVISORS
Eli Harland, Advisor to Commissioner Douglas
Kourtney Vaccaro, Advisor To Commissioner Douglas
Kristy Chew, Technical Advisor on Siting

STAFF
Lisa DeCarlo, Senior Staff Attorney
Ann Chu

INTERVENOR
Robert Sarvey

APPLICANT
Scott Galati, Esquire, Dayzen, LLC
Marcela DeLong, Architect

CONSULTANT
Brewster Birdsall (via WebEx), Aspen Environmental Group
COMMISSIONER DOUGLAS: So, again, good afternoon. This is a hearing on Mr. Sarvey’s Motion to Compel the Applicant to perform a Cumulative Impacts Analysis. And this is for the Sequoia Backup Generating Facility, SPPE.

I’m Karen Douglas, the Presiding Member of this Committee. And I’ll start by introducing everybody on the dais.

So Patty Monahan, the Associate Member, is at the left of the Hearing Officer, Galen Lemei, who is next to me. My advisors, Kourtney Vaccaro and Eli Harland are to my right. And Kristy Chew, the Technical Advisor on Siting for the Commissioners is here with us as well.

I’ll now ask the parties to please introduce themselves and their representatives, starting with Applicant.

MS. DELONG: I’m Marcela DeLong. I’m an architect. I’m representing CyrusOne here today.

COMMISSIONER DOUGLAS: Thank you.

And Staff?

MS. DECARLO: Lisa DeCarlo, Energy Commission Senior Staff Attorney. Also here
today is Ann Chu and Brewster Birdsall, our technological experts in the areas of air quality and public health, as well as additional Staff in the audience should the need for them to weigh in arise.

MR. SARVEY: Robert Sarvey, Intervenor.

COMMISSIONER DOUGLAS: All right. Thank you.

And Mr. Galati?

MR. GALATI: Scott Galati representing the Applicant.

COMMISSIONER DOUGLAS: All right. Thank you very much.

Let’s see, we have an application to intervene from C.U.R.E. Just curious, is C.U.R.E. in the room or on the WebEx? All right.

Any public agencies, starting with, well, starting with people in the room, federal agencies, state agencies, other than the Energy Commission, Native American tribes or nations, local agencies? All right.

What about on the phone? Okay.

So with the conclusion of these introductions, I’ll now turn over the conduct of the rest of the Committee conference to Hearing
MS. DECARLO: Before we begin, if I could make one request? I just want to confirm that Brewster can, indeed, hear us because he’ll be an important aspect of the conversation? So if we could --

MR. BIRDSALL: Hi. This is Brewster.

I’m un-muted right now.

MS. DECARLO: Great. Thank you, Brewster.

HEARING OFFICER LEMEI: All right. Can everyone hear me? I am Galen Lemei, the Hearing Officer in this proceeding.

As Commissioner Douglas stated, this is a hearing on Mr. Sarvey’s Motion to Compel the Applicant to perform a Cumulative Impacts Analysis. Specifically, Mr. Sarvey has filed a Motion to Compel Applicant to respond to Staff’s Data Request number 14, which requested Applicant to, quote, “Provide a cumulative important modeling analysis, including SDC, of existing data centers collocated on the SVP-60 kV Loop (phonetic) and those sources identified above,” end quote.

This request was promulgated by Staff on
September 13th, 2019 as part of Data Request Set number 1. Mr. Sarvey filed his motion on February 21st of this year. Applicant filed a response to Mr. Sarvey’s motion on February 25th. The Committee issued notice of this hearing on February 28th. Staff filed its response to the motion on March 6th. And Mr. Sarvey filed a reply on March 9th. All of these filings were timely and the Committee has reviewed all submissions of the parties on this motion to date.

With that set up, I would now ask the moving party, Mr. Sarvey, to speak to his motion.

MR. SARVEY: Thank you. My purpose here today is to give you an overview of, actually, what is operating out there and what is expected to come.

Now I gave you a handout here that provides -- and you’ve seen both of these maps, they’re in -- but the top map gives you a picture of all the data centers currently operating in Santa Clara. And on the back, I’ve put their power requirements and their addresses on the back for the Committee. I know the Committee has been asking these questions. This information
hasn’t been provided, so I’m providing it now.

The second map, you’ve already seen, are
the data centers under CEC review. And you can
see, there’s quite a bit of overlap between
what’s going -- what’s there now and what we are
now looking at to permit.

The power requirements for the data
centers under review total 650 megawatts, and
that doesn’t include another newly-announced
project. The City of Santa Clara has also
approved several data centers not identified on
the map I gave you. Their power requirements
amount to roughly 120.5 megawatts. And I listed
those in my response to Staff. In total, there’s
over 1,150 megawatts of power required for just
the data centers, and that’s just an estimate out
of the publicly-available information. There’s
other data centers that don’t offer you their
location, don’t offer you their power
requirements, so there’s other information out
there.

Since each of these data centers oversize
their generating facilities, I’m going to roughly
estimate there’s 1,400 megawatts of diesel-fired
generators crammed into roughly three square
miles. So Staff is evaluating the SPPE Data Center using BAAQMD CEQA Guidelines but BAAQMD has already told them that they’re not going far enough with their analysis. And I won’t get into that because that’s not part of this, what we’re looking at today.

But you’ll note that on the second map that I gave you it lists six of the facilities -- or seven of the facilities that have been -- two have been approved and five are under review. And the total greenhouse gas emissions from this is 860,799 metric tons a year, which is very significant. The annual megawatt hours required, 4,568,006.

So in my eyes, this place is a mess. And I understand this is going to be a very complicated, and Staff has explained, very complicated to model all these things and I understand that. And that’s why I believe this should be an AFC proceeding, not an SPPE. These are some serious emissions here, very localized in a small area, and I believe some kind of cumulative impact needs to be assessed here.

Thank you.

HEARING OFFICER LEMEI: Thank you, Mr.
Sarvey.  Sorry, I was looking at your materials.

I would now ask the Applicant, the party to whom the motion is directed, to speak to the motion.

MR. GALATI:  First, I wanted to be respectful and let Mr. Sarvey say the things that he wanted to say.

I would like to make a general objection that most of those are testimony that should be subject to cross-examination.  They’re facts that were presented to this Commission that we haven’t been able to respond to.  It’s why I made a response that was largely procedural and not substantive because I don’t believe that today is the day to decide exactly what level of cumulative analysis should be done.  I think today is the day to decide whether Mr. Sarvey has the right or the standing or the ability to compel the Applicant to respond to a Staff data request?  And I would argue that he does not.

The only way to interpret his motion, although he doesn’t say under what authority he is making a motion to compel, since he’s making a motion to compel to respond to Data Request 14, it has to be under 1716.  And what that says is
that the party who has asked the question has the right to bring a motion to compel. Staff didn’t do so. The time to bring such a motion to compel is past.

And, in addition, if the Committee wanted to do their best to interpret this as a data request from Mr. Sarvey to us, if he had done it timely, we could have responded to that and then had a discussion about whether or not we should do this work, but that is also untimely.

And lastly, what Mr. Sarvey is arguing, essentially, is that the methodology that was used -- so let’s make it really clear, a cumulative impact air quality analysis was done by the Applicant. A cumulative air quality impact analysis was done by Staff. What hasn’t been done is a complex modeling effort and that is what Mr. Sarvey is asking should be done.

I think that that is more appropriate for evidentiary hearing for him to bring his offer of proof and for us to be able to have our experts here and the Committee to be able to hear from the panel of experts, subject to cross-examination, why we did what we did and why we can’t do what Mr. Sarvey is asking.
So I think this is relatively simple. And it does not preclude Mr. Sarvey from bringing these exact arguments up at evidentiary hearing and that’s the appropriate place because there’s a lot of questions I’d like to ask him, too, about what he just testified to. So we ask you to dismiss the motion please.

HEARING OFFICER LEMEI: Thank you, Mr. Galati.

I would now invite Staff to speak on the motion.

MS. DECARLO: Lisa DeCarlo, Senior Staff Attorney.

We agree with the Applicant that the proper forum to really dive into these issues is, really, the evidentiary hearing. We provided a response to Mr. Sarvey’s motion seconding the procedural concerns expressed by Applicant, but also providing additional substantive information, just so the Committee understood Staff’s position on the substance, that we were comfortable with the information we already had, based on the BAAQMD significance thresholds, we could reach a
conclusion and no further additional information was required concerning the project’s potential impacts on air quality. And we can certainly go into that in more detail here. We have air quality and public health staff. But we also believe that evidentiary hearings are the best forum for that discussion.

HEARING OFFICER LEMEI: Thank you. Mr. Sarvey, would you like to respond to anything --

MR. SARVEY: Yes, thank you.

HEARING OFFICER LEMEI: -- that Applicant or Staff have said?

MR. SARVEY: From my review of Committee hearings and stuff, this is the information that the Committee has been asking for. And I believe the Committee needs this information to make an informed decision.

And not only that, this type of information is required by CEQA. And I go through that in my pleadings and such and I’m not going to repeat that here. But, you know, if you want to go ahead and provide a decision that’s not compliant with CEQA, of course, that’s your
choice, but I believe you need that.

Thank you.

HEARING OFFICER LEMEI: All right. One moment please.

(Off mike colloquy between Hearing Officer Lemei and Commissioners Douglas.)

HEARING OFFICER LEMEI: All right. Thank you.

Based on the written materials that were provided, which has now been supplemented by the comments from each of the parties, the Committee has prepared a few questions that they’d like to ask the parties.

The first question is for Mr. Sarvey and that is that if your motion were granted and the information required by Data Request 14 was fully responded to by the Applicant, how would or should this information affect the CEC’s review of the Sequoia SPPE application?

MR. SARVEY: My guess is that if you do require this information, you’re going to find out that this project violates the California and federal NO2 standards and, therefore, it’s going to be a significant impact and, therefore, they’re going to be required to file an
application for certification.

HEARING OFFICER LEMEI: Thank you, Mr. Sarvey. That was concise.

Applicant, can you please explain --

(Off mike colloquy between Hearing Officer Lemei and Commissioners Douglas.)

HEARING OFFICER LEMEI: Oh, sure. I’m so sorry.

Would any of the parties like to respond to Mr. Sarvey’s response to that question?

MR. GALATI: Yeah, I would.

Mr. Sarvey is engaging in speculation, which is exactly what the modeling would do. So it depends on how you tried to model something and how you would -- whether or not those assumptions that you would make would be appropriate.

I would point out that the Committee, certainly the Commission, considered in Laurelwood this same issue. And in Laurelwood the project was approved over objection using the cumulative thresholds that the Bay Area and using the methodology that the Bay Area itself uses for cumulative impacts. We agree a lot with what Staff wrote in their response of why that makes
sense to do it that way.

I would tell you that this project and the Walsh project were both sort of in limbo for a while until that Laurelwood decision came out, so we could get some direction on the right way to treat some of these issues, so we wouldn’t have to hand these in every single case. And the way that the IS/MND, and the way the data responses we prepared were prepared, were consistent with the Laurelwood decision. We think that’s the right way to go. We think it is completely legally defensible. And we’re prepared to provide briefs on that after evidentiary hearing when you hear all the facts.

HEARING OFFICER LEMEI: Thank you.

Staff, do you have anything to add?

MS. DECARLO: As we stated in our response, we conclude that reliance on the BAAQMD CEQA thresholds of significance is entirely justified in this proceeding. It provides the necessary point on which to make a decision about the potential for the project’s impacts on air quality. And modeling, given the context of this project and the specific circumstances, would not provide any additional information that could
lead to a better review of the project impacts.

HEARING OFFICER LEMEI: Thank you.

All right, a few questions for the Applicant. And I’ll just go ahead and lump them together and allow you to provide your response as you see fit.

Why is it that the information that was requested by Staff was ultimately not provided? Could you provide the information requested in Data Request 14 if the Committee so ordered? And how long would that take?

MR. GALATI: We tried to get the information. We submitted a Freedom of Information Act request specifically to the Bay Area Air Quality Management District. They did not provide that information to us. They told us that it was very difficult to compile. They told us that they hadn’t seen requests like that before. They referred us to the thresholds.

This is very different than when you’re doing a large power plant because what you’re looking for are other large sources. There weren’t large sources within the, from our perspective, within the realm of influence of our, basically, very small stacks and very small
emissions units. If it was a very large emission unit, then we would have been able to find two or three or four sources and direct the Bay Area exactly to those sources for the purposes of gathering that information and then going ahead and being able to do a cumulative air quality impact analysis.

But when you’re looking at all the sources and that are both in process and existing, that is not something that the Bay Area could provide to us. And we have no way to get it on our own.

We also know from our own experts that the way that those cumulative air plumes would likely interact would be such that they are not going to interact over a six-mile radius.

And so, again, using the thresholds and completely offsetting the one and only pollutant that could trigger any possible violation, the project is fully mitigated as is.

So this district and other districts often look at a project such as this and determine, first, are there any direct significant impacts? And then compare it to a threshold. They don’t often require this kind of
cumulative impact analysis, as well, both for CEQA or for issuing their own permits.

So if we were to try, if -- we would be unable ever to get the information requested in 11, 12 and 13 and, I believe, 14.

HEARING OFFICER LEMEI: And when you say you would be unable ever, that is based on your past -- that’s based on your experience in response to your prior request?

MR. GALATI: Correct. For example, Mr. Sarvey has plotted a bunch of existing data centers on the site. The Bay Area does not -- for example, for projects such as this, there isn’t a continuous emissions monitors in which they’re constantly reporting to the district what emissions are. So the Bay Area Air Quality Management District would have to ask to get the forms associated with what each one of these facilities is doing. And then we would, then, if they did that, then we could possibly get that.

But then we would have to go and find out what kind of stacks they have, what their -- how -- what their temperatures are, what their make and models are, what all of their air pollution control systems are. Then we’d have to
also get a map of their facility so we could map how their facility and their buildings in between ours and there’s are going to affect each other. And it becomes very, very difficult when you’re dealing with a lot of small sources as opposed to a few very large sources.

So I don’t believe that we would ever be able to get this information. I know Staff has asked for it before, also, from -- I don’t know about this district but other districts. It’s very difficult to get.

So I don’t think we can do this modeling analysis.

HEARING OFFICER LEMEI: So just to clarify, is it Applicant’s position that this is difficult or that it is impossible?

MR. GALATI: I think that it is impossible. I think that if we were to get some of the information, that would also lead to -- I believe we’d have to make a bunch of difficult assumptions. And what you would get would be assumptions by two or three different experts and then you’d have to decide which expert you believe. And that’s the definition of we have an analytical method that the Bay Area not only
specifies in its CEQA Guidelines but uses and this Commission has used. We should continue to do that.

HEARING OFFICER LEMEI: So I’ll just go down the row.

Staff, do you have any response to Mr. Galati’s response to that question?

MS. DECARLO: We agree with Mr. Galati’s representation of the issues and the problems obtaining the information, also, the problems with attempting to model based on the limited information we’d be able to gather.

And, ultimately, BAAQMD has identified and adopted these thresholds of significance for a reason. We’ve used them. There’s no indication that this project presents a circumstance where we cannot rely on those thresholds of significance. Therefore, Staff believes that the best approach is to rely on what BAAQMD has already propounded that we do.

HEARING OFFICER LEMEI: Does Staff concur in Mr. Galati’s assertion that this modeling is impossible?

MS. DECARLO: I don’t believe he stated the modeling itself is impossible. Obtaining, at
least from what I understood him to say --

HEARING OFFICER LEMEI: Thank you for the correction.

MS. DECARLO: -- obtaining the information to the extent that it was requested is probably not possible to do in a complete manner. And you’d end up with incomplete information and, as Mr. Galati said, assumptions, numerous assumptions that would have to be made based on that incomplete information.

HEARING OFFICER LEMEI: Mr. Sarvey?

MR. SARVEY: First of all, the information that’s so impossible to gather happens to be in Staff’s hands as far as the new projects that are being proposed here, and there are seven of them, so they have that information and they could use that.

As far as the BAAQMD CEQA Guidelines and levels of significance, BAAQMD CEQA Guidelines explicitly state,

“While the thresholds of significance give rise to a presumption of insignificance the thresholds are not conclusive and do not excuse a public agency the duty to consider evidence that a significant affect may occur
under the fair argument standard.”

Well, I’m making a pretty fair argument here. There’s a lot of data centers out there, and they’re all within a few square miles of each other, and that’s a lot of pollution. And I believe that, at the very least, they can at least model what the other seven facilities that are being permitted here, along with this one, and that would at least give us some idea of what’s going on, and that shouldn’t be that hard.

HEARING OFFICER LEMEI: Okay. Thank you, Mr. Sarvey.

MR. SARVEY: Thank you.

HEARING OFFICER LEMEI: A couple of questions for Staff. A few questions for Staff.

So can you please explain why it is that you did initially request the information referenced in Data Request 14? And when Staff determined -- and when did Staff determine, precisely, that this information was no longer needed for the -- for your analysis of the SPPE? What facts or factors led to this determination? And is it Staff’s opinion that this information would be of no value and can you please explain that?
Oh, sorry. To clarify, I’m not asking for any attorney-client privileged communications.

MS. DECARLO: Thank you. I can attempt to address the first one. And then I think I’ll hand it over to Mr. Birdsall, our technical expert in this field.

MS. DECARLO: Why requested it was, basically, a confluence of factors. One, we’re used to requesting this type of information for our AFC proceedings.

You know, AFC proceedings are our bread and butter. That’s what we do. That’s what we know. And so because we’ve requested it in the past, we just initially start off requesting this information, especially at the very beginning of a project where we haven’t had time to really dive into the modeling that’s been provided, all the information. You know, for these SPPE proceedings, there’s a very short turnaround time for discovery, so we want to make sure we get out the questions as soon as possible.

We also thought, based on the discussion and status conference in Walsh, that the Committee was interested in this type of
information.
And, thirdly, because we hadn’t had a chance to dive into the project information provided by the Applicant at that point, we didn’t yet realize that we had all the information we needed. So when we started to dive into the data, we realized that we could rely on the thresholds of significance and would not need additional data.

For the other three questions, I’ll turn it over to Mr. Birdsall for a discussion about why -- when Staff determined it was no longer needed, if that response didn’t already answer the question, and a discussion of what facts led to that determination and, lastly, whether or not Staff sees any value whatsoever for a continued attempt to obtain this information?

So, Brewster, I’m turning it over to you.

MR. BIRDSALL: Okay. That’s fine, Lisa. It sounds like I’m in the room. Yeah, so this is Brewster Birdsall and I’m a contractor for the Staff.

We, at Aspen Environmental Group, and my firm helps to -- man. Excuse me. There’s a terrible echo. It’s really distracting me.
We were bearing in mind the Committee’s opinions and interests in Walsh on taking a close look at the cumulative effects of these projects and the possibility of, you know, (indiscernible) of the projects while also providing, hopefully, a robust record (indiscernible). Those words in the Walsh proceeding were really influencing Staff’s actions at the time of issuing data requests for Sequoia.

And, you know, some of our data requests are, at times, aspirational. And I think Data Request 14 would probably fall into that category where we, at Staff, are not exactly sure how the information might come about or how it can be obtained but we are curious if it can be. And we do like to gather as much information about the cases as we can before we go forward.

So I think, you know, as Lisa said, that really does explain why Data Request 14 was asked.

Now the other questions that you have today are about at what point did we sort of change course or decide that maybe the information wouldn’t need to be pursued in order for us to go ahead and continue and complete the
initial study?

And I think part of that lies in this idea that Mr. Sarvey presented today that he thinks we’ll see violations of California Ambient Air Quality Standards or National Ambient Air Quality Standards if we add more and more sources to the modeling that we’ve already completed for the subject facility, the Sequoia facility, today or, in the case of two months ago or three months ago, the Laurelwood or Walsh, for example. And I don’t think that this is necessarily true because what you would have to have happen is, for a violation of the Ambient Air Quality Standards, is for the facilities to really be all operating at the same time, first of all, and then they would have to be impacting the same receptor in meaningful ways at the one time that the violation could occur.

And to take a step back, a violation or an exceedance, rather, of National Ambient Air Quality Standards or California Ambient Air Quality Standard, that depends on two parts of the concentration exceeding the standard. The first part of the concentration is the background. And then the second part of the
concentration is whatever we model in addition to the background. And in the case of a project-specific analysis, we model the project first. And then for emergency testing at a source that is really not operating most of the time because, remember, these are backup generators, we have to, first of all, assume that the testing is going to occur. And we assume that it occurs all the time because we want to see whether or not the background plus the project could possibly exceed the standard.

And I think our arrival at where we are in the initial study depends on the realization that facility A, B, C and D are not going to be testing their engines all at the same hour at the same time. And taking a step back, we see from the emissions tabulation in the initial study that the emissions increase caused by our project, or the Sequoia project, by itself don’t trigger the significance thresholds for the mass of emissions that’s set forth by the Air District. And at that point, we really can stop the analysis of impacts for criteria air pollutants because the Air District Guidelines allows us to.
But we go further into the analysis in order to see how the concentration will work out during testing. And in order to do that, we have to assume that the engines are basically being tested whenever. And to model the impact we assume that they’re being tested every hour for five years, which we know doesn’t happen, but we still go through that analysis anyway to show that the impact to the ambient concentrations would not exceed the standard when combined with the background.

So to try to wrap it up, I guess I just would like to say, when we consider the independent nature of all of the different sources that are in the region, we do find it very unlikely that testing at one facility will be happening at the exact time of testing at the proposed project. And because the project that we are looking at has emissions that fall below the thresholds in the first place, we, essentially, go no further than that.

So I’ll pause here because I’ve been talking a long time.

COMMISSIONER MONAHAN: Mr. Birdsall, this is Patty Monahan, a Commissioner. I had a
question. You kept saying it would be unlikely that they would be testing at the same time. Can you explain what you mean by testing? Do you mean using the generators simultaneously?

MR. BIRDSALL: I do. The analysis that we have for the ambient air quality impacts in the initial study is really the analysis of readiness testing. And the engines, each engine at each facility, might be tested for, you know, somewhere between 12 or 28 or up to 50, allowed by law, hours in a year. So that means for every engine that’s out there at a data center or at a hotel or at a hospital that’s available for backup purposes, those engines can each be tested up to 50 hours a year for reliability and readiness testing. But the rest of the time the facility is not emitting any of these pollutants.

COMMISSIONER MONAHAN: But since the generators are used when there’s a power shutoff, wouldn’t they all be used simultaneously?

MR. BIRDSALL: Well, we have a separate discussion for the emergency scenario and the potential for a widespread outage or an outage on the SPPE system to trigger the operation of the backup generators in a collective sense. And
that’s really a separate analysis in the initial
study, and it comes a little bit later, after the
readiness testing discussion.

COMMISSIONER MONAHAHAN: I’m just trying to
understand, in an analysis of cumulative impacts,
couldn’t you assume that the generators would be
used simultaneously in that response to the Data
Request 14?

MR. BIRDSALL: Well, I think it’s a good
question. And the analysis that we have in the
initial study, essentially, concludes that the
combined or the reasonably foreseeable -- let me
back up a second -- that the likelihood of the
facilities coming on at the same time or being
operated in a manner that creates and impact that
can be analyzed is really -- would require too
much speculation for us to analyze in any
quantitative sense.

So to rephrase, we have a qualitative
approach for that separate question that you’re
asking, the question of what happens during
emergencies when there’s a widespread outage or,
rather, an outage at the data center that
triggers operation of dozens of engines
simultaneously? Our approach is more
qualitative.

Today’s discussion, I think, is really revolving around the Staff analysis of routine readiness testing.

MS. DECARLO: Yes. Lisa DeCarlo just chiming in.

Yes, the data request was focused solely on readiness testing data, so that’s the subject of today’s discussion.

MR. GALATI: If I could just add something factually to the discussion is for the Sequoia project, I believe that the maintenance and testing is anticipated at 12 to 12-and-a-half hours per engine per year and would only be done one engine at a time.

So when it comes to evaluation, for example, of a potential violation, our modeling, as well as Staff’s modeling, assume that an engine was running every hour of every day for five years. Then you compare that one hour to the worst possible background one hour to determine if there was a potential violation. So it’s already very, very conservative on a direct project impact.

So now you take the facility down the
street. Would we assume that they would operate
their engine every hour for every day and then,
actually, that the day that the background is the
highest, both facilities were operating one
engine at a time? When you’re only operating one
engine at a time, distance places a very large
role in whether or not the plumes combine. And
so the fact that there’s a lot of data centers in
Santa Clara doesn’t mean that all their plumes
combine.

In addition, there’s a piece that’s
missing here, and that is the project is
mitigating the one and only potential pollutant
that could cause a violation by offsetting to
zero all of its NOx, and all of the NOx, assuming
that it is for all of its maintenance and testing
for the life of the project.

So it is also really important to
understand that if we did this analysis and we
made assumptions, that you would still come back
to ask the question, have you mitigated your
impact? When it comes to cumulative impacts,
applicants can only mitigate their contribution
to a cumulative impact. Every project before the
Committee -- the Commission right now, every data
center, if it goes over 35 tons, and ours will --
well, actually, I should say even with the new methodology for determining them, I believe everyone would, we’ll be offsetting its NOx to zero.

So that’s why I really wanted this discussion to be procedural because this is really important that what I just said comes from a witness that somebody can cross-examine. And what Brewster just said, I would like to ask him questions about. And what Mr. Sarvey just said, I would like to ask him questions about so the Committee can get a real understanding of what’s a fact, what’s opinion, and who’s qualified to make them on how to do modeling?

And I would still urge the Committee just to go back, from a procedural perspective, and let’s have this discussion. It’s important to have this discussion but let’s do it the right way with the right experts.

(Off mike colloquy between Hearing Officer Lemei and Commissioner Douglas.)

HEARING OFFICER LEMEI: All right, Mr. Galati, you just said a bit, but wanted to ask
you if you have any additional responses in conclusion or if --

MR. GALATI: No. We’ll be prepared to put on a very good case of how we did what we did and why we think it’s defensible at evidentiary hearing.

HEARING OFFICER LEMEI: And, Mr. Sarvey, do you have any -- would you like to respond?

MR. SARVEY: Yes, I would. Thank you.

HEARING OFFICER LEMEI: Okay.

MR. SARVEY: I believe what the Commissioners have been asking, from my review of your status reports, is you’re asking what would happen if all the data centers on the SPPE South Loop went down and all the data centers were operating at once? Staff and Applicant are confusing this with one facility overlapping another one during a maintenance testing. I believe the Committee was asking, what would happen in emergency testing? But the Committee is there. They know what they were asking for.

As far as the Laurelwood project, they did an assessment of emergency operation of just that facility. And this proceeding, they haven’t even done an evaluation of emergency operation of
just this one facility, much less all the other facilities surrounding it, and I believe that’s important to have.

And when I was talking about there may be as many as 1,400 megawatts of diesel engines there and if -- that could be as many as 500 diesel engines. So if you’re talking about testing them once a month, you’ve got about 15 engines a day testing, if you want to go with that argument, but I don’t think that’s what the argument is. But if they want to address that argument, fine, we can talk about that.

But the other thing is, is they did, in fact, address one, just one engine operating one time, and their total impact was 333 micrograms per cubic meter, which is 98 percent of the state one-hour standard. And the federal -- their assessment of the project, the 187 micrograms per cubic meter was the impact, and the limiting standard is 188 micrograms per cubic meter.

We’re talking about one diesel engine. We’re not talking about the whole facility, testing the whole facility, if it goes down at once and you have an emergency operation.

The whole purpose of this project is to
backup this thing in case it does go down. And we’re not going to evaluate the purpose of the project and that’s my issue right now. And I think the Committee can answer what they want but that’s what I read that the Committee wanted, so that’s all I have to say about it.

Thank you.

HEARING OFFICER LEMEI: Thank you. All right.

I’d like to thank all the parties.

At this time the Committee is going to go into closed session, as noticed in the agenda. And just to clarify, the Committee is not planning to continue the substantive or procedural discussion after the hearing is over. We will, of course, close out the proceeding in the traditional manner. Our best estimate is approximately one hour, although that is not a commitment. And we do not expect the parties to remain here.

(Whereupon, closed session commenced at 2:48 p.m., until ???)

HEARING OFFICER LEMEI: The Committee is continuing the closed session to Tuesday, March 17, at 3:30 p.m. in Room Four North A of the
California Energy Commission, located at 1516 9th Street, Sacramento, California, 95811, no, 95814.

Before we end for today, is there any public comment?

Hearing none, today’s session is concluded.

(At 3:30 p.m. the hearing was continued until March 17, 2020 at 3:30 p.m.)
CERTIFICATE OF REPORTER

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 2nd day of June, 2020.

MARSHA L. NELSON, CERT**367
CERTIFICATE OF TRANSCRIBER

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.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

[Signature]

MARTHA L. NELSON, CERT**367

June 2, 2020