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Application for Small Power Plant Exemption for the Great Oaks South Backup Generating Facility Sequoia Data Center Docket No. 20-SPPE-01

COMMITTEE CONFERENCE

REMOTE VIA ZOOM

WEDNESDAY, SEPTEMBER 23, 2020
1:30 P.M.

Reported by:

Elise Hicks
APPEARANCES

HEARING OFFICER
Ralph Lee
Linda Barrera

COMMISSIONERS
Karen Douglas, Presiding Member, Commissioner
David Hochschild, Associate Member, Chair

ADVISORS
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Le-Quyen Nguyen, Advisor to Chair Hochschild
Jon Hilliard, Technical Advisor on Siting

STAFF
Lisa DeCarlo, Senior Staff Attorney
Lisa Worrall, Project Manager
RoseMary Avalos, Acting Public Advisor

APPLICANT
Scott Galati, Esquire, Dayzen, LLC

ALSO PRESENT
Wesley Dyer, California Air Resources Board
Lucas Ramirez, Office of Council Member Jimenez, City of San Jose
Jakub Zielkiewicz, Bay Area Air Quality Management District
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P R O C E E D I N G S

1:34 P.M.

WEDNESDAY, SEPTEMBER 23, 2020

PRESIDING MEMBER DOUGLAS: This is the Committee conference regarding the Application for a Small Power Plant Exemption for the Great Oaks South Backup Generating Facility.

The California Energy Commission has assigned a Committee of two Commissioners to conduct these proceedings. I’m Karen Douglas, the Presiding Member of this Committee. Chair David Hochschild is the Associate Member of this Committee.

We are participating remotely today using Zoom. And I’d like to introduce some of the people in attendance today. Now, Chair Hochschild is not here now. We actually pushed the start time to 1:30 to attempt to accommodate his schedule but I shifted again with some other matters. I think he is going to try to make it to some portion of this and will be here for our closed session.

Kourtney Vaccaro, my Advisor, is on the Zoom right now. Eligible Harland, my Advisor, is here. Le-Quyen Nguyen, Advisor to Chair Hochschild is participating. Jon Hillard,
Technical Advisor to the Commissioners on Siting Matters. Ralph Lee, who we just heard from, Co-
Hearing Officer for this proceeding. And Linda Barrera, Co-Hearing Officer for this proceeding.

At this point, I will also introduce Noemi Gallardo, the Energy Commission’s Public Advisor.

Let me now ask the parties to introduce themselves and their representatives, starting with the Applicant.

MR. GALATI: Hello. Good afternoon, Commissioners, Mr. Hearing Officer, and Advisors. This is Scott Galati, representing SV1 which is a subsidiary of Equinix, on the Great Oaks South Project. With me, we have a bunch of people on the panel. I think I’ll introduce them, Commissioner, if that’s okay, if they are needed?

PRESIDING MEMBER DOUGLAS: That sounds good. Thank you very much.

Staff please.

MS. DECARLO: Good afternoon. This is Lisa DeCarlo, Energy Commission Staff Counsel. And also here today is the Energy Commission Staff Project Manager, Lisa Worrall.

MS. WORRALL: Yes. Good afternoon
everybody.

PRESIDING MEMBER DOUGLAS: Very good.

Thank you.

And now I’ll introduce any public agencies to introduce themselves.

Is there anyone here representing a federal government agency?

What about a state government agency, other than the Energy Commission?

MR. DYER: Hi. This is Wesley Dyer, Attorney from California Air Resources Board.

PRESIDING MEMBER DOUGLAS: Excellent.

Thank you for being here.

MR. DYER: Thank you.

PRESIDING MEMBER DOUGLAS: Any other state government agencies, other than the Energy Commission?

We’ll move on to officials representing Native American tribes or nations?

How about local agencies? Anyone from Bay Area Air Quality Management District?

MR. ZIELKEIWICZ: Hi. This is Jakub Zielkeiwicz, representing the Bay Area Air Quality Management District.

PRESIDING MEMBER DOUGLAS: Excellent.
Thank you.

What about City of San Jose?

Anyone else? Any government entity or agency? All right.

At this point, I’ll turn the proceedings over to the Hearing Officers, Ralph Lee and Linda Barrera.

CO-HEARING OFFICER LEE: Thank you. Good morning. I’m Hearing Officer Ralph Lee. And I’m accompanied by Linda Barrera, the other Hearing Officer in this case.

The Committee provided notice of today’s Committee conference by its Notice of Committee Conference and related orders which was filed on the docket of this proceeding on August 31st, 2020. It was published in English, Spanish, and Vietnamese. The notice of today’s Committee conference and the other documents related to this proceeding are available on the Energy Commission’s website in the electronic docket for this proceeding. Specifically, the dockets are accessible from the project’s website at www.energy.ca.gov/sitingcases/greatoakssouth, or for assistance, you may contact the Energy Commission’s Public Advisor’s Office.
The purpose of today’s hearing is to hear from the parties on the discussion items described in the agenda of the notice of today’s Committee conference. The agenda includes the following topics.

First, to hear from the parties about their positions on the proposal from Energy Commission Staff, or just Staff for short, to prepare an Environmental Impact Report, known as an EIR, as the environmental document for the application.

Second, to hear from the Energy Commission’s Public Advisor’s Office and the parties about opportunities for expanded public outreach and engagement in this proceeding.

Third, to hear from the Public Advisor’s Office and the parties about the feasibility of holding an in-person event in San Jose, California.

And finally, to hear from the parties about the status of discovery, any outstanding issues, proposals for the schedule, and next steps.

We will also provide an opportunity for the general public and local and state government
agencies to provide public comment on matters related to this proceeding.

The Committee may hold a closed session. At the conclusion of the closed session, if any, one or more members of the Committee will return to reopen the record to adjourn this Committee conference.

Before we proceed, I will describe the remote hearing procedures.

Consistent with Governor Newsom’s Executive Order N-25-20 and N-29-20, as well as the recommendations from the California Department of Public Health, to encourage physical distancing to slow the spread of COVID-19, we are conducting this Committee conference remotely using Zoom.

Look for the black bar at the bottom of your Zoom screen for participation options. At the bottom left of your screen, you should see either a mute icon or an audio settings icon. If you see an audio settings icon, that means that you’re muted and your un-mute button has been disabled. We’ve set up this meeting so that the parties and the Public Advisor may speak, but most attendees will not be able to un-mute
themselves or speak unless they use the raise-hand feature to indicate they wish to speak.

    If you wish to be recognized, please use the raise-hand feature by clicking on the raise-hand icon. After clicking on the raise-hand icon, when it’s your turn to speak, we will enable your mute button to allow you to un-mute yourself. The un-mute button will appear at the bottom left of your screen. The general public will have an opportunity to speak during the time for public comment before the end of this conference. If your mute button has been enabled, we request that you remain muted, unless it’s your turn to speak.

    And for those calling in on the phone, you may mute and un-mute your phone by pressing star six. You should still be able to hear the meeting. On the phone, to raise your hand, you may press star nine. If it’s your turn to speak and you’ve muted your phone by pressing star six, you will need to un-mute yourself before you speak by pressing star six again.

    The raise-hand feature creates a list of speakers based on the time when their hand was raised. We will call speakers in that order. I
will review these directions again during the discussion with the parties, and again before we start the public comment period.

Please identify yourself before you speak. When you speak for the first time, please say and spell your name slowly. That’s important for me and for the Court Reporter. If you don’t identify yourself, either the Court Reporter or I may interrupt you to ask that you do so in order to ensure that we have a complete and accurate record of this meeting.

If you have any questions about today’s process, please use the raise-hand feature now and I will take your question.

If you run into difficulties, please contact the Public Advisor’s Office or Zoom’s help center. The contact information showing above is on page five of the notice for today’s Committee conference.

Do we have any questions? Okay. I’m not seeing any raised hands, so I’m going to move on.

PRESIDING MEMBER DOUGLAS: So, Ralph, this is Commissioner Douglas. I just wanted to check in. We may have someone participating on behalf of the City of San Jose or the Council.
Just giving an opportunity for anyone who wants to introduce themselves.

CO-HEARING OFFICER LEE: Sure. If there are any government agencies that haven’t been recognized, I would request that you please raise your hand at this time. Okay.

PRESIDING MEMBER DOUGLAS: All right.

Well, thank you.

CO-HEARING OFFICER LEE: Well, hold on. I’m seeing a Lucas Ramirez has raised his hand.

PRESIDING MEMBER DOUGLAS: Excellent. That’s what I thought. If we could let him introduce himself, that would be great.

CO-HEARING OFFICER LEE: Right. He should be able to un-mute himself.

MR. RAMIREZ: Thank you for the opportunity. Lucas Ramirez, Office of Council Member Sergio Jimenez, who represents District 2 of the site -- of the district in which the project is located. I’m happy to answer any questions on behalf of the Council Member, if needed. Thank you.

CO-HEARING OFFICER LEE: All right.

Thank you very much.

Do we have any other government agencies
online who wish to be recognized? Well, seeing none, let me move on.

This Committee conference concerns the application that the Applicant, SV1, LLC, filed with the California Energy Commission, seeking a Small Power Plant Exemption, known as an SPPE, for the Great Oaks South Backup Generating Facility. The Applicant proposes to build and operate the Great Oaks South Backup Generating Facility and the Great Oaks South Data Center at a location that is currently vacant at the southeast corner of Via del Oro and San Ignacio Avenue in San Jose, California.

The backup generating facility would consist of 36 3-megawatt and 3 0.5-megawatt diesel backup generators. The backup generating facility would provide an uninterruptible power supply to the data center of up to 99 megawatts, which would be the maximum load of the data center. The data center would consist of three two-story buildings totaling 573,000 square feet.

Under the law, Public Resources Code Section 25541, the Energy Commission may grant and SPPE only when it makes three separate and distinct findings. First, that the proposed
power plant has a generating capacity of up to 100 megawatts. Second, that no substantial adverse impact on the environment will result from the construction or operation of the power plant. And third, that no substantial adverse impact on energy resources will result from the construction or operation of the power plant.

In addition, the Energy Commission acts as the lead agency under the California Environmental Quality Act, known as CEQA. In reviewing an SPPE, the Energy Commission performs environmental review of the whole of the action. For this particular application, the whole of the action means the backup generating facility, or data center, and other related features. I may refer to the whole of the action as the project.

Before we hear from the parties on the discussion items, I note that we did have representatives here from government agencies, including the California Air Resources Board, known as CARB, and the Bay Area Air Quality Management District, known as BAAQMD. I personally notified them about this Committee conference by emails, which I filed in the docket. And we also have Lucas Ramirez here.
And so I would ask the Presiding Member whether you’re willing to ask the agencies for comments, if any at this time, out of order? Is that possible?

PRESIDING MEMBER DOUGLAS: If that’s your recommendation, I think that would be fine.

CO-HEARING OFFICER LEE: Yeah, I recommend we go ahead and do that. And, of course, I would allow -- I would recommend that we allow them to have an opportunity, also, during the general public comment at the end, in case something else -- to comment on anything else that comes up during this proceeding.

PRESIDING MEMBER DOUGLAS: Okay. Let’s go ahead and do that. Thank you.

CO-HEARING OFFICER LEE: Okay. Yeah, the Committee encourages interested agencies to participate in the Great Oaks South proceeding and to submit any comment or concerns as early as possible in order to help inform the Energy Commission Staff’s preparation of its environmental document, and then to comment on the environmental document once it’s published. And finally, as appropriate, we would encourage agencies to attend the Committee’s evidentiary
hearing.

And now, turning to the agencies, in no particular order, may I ask if CARB representatives have any comment at this time?

MR. DYER: Yes, we do. This is Wesley Dyer, W-E-S-L-E-Y, last name D, as in dog, -Y-E-R. And again, I’m an attorney for the California Air Resources Board. So just, again, thank you to CEC and the Committee for allowing us to participate on the panel and to provide some comments at this time.

As I’m sure you’re all aware, CARB Technical Staff has been working with CEC Staff on how to improve the CEQA and air quality analyses on present and future data center projects more generally and, particularly, as those projects become more common as backup power systems are called upon more frequently, a trend which is expected to increasingly continue as the planet warms. And so it’s important that we have robust analyses here to ensure that backup generators are as clean as possible.

With respect to CEC Staff’s recommendation here to conduct an EIR, CARB very
much supports that recommendation. In particular, CARB strongly encourages more detailed air quality impact analysis that is based on or, at least, includes the likely scenario that multiple generators will be running simultaneously. And we’re currently working with CEC Staff and BAAQMD Staff closely and collaboratively to develop such an analysis moving forward.

CARB notes that it’s important to fairly analyze the operations of these generators in order to inform the public, whom we owe a clear technical projection of use of these facilities at foreseeable capacity. And we also note that the same conditions that may trigger the use of these backup generators, such as heat storms, are also associated with other air quality issues, like smog formation. So we need to think about operation when air quality is already bad and when people may be at home and without power, and including, you know, taking a look at the cumulative impacts that many such data centers may have in close proximity.

CARB also views a detailed alternatives analysis as required in an EIR-level review to be
extremely important, if not necessary, to this
SPPE process, especially given the expanded air
quality analysis that CARB currently sees as
needed. So the alternatives analysis provided
here in Section 5.6.2 in Chapter 5 of the Great
Oaks South SPPE Application does not allow for a
real meaningful consideration of alternatives.
Notably lacking here, from CARB’s
perspective, are calculations, vendor or
manufacturer data, studies, and so forth that
really evaluate each alternative generating
technology. And I think this is particularly
relevant, given Governor Newsom’s Executive Order
this morning and his illusion of many more to
come. That’s really pushing the state towards
more widespread electrification to address
climate, primarily, and also air quality.
Lastly, we note that in the Applicant’s
status report, that was dated September 11th of
this year, they raise the fact the City of San
Jose conducted -- also conducted an initial study
and adopted a mitigated negative declaration.
But CARB doesn’t view this as being necessarily
material here for these purposes. The CEC is the
CEQA lead agency here and is not required to rely
on any outside environmental impact document.
The Commission may, certainly, have to consider such document if it’s submitted into the docket. But it certainly is not, per se, dispositive to our understanding.

More importantly, the project before the City of San Jose in 2017 and the project before the Committee now are substantially different. The Great Oaks Data Center underwent reconfiguration and added over a dozen more Tier 2 backup generators, and each with more generating capacity. So regardless of that previous environmental impact analysis or any of the quality there, and conducted by the City, it was conducted on an entirely different project, from our perspective, and is now outdated.

So that’s all that CARB has for now. Again, thanks for including us on this panel today.

CO-HEARING OFFICER LEE: Great. Thank you.

Would the Presiding Member like to ask any follow-ups or should I move on to BAAQMD for now?

PRESIDING MEMBER DOUGLAS: I think you
should move on. Thank you.

Well, and thank you all for your comments.

CO-HEARING OFFICER LEE: Mr. Zielkiewicz, would you -- do you have a comment?

MR. ZIELKEIWICZ: Yeah. So, again, my name is Jakub Zielkiewicz, spelled J-A-K-U-B, for boy. And the last name is Z, for zebra, -I-E-L-K-I-E-W-I-C, for Charlie, -Z, for zebra. And I’m representing the Bay Area Air Quality Management District. I’d like to, first, thank the Committee for considering our comments. And likewise, thank you to Staff for the ongoing work and collaboration in evaluating the environmental impacts to air quality, public health, the climate impacts, those seated with the development of this and other projects.

The last time I provided comment in front of this Committee in July, the Air District was aware of more than 1,300 megawatts of likely-to-be diesel backup generation in planned data centers in the Bay Area alone. I’m here three months later today and that number has increased to nearly 1,500 megawatts across new data center sites. Again, that’s in the Bay Area alone, and
there may be others that are not on our radar quite yet.

As before, the significant capacity of fossil diesel power being planned is of great concern to the Air District. The air quality, public health, and greenhouse gas emissions associated with the 36 diesel generators being proposed for the Great Oaks South Data Center are of great concern to us. The Air District does not view fossil fuel generation at Great Oaks South as a solution for achieving the objective of the Air District’s Diesel Free by ‘33 initiative, which was signed onto by the Mayor and Vice Mayor of San Jose, nor do we view 99 megawatts of diesel engine capacity at Great Oaks South a solution to achieving carbon neutrality as soon as possible and no later than 2045, pursuant to Executive Order B-55-18.

The Air District is encouraged by Staff’s proposal to prepare an Environmental Impact Report. The Air District believes that the EIR will provide a more robust opportunity to discuss alternatives and evaluate alternatives to possible diesel generators, alternatives that should include alternative technologies and
alternative fuels, both of which are available and currently in use.

The notion that alternative technologies and fuels are commercially or technically infeasible is a convenient but misleading argument that reinforces the status quo of fossil diesel generation. The Air District urges CEC Staff to continue working with relevant technology and fuel providers that are reshape its thinking in an independent manner on the range of available alternatives to fossil diesel generators.

Lastly, the Air District commends Staff and Committee for the forthcoming discussion about opportunities for expanded public outreach and engagement, including a potential event in the San Jose community that would be impacted by this data center.

Over the past few years the Air District expanded its efforts to reduce community exposure to air pollutants as a result of Assembly Bill 617, Community Health Protection Program. We’re working closely with community groups, with the California Air Resources Board, environmental organizations, regulated industry, and other
stakeholders to reduce harmful air pollutants. San Jose has been identified as one of the next AB 617 Community Air Protection Program communities as a result of numerous high health-burdened neighborhoods with disproportionately high exposure to air pollution. The Air District is encouraged by the Committee’s discussion to more actively engage with the San Jose community.

The Air District thanks the Committee for the opportunity to comment today. We look forward to collaborating with CEC on the Great Oaks South Project and future data center projects. And we look forward to identifying acceptable alternatives to fossil diesel engines that contribute to ameliorating and not exacerbating the climate crisis, that contribute to meeting the goals of carbon neutrality, to improving air quality, and to improving public health for all Californians, and especially those fence-line communities at facilities, such as Great Oaks South.

Thank you.

CO-HEARING OFFICER LEE: Thank you very much.

Now, would Mr. Lucas Ramirez like to make
a comment at this time?

MR. RAMIREZ: Thank you for the opportunity. I won’t be providing any comments unique to the Office of Council Member Jimenez, beyond recognizing the work of City of San Jose Planning Staff in evaluating the project. And it’s our understanding that there has been coordination between CEC Staff and our own City Planning Staff. And the comments that they submit, you know, will be those on behalf of the City.

I did want to thank the CEC, though, for providing opportunities for public comment from residents. We’ve had the opportunity to meet with them and recognize the concerns from the neighborhood and appreciate the opportunity for residents in our district to share their concerns and express their opinions in this format.

Thank you.

CO-HEARING OFFICER LEE: Thank you very much. And, again, if anything comes up later in this proceeding, you’ll all be invited to speak during the general public comment period at the end of this Committee conference as well.

Now, let’s move on to the discussion of
Staff’s proposal to prepare an EIR as its environmental document for review of the Great Oaks South Application, which is Item 2(a) in today’s agenda.

In furtherance of the legal requirements and to aid in the consideration of an application for an SPPE under both the Warren-Alquist Act and CEQA, Staff conducts the initial data gathering and analysis, and then publishes that analysis for public review in a CEQA-compliant environmental document regarding the project. To date, in SPPE proceedings, Staff has prepared an Initial Study and Proposed Mitigated Negative Declaration as its environmental document.

However, for this particular application, on August 7th, 2020, Staff filed a memorandum informing the Committee that Staff intends to prepare an EIR as its environmental document. Both Staff and Applicant addressed this issue in their September 10th status reports.

The Committee has reviewed both status reports. According to Staff, it would be prudent to proceed directly to prepare an EIR because residents, potentially, are affected by the project, have voiced concerns over the project,
and Staff also listed other reasons, including that its analysis for an EIR would not involve a large expenditure of additional time or resources, and that multiple responsible agencies will likely need to use the resulting environmental document for their permit reviews.

On the other hand, the Applicant urged the Committee to instruct Staff to prepare an Initial Study and Proposed Mitigated Negative Declaration, and not an EIR, on grounds that an EIR is not warranted in this case. The Applicant also stressed that the City of San Jose has issued an Initial Study and Proposed Mitigated Negative Declaration for an earlier version of the project.

Now I’ll move on to the parties. This is Staff’s proposal.

So I would ask, would Staff like to begin our discussion?

MS. DECARLO: Yes. Thank you. This is Lisa DeCarlo, Energy Commission Staff Counsel.

And I want to initially thank both CARB and BAAQMD for their comments and their continued willingness to sit down with Staff and discuss our analysis and avenues for improvement and
attempts to resolve differing opinions and result in an improved analysis going forward.

We submitted our comments, as you mentioned, on September 10th, outlining our thinking with regard to recommending an EIR in this situation. I do think, at this point, we’re in that gray area where the Commission could go with an MND or an EIR. But given several factors that we outlined, it seems that an EIR at this point is the most prudent avenue, considering that it will not take a significant amount of extra work on Staff’s part to complete an EIR.

As we mentioned, Staff’s analysis is substantively equivalent to what one sees in general EIRs. We just call it an MND but the analysis is a lot more detailed than you would ordinarily see in an MND.

We’ve been addressing alternatives on an ad hoc basis in these proceedings as they’re raised by various agencies. So we’ve touched on those but an EIR would allow us to dive into alternatives in a more thorough way, I believe.

It’s interesting that our regulations currently require the Applicant to provide an alternatives analysis. But when you’re doing an
MND, there’s really no place for alternatives. So an EIR would make it clear that there’s a place for us to really dive into the various alternatives that have been mentioned in the other proceedings by the various agencies.

We acknowledge that it would take a little extra time in this proceeding. Now if we do, ultimately, decide to go with an EIR, and the Commission feels like EIRs are more prudent in other proceedings, as well, that time won’t be as significant because we can start off immediately with an NOP, once we receive an application. That’s, apparently, the biggest hurdle at this point.

Because we’ve been going forward without the NOP, the NOP will require us to wait an additional 30 days before releasing our analysis. But as Staff has noted in its proposed schedule, we would already need 60 days once we receive the final data responses in order to complete our analysis. So I don’t think, in this case, the requirement for an NOP really adds any additional time to when we would see the publication of the CEQA document.

And fundamentally, I think, the reason we
are proposing an EIR is to allow the Commission flexibility at the end of this process without triggering, at that point, the need to go back and do this all over again. So as we mentioned in our filing, Staff proposes its conclusions, it presents its analysis in the published document, and then we receive comments. And Committee have, generally, asked Staff to respond to those comments before we head into evidentiary hearings.

But then we have this second step of the evidentiary hearings where additional evidence may be received. And so Staff may initially think that there’s no significant impact, everything’s been mitigated and an MND is justified, but that doesn’t mean, once we get to the evidentiary hearing, that additional information won’t come up, or the Commission might feel that it’s not necessarily in line with Staff’s conclusions on impacts.

And if that were to happen with an MND, the end result would ultimately be to start the process over with an NOP, and then an EIR, and the time that it would take for that, whereas if we started off with an EIR, the Commission is
able to weigh whatever additional evidence other parties may provide, other agencies concerns and, ultimately, reach a decision on the exemption without having to change course with a different document.

Now there may be a situation where the evidence is so significant that it would require recirculation of the document. But the bar for recirculating an EIR is a lot lower -- I’m sorry, a lot higher than the bar for recirculating an MND. So that EIR still gives the Commission more flexibility in the end.

And as you’ve heard from the agencies today, there are concerns with these facilities in general. We’re working with them to try and get the Commission an analysis and a document that satisfies CARB and BAAQMD. But there are significant disagreements currently with Staff and those agencies in terms of what’s necessary in terms of the analysis, what’s defensible, what assumptions can be made? Is modeling really feasible for these emergency situations?

So I would love for us to, ultimately, reach agreement. And we’re all hoping for that but, at the end of the day, we may not. And so
the Commission may be presented with a situation where we have Staff’s analysis and we still have CARB and BAAQMD expressing disagreement with that analysis, that it fully meets the requirements of CEQA. And so it’s not inconceivable that these disagreements may carry over to the evidentiary hearings. And that really wouldn’t be possible with an MND.

So, anyway, those are our basic reasons for recommending an EIR in this situation.

We also have, I forget if I mentioned or not, the public comments we received. So we also have, in addition to concerns expressed by the agencies, the potential for the residents and the public to continue to be involved in this proceeding and raise concerns up to the evidentiary hearing.

And so we believe doing an EIR at the front stage allows the Commission to proceed in an orderly manner and hear and respond to any concerns raised by members of the public or the agencies.

So that’s the basic position that we have on this. And I’m happy to respond to any questions or any concerns from the dais or from
the Applicant.

PRESIDING MEMBER DOUGLAS: So --

CO-HEARING OFFICER LEE: Thank you.

PRESIDING MEMBER DOUGLAS: Sorry. I’ll just --

CO-HEARING OFFICER LEE: Oh, go ahead.

PRESIDING MEMBER DOUGLAS: -- yeah, I’ll just jump in for a moment. This is Commissioner Douglas.

So, Ms. DeCarlo, it sounds like you’re saying that -- and you’ve said a number of things, and some are really more procedural considerations and timing considerations, but in terms of what the most appropriate document is, at least one of the things that I heard you say is that there seems to be some chance in your mind that either the Committee, when presented with all of the evidence that comes before us, might find that there is, at least, a fair argument that there could be a significant environmental impact, or that Staff conceivably might find it, or that one of the other agencies participating, Air Resources Board or BAAQMD, for example, might raise those sorts of concerns. And is that one of the underlying reasons why
Staff is recommending an EIR?

MS. DECARLO: Yes. Yes. Because the --
even if the Committee did not believe that there
would be an impact after seeing the evidence, if
anyone has raised -- that’s their argument, the
Commission is obligated to then produce an EIR in
order to reach a conclusion.

PRESIDING MEMBER DOUGLAS: Got it. Thank
you. That’s the only question I have for you
right now.

CO-HEARING OFFICER LEE: Yeah. This is
Hearing Officer Ralph Lee. I may have more
questions but I would like to hear what the --
whether the Applicant has any response to that
first.

Mr. Galati, do you have a response?

MR. GALATI: Yes, I do. Thank you. This
is -- sorry, Elise, I forgot to spell my name for
you. It is Scott, S-C-O-T-To, Galati, G-A-L-A-T-
I, representing SV1. Thank you for the
opportunity to respond to this.

First of all, I’d like to just put things
in perspective. The project is not a power
plant. It certainly falls under the Commission’s
regulations but what it is, is a data center with
backup generators. Those backup generators are prohibited by law to operate unless there is an emergency. So at no point can SV1, which is owned by Equinix, turn on a backup generator under the law and have that generator power the facility. It’s only when there is an emergency loss of utility power.

So let’s put that in perspective because Equinix has three data centers in the San Jose area. And since 2016, up to yesterday, the all three of those data centers, the total combined hours of emergency operation has been two hours in four years. That includes the Public Safety Power Shutoff programs which never required the generators to run. And this facility is in San Jose and it just up the street on Great Oaks Boulevard. In addition, none of those facilities ran during either extreme heat event or storm event.

I wanted to put this in perspective for the public because the public, I believe, inappropriately believes that the generators run often or it runs like a power plant. So just to be clear, the generators do run for testing and maintenance, but this Applicant does them one at
a time. They usually run for 15 minutes to an
hour once a month. The Applicant has even agreed
to take a limitation on the number of hours it
will use for testing and maintenance, and a
condition that it will never run more than one
generator at a time.

In addition, some of the things you heard
about the last project versus this project, what
you didn’t hear is that, yes, these generators
are larger and, yes, they do generate more
electricity, but they also have been incorporated
with diesel particulate filters which are not
required by the Bay Area Air Quality Management
District. In fact, the Bay Area has just issued
permits for a facility using Tier 2 generators,
similar size, without diesel particulate filters.
And we can docket that information later.

But I think it’s important to put this in
perspective, I think, hearing the CARB
representatives speak, is that the generators are
going to be running frequently when that is not
the experience, nor did that occur during the
extreme heat event. In fact, during the extreme
heat event, there were about 100 megawatts of
generators that went on in the Silicon Valley
Power area. Those all went on voluntary because the Governor had asked them to. None of those generators would have been curtailed. The only curtailment, because of the heat storm, in the Silicon Valley Power was 12 megawatts, which is about four or five generators that ran for 30 minutes.

So that is an important overlay. Number one, we’re the same data center we were. We do have larger generators, and a few more. We’re using less water than the project was allowed to use before. We went from 1,300 acre feet a year to 4 acre feet. The buildings are in the same location. They’re slightly smaller. It’s on the same site. And so it’s not just that the City of San Jose did an IS -- excuse me, an Initial Study Mitigated Negative Declaration for the first project, it’s the fact that the project is very similar to what it was.

We are in no way, shape or form saying that the Staff should not analyze the changes, including the larger generators and how they operate. And, in fact, we hired a consulting firm that prepared the Initial Study Mitigated Negative Declaration for the City of San Jose to
prepare our application to the Commission.

In addition, when Staff was first proposing a EIR, we filed, recently, an alternatives section that was also reviewed and prepared by that consultant, as well, with their advice. There’s some things that we need to clear up. We’re happy to talk about these more in detail. But it’s important to determine whether an EIR needs to be prepared or not.

I heard Mr. Dyer testify that our alternative analysis was not appropriate because it didn’t include vendors. Equinix has been operating data centers for a long time and, in fact, has two fuel cells in operation, so it has experience on how fuel cells operate. And large fuel cells take almost 12 hours to start up. Remember, the purpose of the entire backup generator is so within minutes, actually within 11 or 12 seconds from a loss of power, the generators can kick on for the purposes of not losing client data.

We don’t own the servers that are in our facilities. We have clients who provide the servers in those facilities. And those clients demand an insurance policy that their data will
not be lost, that the internet will continue to function. And, currently, they ask us to provide the most reliable facility possible, and that is a liquid fuel emergency generator with redundant generators in case those generators break. That’s what we provide. Just needed to make that clear.

The idea that an EIR is required because, during evidentiary hearing, new information can be provided can be simply handled by the Committee here. As I have proposed in the past, someone who intervenes late in the process without commenting on the environmental document, those are the types of intervenors that bring up new issues that could have been resolved in the right way.

We ask the Committee to require people who want to intervene and participate in the evidentiary hearings to file comments, either come to a meeting or actually file written comments on the environmental document, so that Staff has a fair opportunity to look at it and address it. The Committee can look at those responses to determine at that time, at the prehearing conference, whether the parties are
ready to go to evidentiary hearing. And it can eliminate this possibility of surprise that keeps happening late in the process by actually enforcing rules on when people can bring up issues and when they cannot. It doesn’t stop public comment but it certainly allows for -- encourages agencies and individuals to participate at a time when Staff needs the information so it can do its analysis.

We strongly believe that an ISMND is adequate for this project. And we’re not talking about any Initial Study or Mitigated Negative Declaration. We’re talking about the type of analysis that Staff does, which we all believe on our side that that is already an EIR. If the Energy Commission is interested in an alternatives analysis, it can simply order Staff to include one. We certainly have. And we’re happy to discuss those issues as we go forward. But it’s important to keep this project and what it does and what it does not do in mind when the Committee is considering that.

So I don’t have anything more but I’m available to answer questions. Thank you very much.
CO-HEARING OFFICER LEE: This is Hearing Officer Ralph Lee. Thank you.

I’ll invite Staff. Did you have any reply to what Mr. Galati just said?

MS. DECARLO: No. Thank you.

CO-HEARING OFFICER LEE: Okay. I don’t have any further questions. Then I think, unless the Presiding Member has any questions, I’m going to move on to the next discussion item.

So the second discussion item is, in our notice, we said we were going to have a discussion among Staff, Applicant, the Energy Commission’s Public Advisor’s Office, and the Committee about opportunities for expanded public outreach and engagement in this proceeding.

At our last Committee conference on July 13th, the Energy Commission’s Public Advisor’s Office gave a presentation that touched on public outreach and engagement. And so I’ll start this discussion by Public Advisor’s Office to report any update on public outreach and engagement since the last meeting and provide any recommendations, if any.

Do we have a representative from the Public Advisor’s Office available at this time?
MS. AVALOS: Yes. I’m RoseMary Avalos with the Public Advisor’s Office. And I’m representing Noemi Gallardo, our Public Advisor.

CO-HEARING OFFICER LEE: Thank you. Did you have any report that you --

MS. AVALOS: Yes.

CO-HEARING OFFICER LEE: -- can offer?

MS. AVALOS: Yes.

CO-HEARING OFFICER LEE: Thank you.

MS. AVALOS: Yes. With regard to in-person engagement, the Public Advisor’s Office tends to encourage in-person engagement with the public for all types of CEC proceedings. The close contact with the public helps the CEC build relationships and trust and make participation more convenient for stakeholders.

The City of San Jose allows for some outdoor and indoor gatherings with modifications. And this goes to regard to the question of in-person meetings in the community.

However, in this proceeding, due to the totality of the circumstances, including the national COVID-19 pandemic, air pollution caused by wildfires, energy emergencies caused by recent heat waves, and the state’s ban on travel and
limited budget, the Public Advisor recommends not holding an in-person gathering for the Great Oaks South Data Center proceeding. The health risk of exposing Staff and the public to the coronavirus, polluted air, and heat outweigh an benefit that an in-person gathering could provide to the local community.

The Public Advisor recognizes that the SCU Lightning Complex Fire has been contained, heat has decreased and air quality has improved, but Santa Clara County, where San Jose is located, is still in the substantial tier of county risk level, according to the Governor’s Blueprint for a Safer Economy. This is the second most restrictive tier and mean some nonessential indoor business operations are closed.

Our City contacts have verified that the policy and practice of the city is not -- is to not hold in-person meetings and to close all city buildings during the pandemic. Instead, the City is relying on virtual platforms, like the Zoom and via phone, to conduct its public proceedings and public participation.

Additionally, the travel ban is still in
place. And state agencies are still under pressure to reduce spending. Doing an in-person gathering would cost more money than a virtual convening and would require a member of Staff to travel.

Thus, the Public Advisor advises against an in-person gathering and recommends adhering to state policy and following local practice by holding a community meeting via Zoom. To better accommodate the public, the Zoom event should be held after traditional work hours, preferably around 6:00 or 6:30 p.m., and could be focused on enabling the public to ask questions and comment.

Interpreting services should be provided if we requested. And notification should go out via numerous local mediums. It would add value if it was possible to allow Staff, and the City representatives from the locally official offices, and the Air District to present and provide additional information to the public.

And with regard to a possible question about billboards, I’ll wait for that question, okay?

CO-HEARING OFFICER LEE: Well, this is Hearing Officer Ralph Lee. I don’t have any specific questions. If you had anything else to
add, this would be the time.

MS. AVALOS: Okay. There have been discussions with regard to a more extensive outreach. And one of the suggestions was placing a construction billboard at the site of the proposed project.

And the Public Advisor recommends that the Committee ask the Applicant to cover the cost of producing and posting a construction board or multiple construction boards at the proposed Great Oaks South Project site, preferably in a location near the street where residents and passers-by are more likely to view the board. The reason for the billboards is to provide an additional mechanism to inform the public about the proposed project and provide contact information in case the public has additional questions.

The Public Advisor recommends the announcement on the board or boards be in Spanish, Vietnamese, and Chinese, and in a large font to help ensure that the text can be easily read. The Public Advisor thinks that this additional measure will be a cost effective benefit to the public, particularly because not
all notices were translated in languages from the
inception of the proceeding.

Thank you.

CO-HEARING OFFICER LEE: Thank you.

Let’s see, this was in our notice of the
event for today. I would ask -- we have a couple
of recommendations from the Public Advisor’s
Office, and that’s not the scope of potential
topics we have today. But one was for no -- what
I heard, I believe, was no in-person event but a
possible public event after work hours via Zoom.
And the second recommendation involving a sign on
the project site.

Does the Applicant have any response to
the Public Advisor’s Office’s recommendation or
report?

MR. GALATI: I can report to you that
there are already signs up associated with the
original application to the City. Maybe those
could be used or extended. But we’ll go ahead
and work with the Commission Staff and the Public
Advisor offline.

My understanding was the recommendation
was that the Commission would actually make the
notices, so that they’re comfortable with it, but
we would allow access to the site for them to be
put up or extended. And the request was for us
to fund it; correct?

CO-HEARING OFFICER LEE: Excuse me. I’m
not sure I completely caught what you just said.
Did you say there has been a recommendation? You
mean the recommendation today from the Public
Advisor’s Office?

MR. GALATI: Yeah. I apologize, Mr. Lee.
The recommendation that I heard from the Public
Advisor’s Office, what I was trying to understand
was what we were being asked to do. I thought it
was we were being asked to fund.

We have existing signs up. Maybe they
could be used or extended, is what I was saying,
because those signs are up because of the
application pending before the City of San Jose.
But since it was -- the recommendations were that
the notices look at certain way and be in
different languages, I didn’t know if the
Commission wants to put up -- prepare the notices
and they’re asking us just to fund it, or are
they asking us very specifically to go out and
also do that?

CO-HEARING OFFICER LEE: Well, this is
Hearing Officer Ralph Lee.

I’m not sure that we have a recommendation right now. I’m just trying to get some information about what’s recommended and what’s possible and what’s there.

MR. GALATI: There are signs there now. I don’t know if those are acceptable to the Commission.

So I guess what I would say is we’re happy to work with the Commission to make sure that people know about the project. And we comply with the City rules right now about how they require the notification. If the Commission wants additional notification, we’d be happy to work with them.

CO-HEARING OFFICER LEE: Okay. Great. And would it be -- if, I mean, if the signs, if there is some additional signage, is that something that is feasible for the Applicant to install?

MR. GALATI: It certainly is feasible. I wish I could say yes. I don’t have the person who can write the check. I can tell you this, that there is a deposit with the Commission. And that might be something that the Commission would
like to take care of doing out of that deposit.

CO-HEARING OFFICER LEE: Let me move to staff.

Does Staff have any response to either the Public Advisor’s Office’s recommendation or to the Applicant’s response to that?

MS. WORRALL: I’m raising hand -- raising my hand.

CO-HEARING OFFICER LEE: Oh.

MS. DECARLO: Lisa, we can hear you. You can go ahead.

MS. WORRALL: Oh, you can? Good.

MS. DECARLO: YES.

MS. WORRALL: I’m sorry because I’ve got various modes. And my wi-fi is three megabits, so didn’t want to lose you guys.

Yes, so listening to what RoseMary is recommending, the Public Advisor’s Office, I could feasibly see that it’s something that Staff could organize. As far as the placement of the sign, I mean, as far as coordinating to get the text correct, I could see Staff could feasibly do that, putting a sign, and then placement and things like that. That may be easier for the Applicant since it’s their property.
I happen to know the property is back against Via del Oro and the residents are sort of across the street. And there’s a parcel, a big parcel of land, that’s between where the residences are on the, I would say, probably south side of Santa Teresa, so there’s a big parcel of land and a main road that’s in between. So you would probably have to go around to the back of the property for residential -- to get residential visibility of the signs. I mean, you can’t place the signs on the other parcels. That was just my thoughts.

Yeah, so that’s really all I have, I think.

CO-HEARING OFFICER LEE: Okay. Thank you.

MS. WORRALL: Yeah. I mean, as far as -- CO-HEARING OFFICER LEE: I think -- MS. WORRALL: -- outreach, we do have -- you know, so the argument for the -- in favor of the EIR is that we will be holding a scoping meeting. And so that’s an opportunity for additional comment from the public. And instead of a 30-day comment period on the environmental document, it would be a 45-day comment period, so
you’ll have a longer comment period.

And so that’s all.

CO-HEARING OFFICER LEE: Okay. Thank you. I think, unless the Presiding Member has any further comments, I’m going to move on to our next discussion item.

PRESIDING MEMBER DOUGLAS: Yeah. Thank you. No comments from me.

CO-HEARING OFFICER LEE: Thank you.

The notice of today’s Committee conference also included a discussion item on, let’s see, next steps, issues, and a schedule, and the status of discovery. Yeah, that’s the last discussion item on today’s Committee conference.

Can Staff start us off on that? Does the Staff have a report on the progress of the application?

MS. WORRALL: Sure. Surely. Staff continues to work diligently on their technical analyses and certainly appreciates the Applicant’s ongoing efforts to provide responses as additional information becomes available. We’ve had a meeting with Pacific Gas and Electric Company which was very productive.
We have a couple of just a few outstanding data responses that we require. For the technical area of air quality, we had a question about, in response to the revised AQ and HRA analysis that was documented -- docketed on August 25th. There was a question about the 21 kV underground distribution lines being included in the emissions calculations. And we’re just expecting -- we’re waiting for a response on that.

Also, there was a request for the technical data sheet for the small engines associated with -- this was part of responses, SV1 Supplemental Responses to Revised AQ Analysis, which was docketed on September 4th.

And for cultural resources, we’re just missing one report -- Scott’s aware of this, Scott’s aware of all of this -- for Dataset 2, Data Request 49.

For transportation, a vehicle miles traveled analysis for CEQA compliance, and a local transportation analysis and transportation demand management plan for compliance with City of San Jose regulations are required.

That’s about it for outstanding data’s
discovery.

Our proposed schedule remains unchanged.

Yeah. And that’s about it.

CO-HEARING OFFICER LEE: Thank you. This

is Hearing Officer Ralph Lee.

Does Staff have an estimate of how close
it is to having the information it needs and to
complete an environmental document?

MS. WORRALL: I don’t know. It’s really

on when the Applicant can submit all this. I

mean, I wouldn’t think the air quality

information would take terribly long, nor the

cultural and tribal cultural resources

information. The transportation analysis, that

might take a little longer. So this was

something that we had discovered during our

coordination with the City of San Jose to make

sure that we were responsive to their -- any kind

of specific thresholds of significance that they

had.

But our, essentially, our estimate is we

would produce a document 60 days after the

receipt of the last information from the

Applicant.

CO-HEARING OFFICER LEE: Okay. Well,
Does the Applicant have anything to add to that discussion?

MR. GALATI: Yes. The -- we’re aware of the technical data sheet and the 21 kV underground emissions, neither of which are probably going to be necessary to determine whether there’s an impact or needs mitigation but it does fill out the record, so we are working on those. We think we can get those to Staff next week, including the missing cultural report as well. That was sort of lost in my work, so I apologize for that.

As far as the transportation VMT, we also did talk to the City. And I think there’s a misunderstanding about the level of analysis that needs to be done. We have worked, also, with a consultant to try to understand that issue. And we think that it might be a good idea to have a call with Staff and the City so that we all get on the same page. We’re unclear as to what we, specifically, need to provide. So I think we could set that up quickly. I didn’t think we needed that at first but I think we do need that so that we have the direction of what it is that
we’re being asked to provide.

MS. WORRALL: Yeah. Not a problem. I can do that.

MR. GALATI: Okay. Thank you. So we are working well with Staff.

We do believe that 60 days is an awful long time after the last bit of information, so let’s think about this for a minute.

The air quality has everything that they need, except for the calculations for fugitive dust when the trenches are dug, which are not going to be a significant impact, we’re using best management practice, so that’s missing.

The technical data sheet for the small generators, we have provided the information once we provided the technical data sheet that corroborates it. But Staff can certainly finalize the analysis based on what it has and wait for the sheet to be able to refer to it.

And then transportation, we understand why the transportation section might not be able to written. But it seems like everything else can be written, except for maybe a portion of the air quality analysis that deals with an issue that is not likely to result in a significant
impact. It’s emissions from digging a trench.

So we would hope that Staff is working on that now and that can respond and create a document 30 days after it receives the last of the information.

Now if the Committee orders a Notice of Preparation and there is a public comment period on that Notice of Preparation, we’ve already received a lot of comments from the public.

Remember what those comments are for. They’re not for should we have the project be approved or not be approved. Those comments are to tell the Staff what to review and what to analyze. The Staff is already committed to analyzing 23 sections at a level that is already an EIR level. I don’t think that the additional public comment would inform that analysis, that we haven’t already received, which there’s been quite a bit of public comment so far.

So we do believe that Staff should be able to produce the document, whichever it is, quicker than it is saying it should.

Thank you.

CO-HEARING OFFICER LEE: Yeah. Thank you.
Again, this is Ralph Lee.

Well, as Staff prepares its analysis, isn’t -- is Staff expecting some information from CARB or BAAQMD that they -- that they’re going to wait for before they file their environmental document?

MS. DECARLO: I mean, we’ll certainly be paying attention to what CARB is going to file on October 15th in the Sequoia proceeding. We continue to have discussions with the two agencies on a, mostly, weekly basis. And that will certainly inform our ultimate analysis in this proceeding.

But as far as anything formally submitted by CARB or BAAQMD, while we certainly welcome any additional information they can provide, whether it be regarding the feasibility of various alternatives, alternatives that they’ve identified that are commercially available and being used in these situations elsewhere, would be helpful. Also, information regarding how they see the modeling being done, any of that information would be welcome. But we’re certainly, at this point, not expecting them to file anything formally.
CO-HEARING OFFICER LEE: Okay. Thank you.

Well, again, I have nothing further. And unless the Presiding Member has any --

MS. WORRALL: I just wanted just to add a couple things. This is Lisa Worrall here.

Just -- we just -- our cultural resources technical Staff just received the responses to Dataset 49, with the exception of just one report, but that just happened today. And they needed that information in order to their impact analysis. So they’re just sort of, you know, being able to get to their impact analysis portion of the section right now.

And then, of course, the transportation section, you know, would be -- yes, so two big sections, you know, still need to be prepared. And then if we do, you know, provided we keep moving forward with doing an EIR, then, you know, we have alternatives that we’re, you know, working on right now. And, yeah, so that’s just the various things that end up going into it.

CO-HEARING OFFICER LEE: Well, great.

Thank you.

This is Ralph Lee.
Commissioner Douglas, do you have any further questions or comments before we move on to public comment?

PRESIDING MEMBER DOUGLAS: Not for the parties. But I would be interested if CARB and Bay Area are on, if they could speak to the question of what, if anything, they might intend to submit in this -- on this project? And would it be in the form of comment on the environmental document or something ahead of that, or testimony, if they know?

CO-HEARING OFFICER LEE: Is CARB available first?

MR. DYER: Yeah. This is, again, Wesley Dyer with CARB.

And, also, I’ll say that our October 15th comments will also address kind of more broader concerns that we have that -- it will be specifically for Sequoia, but there are concerns, also, more broadly that will be applicable here. And so if that’s helpful, I think that we can, also, kind of echo those in this proceeding as well. And I would anticipate that we are looking into and interested in commenting on the Environmental Impact Analysis for this project as
well.

But, again, we’re still working with both CEC Staff and BAAQMD Staff and internally to really put together concretely what those are going to look like and consist of.

CO-HEARING OFFICER LEE:  Great. Thank you.

BAAQMD, did you have any response to Commissioner Douglas’ question?

MR. ZIELKEIWICZ:  So this is Jakub. I mean, similar to what CARB said, I mean, again, I anticipate that we’ll be commenting on the EIR or environmental analysis and participating in future proceedings. And, again, we’re working with the CEC and CARB Staff to identify any data needs.

CO-HEARING OFFICER LEE:  Thank you.

MR. GALATI:  Mr. Lee, may I please address the Commissioner?

CO-HEARING OFFICER LEE:  Is that Mr. Galati?

MR. GALATI:  Yes.

MR. RAMIREZ:  Yeah. Please go ahead.

MR. GALATI:  Commissioner Douglas, I’ve been doing work at the Commission a long time.
And I haven’t really worked with CARB in any of the proceedings that we’ve been in. And so I’m just assuming that they may not realize how much the Commission encourages workshop and collaboration between the parties so that issues can be worked out. The hearings are not the place to work these things out, if we can find agreement or disagreement.

So I really think that what could possibly happen here is that information would be provided and then there would be a surprise at the end in comments on the document that causes us all to roll up our sleeves. I’d really like you to entertain possibly ordering a workshop where we can get in a room with CARB, Bay Area, and Staff, get our technical experts together, and really have some of the discussions that we’ve had with Staff about emergencies and how difficult they are to model, and about alternatives. We’ve gone down the path a lot on a lot of the projects. And we think that there might be a lot of information that CARB could gain from us as well. And it would avoid any surprise and wasteful hearings in front of Commissioner time.
Thank you.

PRESIDING MEMBER DOUGLAS: So thank you, Mr. Galati. And those are helpful comments. And that really is why I asked that question.

We do have a process where we encourage the parties and interested agencies to meet and work on issues ahead of time through workshops, typically, in order to resolve the issues that can be resolved and, where necessary, clearly present disagreements to the Committee in a way that the Committee can weigh evidence and make a decision. And so it would be extremely helpful to have CARB and BAAQMD -- and, of course, Bay Area is experienced in our proceedings -- but it would be very helpful to have that level of engagement. Now Staff did mention that there are weekly meetings or so, something like that. Hopefully, that can lead to some engaged work through the process on this proceeding.

So I hear your comments, Mr. Galati. We will consider your request.

And let me just ask Staff if they have any comment about Mr. Galati’s suggestion of a workshop?

MS. DECARLO: This is Lisa DeCarlo,
Energy Commission Staff Counsel.

I mean, we’re definitely supportive of CARB and BAAQMD getting a better understanding of where the project proponents are coming from in term of their reliability needs and their investigations into alternative technologies and what they’ve found. So the more discussion and conversation along those lines, I think, the better for the process in general.

PRESIDING MEMBER DOUGLAS: Great. Thank you.

CO-HEARING OFFICER LEE: Thank you. This is Ralph Lee.

Before we move on to public comment, I would acknowledge that the Chair, the Associate Member of this Committee, has joined the meeting. And I’ll invite either the Presiding Member or the Chair to make any additional comments before we move on to public comment.

CHAIR HOCSCHILD: No additional comment from me. Thanks.

CO-HEARING OFFICER LEE: Thank you.

PRESIDING MEMBER DOUGLAS: Nothing.

Nothing from me either. Thank you.

CO-HEARING OFFICER LEE: Thanks. So that
concludes our discussion of the schedule and
status.

And now we’ll move on to the public
comment period. Comments are limited to three
minutes per person.

If you’re on a computer, the way we’re
going to do this is, please, use the raise-hand
feature to let us know that you’d like to
comment. If you change your mind, you can always
lower your hand again by using the same icon.
We’ll call on you, and then un-mute your line so
that you can state your comment. And if you
press the un-mute button, it will appear -- or if
we un-mute you, it will -- your un-mute button
will appear for you to press on the lower left of
your Zoom screen.

And again, for those using a telephone,
you can dial star nine to raise your hand. And
if you’ve muted your phone using star six, you
may need to press star six again to un-mute
yourself. If you’re on the phone, we’ll tell you
that your line is open and call on you by reading
off the last three numbers of the phone number.
I think that’s everything.

I’m seeing some hands starting to raise.
Can I have the Public Advisor announce the names of the people who are -- our Public Advisor’s Office representative, RoseMary Avalos, announce the commenters in the order that they’ve raised their hand?

MS. AVALOS: Yes. Yes. The first commenter is Bill Dunmyer.

And, Mr. Dunmyer, please spell your first and last name, and then go ahead and make your comment. And you may have to un-mute on your end.

CO-HEARING OFFICER LEE: Please go ahead, Mr. Dunmyer.

MR. DUNMYER: Can you all hear me?

MS. AVALOS: Yes.

CO-HEARING OFFICER LEE: Fine. This is Ralph Lee. Your voice is a little bit low, is the only thing.

MR. DUNMYER: Let me see here. Is this any better?

CO-HEARING OFFICER LEE: Yes. Thank you.

MR. DUNMYER: Okay. Well, ladies and gentlemen, thank you for letting me speak. I wish that San Jose in 2017 had given us the same opportunity. Maybe this project would have
You all did a good job of convincing me. I did a job of staying out of government. I don’t know how you keep all these acronyms straight in your minds.

At any rate, I do have a brief comment I want to make in regards to a comment that Mr. Galati, essentially, talked about. He did a good job of trying to move this from a small power plant to a, quote, “backup emergency situation,” so I applaud him for that.

The -- you know, our minds on our side is that this -- 36 massive generators don’t look like a small backup situation. It looks like a real power plant. And I don’t know how they’re placed next to Santa Teresa Boulevard or how that’s going to be. If the buildings are on this side and the generators are behind them, that’s one thing. But it raises questions as to what these things are going to look like from our residence. And it really kills our value of the houses that we’ve been in for 20-some years.

So on the environmental side, it’s my understanding that generators are -- you know, that meet today’s standards should produce zero
emissions. So I’m very interested in seeing an environmental report done, even if these things only operate a small period -- amount of time. So that would be number one.

Secondly, noise standards. When all 36 of these go online, and nobody can say whether or not they’re going to go all online or not, but if they did, what is that going to sound like, a 747 taking off next door? That’s something to be -- something that should be discussed and something you should look into.

In regards to the water, I read someplace, somewhere on this report, that there’s a massive amount of water being used by these generators. I have a question as to where that’s going to come from. Is this coming from the normal wells, the drinking wells that we use here? Because we’re short of water as it is. Secondly, is -- are the wells -- if they are not, if the well -- if it’s coming from a well, a different well of what we use for drinking water here, then are they being -- are they using the water that is being -- that was from a well that had gone down, at least not used any longer by Great Oaks, because of poison that
was spilled into it by Fairchild so many years back? So I have questions in that regards too. If they are using that water, that poisoned water, how does that impact the City of San Jose? What does the City of San Jose have to do to clean up that water which has spilled into the system?

And let’s see. What else?

Oh, noise abatement. I don’t know, again, where these generators are going to be placed. But I’m hoping that someone took the initiative and thought about building some noise abatement around these things so that they could damper the amount of noise it’s going to be projecting.

And I guess that’s all the issue I had. So I know that not -- many of you can’t make any comments now because it sounds like there’s a good chance that an environmental report will be done and some of these issues will be addressed, so thank you.

CO-HEARING OFFICER LEE: Thank you.

MS. AVALOS: Thank you. Okay. The next --

CO-HEARING OFFICER LEE: Yeah, please,
Ms. Avalos --

MS. AVALOS: -- the next --

CO-HEARING OFFICER LEE: -- go ahead.

MS. AVALOS: -- the next public comment is from Patricia Sheehan.

Please spell your first and last name and state your affiliation. And go ahead. Your line is open.

MS. SHEEHAN: Hi. My name is -- can you hear me?

MS. AVALOS: Yes.

MS. SHEEHAN: My name is Patricia Sheehan, S-H-E-E-H-A-N. I live on San Ignacio and have been here for close to 40 years.

One, I never heard of this project until my neighbor told me about it. So I’m quite concerned. How come the neighborhood was never given any kind of notice of this proposal?

Two, Mr. Galati said that we don’t lose electricity that often. He’s very wrong. We just lost electricity the other night. Last year, we lost electricity for four days. And we are now going into the big fire season. And when that happens, PG&E pulls back on our use by
shutting it off and keeping the area safe.

So, Mr. Galati, you’re very wrong on saying we don’t lose our electricity often here. We do. I live here and I have had to live through that.

I am very concerned about noise. When these generators come up, what is it going to be like for us? I like to sleep with my windows open. If you come down San Ignacio, you will see all of the federal lands behind me, where we have coyotes coming down the street, we have deer coming down the street. Is your noise going to drive all of this away? Is your noise going to keep me up at night because I sleep with all of my windows open?

Another comment prior to my speaking was the water. I came to San Jose in 1976, right when the Fairchild fiasco was going on. And I happened to work in the law firm who was making these settlement distributions. Ever since Fairchild poisoned our water wells, I’ve never drank water from these wells. What’s going to happen to our water wells with this big company?

My other concern is I saw the picture of what it’s going to look like. Most of the
buildings over there on the other side of Santa Teresa are only two-story buildings. They don’t stick out. And your building looks like it’s going to look like a very ugly business. That’s kind of sad.

Unfortunately, I mean, I know that the land is valuable. I know that people want it. But I just want to make sure that us over here, that our value, our property values don’t plummet because of you bringing this business, this company. How many people are going to be working in this business? How is going to affect the traffic?

I think these are all issues that I would like to see addressed. And I would like to see in writing the proposal.

Thank you for your time.

CO-HEARING OFFICER LEE: Thank you.

Ms. Avalos, our next public commenter?

Well, let’s see. This is Ralph Lee. I see Nick Renna.

Can we have him un-muted please?

MR. RENNA: You got me?

CO-HEARING OFFICER LEE: Is that Mr. Renna?
MR. RENNA: Yes, this is Nick Renna.

CO-HEARING OFFICER LEE: Yeah. This is Hearing Officer Ralph Lee. Please go ahead.

Sorry.

MR. RENNA: First name is Nick, N-I-C-K, last name Renna, R-E-N-N-A.

First of all, I want to start off by thanking Wesley Dyer, and I didn’t catch Jakub’s last name, but Jakub, for their comments about the EIR. I think that’s very important. And I’m really suspicious of the fact that the representative from the company is not wanting to do an EIR. It sounds like there’s some fear there that there might be something put out there that he doesn’t want anybody to see, that’s Mr. Galati.

He also mentioned the fact that he -- the systems would only be up 15 minutes an hour for each month. And, in fact, he put something out on the docket sometime ago that each system would be under maintenance 100 hours each for each system or each generator per year, 100 hours per year for each one, so that’s 3,600 hours. And that’s about 150 days of 24 hours a day, so if they’re run sequentially.
We have three data centers that are within a half a mile of here. So now I don’t know how many generators are at those data centers. But -- so we talk about the pollution, we talk about the, you know, the NOx, and it’s concerning to all of us in this neighborhood, mainly because we live in a bowl. You know, this is -- we’re surrounded by hills or mountains or whatever you want to call them and everything accumulates here. We end up having poor air quality all the time. This is going to exacerbate the situation and create a huge problem for those people with conditions that are like allergies and that sort of thing.

So, you know, three minutes isn’t enough to say everything I want to say, you know? But for the most part, as Mrs. Sheehan said, we were not notified about this. There was no community outreach until March of this year. And the initial proposal for the 21 generators and these three data centers, no one ever knew about this back in 2017.

This was all done with -- I think it was Harry Freitas that signed off on this. He was the head of the department, planning department.
And I don’t know how he would have done that without community approval or community involvement, but it happened. And now, three years later, and we’re asking for more generators, we’re asking for more -- basically, they’re asking for permission rather than -- you know, to do this, and I think it’s wrong. And I think it’s -- and it exacerbates the situation.

And I think that what Mrs. Sheehan said was the fact that we’re worried about our home values. I mean, I’ve been here for 45 years. And, you know, I think my value of my property that I’ve invested my life into is going to go down because of this unit out there.

So whether it be environmental, whether it be, you know, the value of the homes, whether it be the possibility that each of these generators are sitting on 90,000 gallons of gasoline or petrol or whatever in the hell it is, that, you know, a disaster could occur. You know, San Bruno all over again. You know, what are we looking at here?

Anyway, I have a lot more to say but my time is up, I see. But I thank you for your time. And I hope that someone pushes to put
these people to the fire, put their feet to the
fire, and make them really think about whether
this is really a viable project or not.

MS. AVALOS: Okay. Thank you, Mr. Renna.

Our next public speaker is Mimi
Patterson. And again, please state your name,
and spell your first and last name and your
affiliation. Thank you. Go ahead. Your line is
un-muted. Mimi Patterson?

Okay. It looks like she lowered her
hand.

I just want to remind folks on the phone,
if you want to make a public comment, you can
dial star nine to raise your hand, and start six
to mute and un-mute yourself.

Mimi Patterson has raised her hand again.

Go ahead. Your line is open. Mimi
Patterson? Ms. Patterson, your line is open?

CO-HEARING OFFICER LEE: Well, this is
Hearing Officer.

MS. AVALOS: Okay. Go ahead, Hearing
Officer Lee.

CO-HEARING OFFICER LEE: Yeah. This --

MS. AVALOS: There are no more raised
hands.
CO-HEARING OFFICER LEE: This is Ralph Lee, the Hearing Officer.

If Mimi Patterson wants to interrupt me, that’s fine, but I think she may be having technical difficulties. And I think we need to move on to the last phase of this proceeding.

So now I’ll ask the Presiding Member if we need to move to closed session?

PRESIDING MEMBER DOUGLAS: Yes. This is Commissioner Douglas. I think we should go into closed session.

And, perhaps, if this works for you, Chair Hochschild, report back in about an hour?

CO-HEARING OFFICER LEE: This is Ralph Lee.

Then at this time, we’ll move on to closed session. The Committee now adjourns to closed session in accordance with California Government Code Section 11126(c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding that the state body was required by law to conduct.

So we’re going to return here in about an hour, so won’t return before, let’s say, before
4:15, so we’ll return at 4:15 to --

MS. AVALOS: Excuse me.

CO-HEARING OFFICER LEE: Sorry. Go ahead.

MS. AVALOS: Excuse me, Hearing Officer Lee. Mimi Patterson wanted to speak. She was having problems but it seems that she’s able to open her line. Is it still time for her to be able to speak?

CO-HEARING OFFICER LEE: Yes. Yes, please, before we move on to closed session.

Mimi Patterson, please go ahead.

MS. AVALOS: Okay. She’s still having technical difficulty. We’ll try to communicate with her offline. Thank you, Hearing Officer Lee.

CO-HEARING OFFICER LEE: Yeah. Thank you.

And you’ll always be free to submit comments online.

And so with that, we’ll move on to -- we’ll go to closed session. And we’ll be back here at 4:15 to report any actions and, potentially, to ask additional questions that are raised during our deliberations.
And so, with that, we’re moving on to closed session. Thank you.

(The Committee recessed into closed session from 3:12 p.m., until 4:15 p.m.)

PRESIDING MEMBER DOUGLAS: Hi everybody. This is Commissioner Douglas. It’s 4:15 and we are reporting back from closed session deliberations. We have no reportable actions.

Hearing Officer Lee, do you want to make any comments at this point or say anything?

CO-HEARING OFFICER LEE: No, thank you.

PRESIDING MEMBER DOUGLAS: All right.

Well, with that, we thank everybody for your participation. And today’s Committee conference is adjourned.

(The Committee conference adjourned at 4:15 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 24th day of September, 2020.

ELISE HICKS, IAPRT
CERT**2176
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.

September 24, 2020

MARTHA L. NELSON, CERT**367