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

In the matter of, )
Application for Small Power Plant
Exemption for the Sequoia Backup Generating Facility )
Docket No. 19-SPPE-03

PREHEARING CONFERENCE, EVIDENTIARY HEARING,
SCHEDULING ORDER, AND FURTHER ORDERS

REMOTE ACCESS ONLY
VIA ZOOM VIRTUAL MEETING PLATFORM

TUESDAY, MAY 11, 2021
10:00 A.M.

Reported by:
Martha Nelson
APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:
Karen Douglas, Commissioner, Presiding Member
    Kourtney Vaccaro, Advisor to Commissioner Douglas
    Eli Harland, Advisor to Commissioner Douglas
Patty Monahan, Commissioner, Associate Member
    Mona Badie, Advisor to Commissioner Monahan
    Ben De Alba, Advisor to Commissioner Monahan
Jim Bartridge, Technical Advisor to the Commission on Siting Matters

HEARING OFFICER:
Susan Cochran, California Energy Commission

CEC STAFF PRESENT:
Lisa DeCarlo, Senior Staff Attorney
Leonidas Payne, Project Manager

PUBLIC ADVISOR:
Rosemary Avalos

APPLICANT:
C-1 Santa Clara, LLC
    Scott Galati, Esq.
    DayZen, LLC
Steven Branoff, Ramboll
Marcela Long, Corgan

INTERVENOR:
Robert Sarvey
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HEARING OFFICER COCHRAN: Okay, my clock shows 10:00.

Let’s start the recording. We are going live for the California Energy Commission Prehearing Conference and Evidentiary Hearing for the Application for a Small Power Plant Exemption for the Sequoia Backup Generating Facility. Today is May 11, 2021.

Commissioner Douglas and Commissioner Monahan are both here. Are you both ready to proceed?

COMMISSIONER DOUGLAS: Hi, this is Commissioner Douglas. I’m ready to proceed.

HEARING OFFICER COCHRAN: Okay.

COMMISSIONER MONAHAN: And this is Commissioner Monahan and I am as well.

HEARING OFFICER COCHRAN: Then let’s go.

COMMISSIONER DOUGLAS: All right, super. Well, I will kick things off. This is the Prehearing Conference and Evidentiary Hearing for the Application for a Small Power Plant Exemption for the Sequoia Backup Generating Facility.

I’m Karen Douglas, the Presiding Member of the Committee assigned to conduct proceedings on the application. Commissioner Patty Monahan is here today and is the Associate Member of this Committee.

We are all participating remotely today using Zoom.
Before we begin, I would like to make introductions of the following individuals, and we’re participating via teleconference. Kourtney Vaccaro and Eli Harland, my Advisors. Mona Badie and Ben De Alba, Commissioner Monahan’s Advisors. Jim Bartridge, Technical Advisory to the Commission on Siting Matters. And Susan Cochran, the Hearing Officer for this proceeding. I would also like to introduce Rosemary Avalos from the Public Advisor’s Office.

And at this time I will ask the parties to please introduce themselves and their representatives, starting with the Applicant.

MR. GALATI: Good morning, Scott Galati representing C-1 Santa Clara, which you know is Cyrus 1. I have with me today only two witnesses, if they’re needed. Steven Branoff with Ramboll, R-A-M-B-O-L-L. And Marcela Long (phonetic) with the architecture firm Corgan.

COMMISSIONER DOUGLAS: All right, thank you very much Mr. Galati.

And now, staff.

MS. DECARLO: Good morning Commissioners and Hearing Officer Cochran. Lisa De Carlo, as an Energy Commission Staff Counsel. With me today is Leonidas Payne, Project Manager with the Energy Commission.

And we also have a host of witnesses that I can go through now, if you would like, or I can save that for when
we get into the substantive aspects of the hearing.

COMMISSIONER DOUGLAS: I think you could save that, if you don’t mind, Ms. De Carlo. Thank you.

MS. DECARLO: Sure, thank you.

COMMISSIONER DOUGLAS: And Intervenor Robert Sarvey?

MR. SARVEY: Yes, this is Bob Sarvey on the line.

COMMISSIONER DOUGLAS: All right, thank you very much.

Now, I will ask if there are any elected officials or representatives from agencies of the federal government or the State of California, or Native American Tribes participating today?

Okay, what about Bay Area Air Quality Management District?

Is anyone here from the City of Santa Clara, or Silicon Valley Power, or any other local agencies?

All right, Commissioner Monahan anything you’d like to say by way of opening?

COMMISSIONER MONAHAN: Sure, just briefly. I just want to thank staff, especially Lisa De Carlo and Lon Payne, Mr. Sarvey and the Applicant represented by Mr. Galati. I think we all recognize this has been a long process and we are committed to issuing a decision that’s grounded in strong analysis as quickly as we can. So, looking forward to today’s hearing and thanks to everyone.
COMMISSIONER DOUGLAS: Thank you, Commissioner Monahan. And I definitely join in those remarks.

And at this point I’ll hand over the conduct of this Prehearing Conference to Hearing Officer Susan Cochran.

HEARING OFFICER COCHRAN: Thank you Commissioner Douglas and Monahan. And again, good morning.

The Committee noticed today’s Prehearing Conference in the Notice of Prehearing Conference and Evidentiary Hearing, Revised Scheduling Order, and Further Orders issued on April 12, 2021. I’ll be referring to that as the April 12 Notice from here on out.

As explained in the April 12 Notice, the basic purposes of the Prehearing Conference are as follows. To assess the parties’ readiness for hearings, to identify the matters in dispute, and to discuss the remaining issues and procedures necessary to conclude the SPPE process.

Before we proceed with the substantive portion of this Prehearing Conference, I want to discuss housekeeping issues.

Consistent with Governor Newsom’s Executive Orders N-25-20 and N-29-20, and the recommendations from the California Department of Public Health to encourage physical distancing to slow the spread of COVID-19, we are conducting the Prehearing Conference and Evidentiary Hearing remotely using Zoom.
The next slide, please. We have set up this Zoom meeting so that the parties are panelists. This means that they will mute and unmute themselves to speak and have the option to use the video feature.

Please note that if you are making noise that disrupts the meeting, the host may mute you. When you need to speak, you will need to raise your hand to have your microphone turned on again.

The next slide, please. On the screen you can see the participant instructions for using Zoom. To find your participation options look for the black bar at the bottom of your Zoom screens. If you want to be recognized, please use the raise hand feature. If you are on the phone, press *9 to raise your hand. If you have muted your phone by press *6, please be sure to unmute yourself by pressing *6 again. The raise hand feature creates a list of speakers based on the time when your hand was raised and we will call on you in that order.

The general public will have two opportunities to speak today. There are public comment periods toward the end of both the Prehearing Conference and the Evidentiary Hearing.

A court reporter is present today, who is taking down all of the discussion and will prepare a transcript of what is said. To ensure that we have a complete and accurate
transcript, I must ask that only one person at a time speak.

Second, please identify yourself before you speak.

When you speak for the first time please say and spell your name slowly. Meeting remotely like this makes it harder for the court reporter and for me to identify who is speaking, or wishes to be recognized.

The next slide, please. If you run into difficulties today during this meeting, please contact the Public Advisor’s Office, or Zoom’s help center. The contact information for both of these is on this slide and is also in the name -- I’m sorry, in the notice of today’s hearing.

Before we proceed, are there any questions about how to use Zoom for today’s Prehearing Conference and Evidentiary Hearing?

Seeing no raised hands and hearing no questions, I will now move on to the substance.

This Prehearing Conference concerns the application for a small power plant exemption, SPPE, for the Sequoia Backup Generating Facility. The application was filed by the Applicant on August 14, 2019. The application and many of the other documents I will be mentioning today are available in the online docketing system used by the Energy Commission.

The next slide, please. Here is the agenda for today’s proceedings. Briefly, the Applicant proposed to install and operate 54 diesel-powered backup generators to
provide an uninterruptable power supply to the Sequoia Data Center to be located at 2600 De La Cruz Boulevard in Santa Clara, California.

Each generator is capable of providing up to 2.25 megawatts of power to meet the data center load of 96.5 megawatts. The generators and their related fuel tanks are to be set in below grade concrete vaults because of the project’s proximity to Mineta International Airport.

In addition, the Applicant will construct a substation for Silicon Valley Power, the local electricity provide, on the project site.

I may refer to all of these features as the project, moving forward.

As originally proposed, the backup generators would have been consistent with USEPA Tier 2 emission standards. The backup generators would not be able to deliver power off of the project site. Instead, the generators would only serve the data center load.

The Committee already conducted an Evidentiary Hearing on the project in June 2020. The Committee then issued its proposed decision for the project on August 21, 2020. That Committee-proposed decision recommended that based on the hearing record of these proceedings, the CEC grant the requested exemption and adopt a mitigated negative declaration to address the project’s potential environmental
and energy resource impacts.

The CEC conducted a public hearing on the Committee-proposed decision on September 9, 2020. At the September 9, 2020 Business Meeting, the California Air Resources Board, CARB, made oral comments concerning the project and its potential air quality impacts. The Bay Area Air Quality Management District, Bay Area, also raised concerns about the project. Specifically, CARB and Bay Area proposed that the CEC consider additional information about air quality and public health impacts, particularly in light of recent energy emergencies where existing data center backup generators had been called on to provide power to avoid curtailment of power.

The CEC ultimately voted to remand the project to the Committee to obtain additional information about CARB’s and Bay Area’s concerns. That remand decision leads us to today’s Prehearing Conference and Evidentiary Hearing.

In late December 2020, Bay Area notified the CEC that it had established a new best available control technology, BACT, guideline. This new BACT guideline is application to the Sequoia Project and requires that backup generators of the size proposed for the Sequoia Project meet USEPA Tier 4 Emissions Standards.

Accordingly, on January 25, 2021 the Applicant filed a revised project description to convert the backup
generators to meet the more stringent Tier 1 -- I’m sorry, Tier 4 Emissions Standards. To meet the Tier 4 standards, the Application is proposing to add a Miratech system consisting of selective catalytic reduction, SCR, and a diesel particulate filter. The SCR uses urea that would be stored in tanks in the same concrete basins as originally proposed for the generators and the diesel fuel tanks. The below grade basins would be slightly enlarged to accommodate the urea tanks and there would be one urea tank for every two generators. This revised project description is the focus of the proceedings today.

Public Resources Code Section 25541 specifies that the CEC may grant an SPPE only when it makes three separate and distinct findings. The proposed power plant has a generating capacity of no more than 100 megawatts, no substantial adverse impact on the environment will result from the construction or operation of the power plant, and no substantial adverse impact on energy resources will result from the construction or operation of the power plant.

In addition, the CEC acts as the lead agency under CEQA. In reviewing an SPPE, the CEC considers the whole of the action. For the application, the whole of the action means the backup generators, including the added Miratech system, the data center, and other project features such as the substation. Again when I refer to the project I mean the
backup generators, the data center, and the other project features such as the substation.

When considering the original project using Tier 2-compliant backup generators, the Committee was informed by an initial study and proposed mitigated negative declaration prepared by staff, and filed on January 23, 2020, as well as several supplemental staff filings afterwards.

In response to the project’s conversion to Tier 4-compliant generators, staff has prepared a compiled revised IS/PMND that reflects new analysis related to the changes to the project, as well as the supplemental filings previously filed. The complied, revised IS/PMND was filed on April 23, 2021.

We’ll now talk about how we will be conducting the Evidentiary Hearing today. As set forth in the April 12 notice, the Evidentiary Hearing will be conducted using an informal hearing procedures, modified to fit the remote nature of the hearing. In addition, the Committee notified the parties that cross-examination would be by written questions only. The Committee explained that if a party failed to submit cross-examination, that party could be precluded from questioning witnesses. Mr. Sarvey is the only party who filed written cross-examination questions. Neither staff, nor Applicant filed any cross-examination questions.

Eliza, could you display the exhibit list now,
Because the hearing is being conducted remotely, we required the parties to submit lists of exhibits to be introduced. The exhibit list you see on the screen is -- has been compiled by the hearing office and is a complete list of the exhibits identified by the parties. It also includes the exhibits that were previously admitted at the Evidentiary Hearing conducted on June 5, 2020.

During the Evidentiary Hearing we will not take time to describe the exhibits that are moved into evidence or to describe the topics that are covered by declaration. You have the ability to create your own exhibit list by going to the CEC webpage for the Sequoia Project and clicking on the link “exhibit list” in the box.

I know that this is quick. Have the parties had a chance to generate exhibit lists of their own? And if not, I would like you to take the opportunity to do that during our break.

Ms. Lopez, could you return to the power point now please.

During the Evidentiary Hearing I will ask you to confirm that the exhibit list contains all of the exhibits that you intend to rely on in the Evidentiary Hearing later today.

Absent any objections, we will deem all parties’
opening and rebuttal testimony admitted. There is no need to
discuss experts’ resumes because we have them in writing and
there has been, thus far, no objection to any witness as an
expert.

If any party has an objection to the qualifications
of a witness, please be prepared to state the objection and
its basis when we get to that point in the Evidentiary
Hearing.

As it relates to Mr. Sarvey’s cross-examination
questions, the April 12 notice stated that objections to the
questions would be considered during the Evidentiary Hearing.
The parties should be ready to state objections to the
questions. And the Committee may rule on the objections
during the Evidentiary Hearing or take the objections under
submission.

As set forth in the April 12 notice, the Committee
may allow parties who filed cross-examination in accordance
with the notice limited cross-examination during the
Evidentiary Hearing. In order to avail yourself of having
the right to conduct oral cross-examination, you will need to
show good cause. Practically, in showing good cause the
person requesting oral cross-examination should be prepared
to show extraordinary circumstances, such as illness, and
other excusable circumstances beyond the requester’s control
that prevented him or her from asking questions. Mere
disagreement with an answer is not sufficient for a showing of good cause.

In addition, you will need to identify the witness to be cross-examined, and tell us the availability of the witness today and any time constraints the witness may have.

Finally, you will need to tell us the approximate amount of time necessary to cross -- to conduct the cross-examination.

At the conclusion of the admission of evidence at the Evidentiary Hearing, the parties will be provided with an opportunity to offer a summation or closing argument. Please limit any such summation or closing argument to ten minutes.

Mr. Galati, would you like to go first or last in the summation?

MR. GALATI: I would like to go last, since I have the burden of proof. Thank you.

HEARING OFFICER COCHRAN: Thank you.

The April 12 notice did not call for briefing, nor does the Committee foresee the need for briefing. Does any party disagree? Does any party believe that briefing is required in this case? Mr. Galati?

MR. GALATI: Briefing is not required from our perspective.

HEARING OFFICER COCHRAN: Thank you.

Ms. DeCarlo?
MS. DECARLO: Staff does not believe briefing is necessary in this case.

HEARING OFFICER COCHRAN: Thank you.

Mr. Sarvey?

MR. SARVEY: Yes, I believe briefing is necessary.

HEARING OFFICER COCHRAN: And why is briefing necessary?

MR. SARVEY: We have a long, convoluted record here and it needs to be summarized so the Committee can see the points, point by point, and I think it would aid the Committee in making their decision.

HEARING OFFICER COCHRAN: Okay. Thank you for that.

That concludes the Prehearing Conference. Did I -- before we move on to the public comment portion, which is Item 3 on the agenda, does either Commissioner Douglas or Commissioner Monahan wish to make any remarks?

COMMISSIONER DOUGLAS: No comments from me at this point, thank you.

HEARING OFFICER COCHRAN: Thank you.

COMMISSIONER MONAHAN: And no comments from me, either.

HEARING OFFICER COCHRAN: Thank you.

I am now -- we are now moving on to Item 3 on today’s agenda, the public comment portion. I am now going to hand over control of the meeting to Ms. Avalos, from the Public
Advisor’s Office, to assist in running the public comment portion of the meeting.

Ms. Avalos, before you ask for verbal comments, has the Public Advisor’s Office received any written comments that folks have requested be conveyed at today’s Prehearing Conference?

MS. AVALOS: As of today we have not received any public comment, written or oral received in the Public Advisory’s Office.

HEARING OFFICER COCHRAN: Okay, thank you. If you could proceed, now, with anyone who has oral comments right now?

MS. AVALOS: I will first call on attendees using the raise hand feature on Zoom. Please state your name and affiliation, and spell you first and last name. Also, do not use the speakerphone feature because we may not be able to hear you clearly.

Okay, and I’m looking at the list to see if there are any hands raised. And just as a reminder, dial *9 to raise your hand if you are on the phone.

HEARING OFFICER COCHRAN: I am not seeing any raised hands, Ms. Avalos.

MS. AVALOS: Neither am I. So, there are no raised hands and, therefore, no public comment at this time.

HEARING OFFICER COCHRAN: Okay. So, the next slide,
please. The agenda calls for a ten-minute break. So, we will return -- let’s cut it to eight minutes, so we’ll be back at 10:30. Thank you.

(Off the record at 10:22 a.m.)

(On the record at 10:34 a.m.)

HEARING OFFICER COCHRAN: Ms. Lopez, could you please advance to the next slide in the PowerPoint presentation?

I believe all of the parties are present, at least I’m seeing their names in the list. Mr. Sarvey, Mr. Galati, Ms. DeCarlo.

So, we will now proceed with the Evidentiary Hearing. This is the Evidentiary Hearing provided for in the April 12 notice. We conducted the Prehearing Conference immediately before this hearing. We are now going to have the receipt of evidence.

I had asked each of the parties to review the exhibit list that was prepared by the Hearing and Policy Unit of the Chief Counsel’s Office.

Do any of the parties see any errors or omissions in the exhibit list?

Mr. Sarvey, for your exhibits please note that the system does not allow for part 1 or part 2 of an exhibit. So, we made the two-part exhibit that you had listed two separate exhibits, and then renumbered the rest of your exhibits. Did that appear understandable to you?
MR. SARVEY: Yes, I see that. Thank you.

HEARING OFFICER COCHRAN: Thank you.

So, are there any errors or omissions, Mr. Sarvey?

MR. SARVEY: None that I recognize at this point.

HEARING OFFICER COCHRAN: Thank you.

Mr. Galati, same question?

MR. GALATI: No errors.

HEARING OFFICER COCHRAN: Ms. DeCarlo, any errors or omissions?

MS. DECARLO: No errors or omissions.

HEARING OFFICER COCHRAN: Thank you so much.

I’m now going to ask each party for a motion concerning their exhibits. At this time, if you have an objection to any of the exhibits or other evidence being offered by any party, you will be given an opportunity to make that objection.

I will first call on each party for a motion to admit their evidence. I will then call on the other parties to see if there are any objections to the proffered evidence.

For any objections to Mr. Sarvey’s cross-examination questions that are an exhibit in this proceeding, the Committee reserves its right under Title 20, Section 1211.5(c) to rule on the objections after the hearings. Does everyone understand how we will be proceeding?

MR. SARVEY: Yes.
HEARING OFFICER COCHRAN: Thank you.

Applicant, I will turn to you first. Do you have a motion concerning your exhibits?

MR. GALATI: Yeah, I move Exhibits 36 through 48 into the record, please.

HEARING OFFICER COCHRAN: Thank you.

Staff, do you have any objection to the admission of Exhibits 36 to 48 into the evidentiary -- into the hearing record for this proceeding?

MS. DECARLO: No objections from staff.

HEARING OFFICER COCHRAN: Mr. Sarvey, do you have any objection to receiving Exhibits 36 to 48 into the hearing record of this proceeding?

MR. SARVEY: No objection.

HEARING OFFICER COCHRAN: Thank you.

Staff, do you have a motion concerning your exhibits?

MS. DECARLO: Yes, I move Exhibits 205 through 213 into the record.

HEARING OFFICER COCHRAN: Thank you.

Applicant, do you have any objection to staff’s exhibits?

MR. GALATI: No objection.

HEARING OFFICER COCHRAN: Mr. Sarvey, do you have any objection?

MR. SARVEY: No objection.
HEARING OFFICER COCHRAN: Thank you so much.

Mr. Sarvey, do you have a motion concerning your exhibits?

MR. SARVEY: Yes, I would like to move 312 through 321 into the record, please.

HEARING OFFICER COCHRAN: Thank you.

Mr. Galati, do you have an objection to any of Mr. Sarvey’s exhibits?

MR. GALATI: You know, we joined in the objections to Mr. Sarvey’s cross-examination that go outside the scope of the hearing. Other than that, no objection.

HEARING OFFICER COCHRAN: Okay.

Ms. DeCarlo, do you have any objection on behalf of staff to the receipt of Mr. Sarvey’s Exhibits 312 to 321?

MS. DECARLO: I do to the extent that portions of Mr. Sarvey’s direct testimony in Exhibit 312 and various other exhibits go outside the scope of the Evidentiary Hearing established in the April 12th notice. I object to the introduction of those exhibits.

HEARING OFFICER COCHRAN: Do you have a list or a citation to the portions of the exhibits that you are objecting to?

MS. DECARLO: I could read -- to the portions of the testimony, the portions of Exhibit 312 that staff objects to are starting page 3 through page 12.
HEARING OFFICER COCHRAN: Okay.

MS. DECARLO: And then, for the exhibits, the whole exhibits that we object to as outside the scope of the notice, Exhibits 313 through 319, and Exhibit 321.

HEARING OFFICER COCHRAN: Thank you.

Mr. Sarvey, do you have any response to staff’s objections to your exhibits?

MR. SARVEY: Well, if I had a clue to what she’s objecting to, I would. But I can’t tell from her objection what specifically she’s objecting to. So, if you could be a little more specific. Let’s start with the exhibits, say 321, she’s objecting to that one, is that right?

MS. DECARLO: Yes. So, I can be a little bit more specific, 321 --

MR. SARVEY: Why?

MS. DECARLO: It appears that your intent with this exhibit is to focus on the cumulative impacts discussion and that issue was already addressed in the previous Evidentiary Hearing. It is not impacted by the change in the project to Tier 4 or the additional data gathered by the Bay Area Air Quality Management District regarding outages.

And so, it is my understanding that this is outside the scope of what was established in the notice.

MR. SARVEY: I believe you need to reread the order in the notice and I think you’re clearly see the cumulative
impacts was an issue.

MS. DECARLO: I disagree, respectfully.

MR. SARVEY: I would ask you to read it again and you’ll see clearly cumulative impact issues were a part of this.

MS. DECARLO: It’s specifically directed to the project’s conversion to Tier 4-compliant engines and it’s not -- my reading of the notice is it is not intended to revisit the identification of other projects within the vicinity of this, and whether or not staff analysis and inclusion of various projects in their cumulative analysis should be revisited, or open to further discussion.

MR. SARVEY: Let me reread the notice --

(indiscernible) --

HEARING OFFICER COCHRAN: Okay. Okay, so that’s sufficient back and forth. I think we understand each party’s position. We have to understand that the intent of this Evidentiary Hearing is to resolve questions related to the changes to the environmental analysis as they related to the revised project description to modify the backup generators to meet Tier 4 emissions.

The Committee will take this motion to exclude under submission.

MS. DECARLO: Thank you.

HEARING OFFICER COCHRAN: And any ruling will be
contained in the revised Committee proposed decision.

Again, as noted before, pursuant to Title 20, Section 211.5(c), the Committee will rule on the objections in the revised Committee proposed decision.

MR. SARVEY: Absolutely not acceptable. We’ve got a bunch of objections here that really aren’t clear. They need to be fleshed out. We can’t just let the Committee decide what the objections are when the objections aren’t clear at all. You should just --

HEARING OFFICER COCHRAN: Her objection -- Mr. Sarvey, her objection is that you have exceeded the scope of this Evidentiary Hearing. You’re saying that you have not exceeded the scope of the Evidentiary Hearing.

MR. SARVEY: Exactly.

HEARING OFFICER COCHRAN: That’s the question.

MR. SARVEY: But there’s more than that. She’s making a lot of assertions. She’s trying to disqualify the majority of my reply testimony without, you know, this is outside the scope. It’s not true. I mean if we’re going to start objecting on that basis, I’m going to object to staff filing all their stuff late. They didn’t even file their responses until two days after the time it was supposed to be filed --

HEARING OFFICER COCHRAN: Actually, Mr. Sarvey, if you reread --
MR. SARVEY: They didn’t file their exhibit list until yesterday --

HEARING OFFICER COCHRAN: Which is when they were due.

MR. SARVEY: -- (indiscernible) --

HEARING OFFICER COCHRAN: Which is when they were due. Which is when they were due, Mr. Sarvey. There was Hearing Officer memos that dictated and changed the deadlines. That did say that parties had until May 10 to file their exhibit lists, that staff and Applicant were granted additional time to respond to the cross-examination questions after you had revised them in order to meet the original requirements from the April 12 notice.

MR. SARVEY: The only thing I revised was to the (indiscernible) --

HEARING OFFICER COCHRAN: Which was -- which was originally supposed to have been included in the questions and was not. So, the Hearing Officer memo said you have until May 4 to correct that error. Staff and Applicant, you have additional time to answer the questions once you know to whom the questions are directed. All parties, you have additional time to then file your exhibit lists.

So, staff has not been untimely. Staff has followed the amended dates set forth in the Hearing Officer memo that were given for fair process for all concerned.
The objections are that your filings exceed the scope of this Evidentiary Hearing. Ms. DeCarlo, is that the basis of your objections?

MS. DECARLO: Yes. Although, I could provide a little bit more focus on a few of the exhibits. The objection also includes that these materials were not submitted or directed in this specific proceeding. So, Exhibits 315 and 316, BAAQMD’s letters in other proceedings do not directly address this proceeding.

And then, additionally, Exhibit 318, the revised noise analysis for grade up south (phonetic) is not relevant to this proceeding.

MR. SARVEY: Can I add one more thing, please?

HEARING OFFICER COCHRAN: Yes. Please go ahead, Mr. Sarvey.

MR. SARVEY: Okay. I’m going to read to you -- I’m going to read to you, this is from page 1 and 2 of your Notice of Evidentiary Hearing.

It says: On November 16th, the CEC voted to affirm its remand and to provide further directions to the Committee. A subsequent order memorializing the action at the business meeting and directed the Committee to conduct additional proceedings to consider those comments raised by CARB and BAAQMD in this proceeding that addressed input assumptions regarding NO2 impacts from routine testing and
maintenance, and direct and cumulative impacts of emergency
operations of the Project’s backup generators.

That is what your notice says. That is what my
testimony addresses.

MS. DECARLO: I would just direct you, Mr. Sarvey, to
page 4 of the Notice which specifically itemizes the
particular issues that the Committee is reopening this
Evidentiary Hearing for.

MR. SARVEY: Okay, it says: Direct and cumulative
impacts right there. On page 4 it says the same thing.

It says: Because the Committee previously held an
Evidentiary Hearing -- so the cumulative impacts are directly
and squarely within what we’re talking about because that is
what BAAQMD and CARB raised. That was the issues that they
raised at that meeting.

HEARING OFFICER COCHRAN: Okay. I believe that the
Committee has sufficient argument from the parties on these
objections. And again, pursuant to Title 20, Section
1211.5(c), the Committee will rule on your objections in the
CPD, Committee Proposed Decision.

MS. DECARLO: Thank you.

HEARING OFFICER COCHRAN: Anything further?

MS. DECARLO: Nothing from staff. Thank you so much.

HEARING OFFICER COCHRAN: Thank you.

In the April --
MR. GALATI: Can I be heard on this point?

HEARING OFFICER COCHRAN: Absolutely, Mr. Galati.

I’m sorry.

MR. GALATI: Thank you. There is a different between cumulative impacts when we just say cumulative impacts, then there is something different between cumulative impacts from emergency operation. The staff has addressed emergency operations, we’ve addressed emergency operations. We’ve addressed the specific issues of how emergency operations should be treated, whether they’re cumulative or direct.

So, I think that Mr. Sarvey’s argument about cumulative impacts and what he’s arguing goes beyond what you asked for because he hasn’t made a showing that the operational impacts -- excuse me, the emergency impacts should even be modeled.

So, from my perspective, it’s sort of a -- assuming that emergency operations were done incorrectly and then, also, they needed to be looked at from a cumulative perspective.

We had a very, very long discussion on cumulative and cross-examination on cumulative in general, and cumulative specifically with respect to all of the modeling that was done in this case in the earlier Evidentiary Hearings.

I just wanted to make that distinction.

MR. SARVEY: I’d like to add something, please.
HEARING OFFICER COCHRAN: Please, Mr. Sarvey. Yours will be the last words.

MR. SARVEY: Okay. Once again, CARB and BAAQMD raised this issue of cumulative impacts and that’s what (indiscernible) -- is all about. That’s what specifically the testimony entailed. Cumulative impacts, air quality impacts. Staff and Applicant, neither one of them has modeled the cumulative air quality impacts of emergency operations or the cumulative air quality impacts period. They have done a cumulative health risk assessment that’s inadequate because they didn’t include three of the CEC cited power plants. So, you know, there is no air quality impact assessment performed for emergency operation or cumulative impacts of the entire area. It hasn’t happened.

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

Again, we will rule on these objections in the Committee Proposed Decision.

Let’s now talk about the need for cross-examination.

In the April 12 Notice, the Committee indicated that it may allow parties who filed cross-examination, in accordance with the Committee Notice, limited cross-examination of witnesses during this Evidentiary Hearing upon a showing of good cause.

Practically, showing good cause requires that the person requesting oral examination show extraordinary
circumstances such as illness and other excusable circumstances beyond the requester’s control that prevented him or her from asking questions.

Again, mere disagreement with an answer is not sufficient for a showing of good cause.

Finally, we need to have a discussion about the identity of the witness to be cross-examination -- cross-examined, pardon me, their availability, and the amount of time necessary.

Does any party move to conduct cross-examination?

Mr. Galati?

MR. GALATI: Madam Hearing Officer, we don’t have any cross-examination.

HEARING OFFICER COCHRAN: Thank you.

Ms. De Carlo?

MS. DECARLO: Staff does not have any cross-examination.

HEARING OFFICER COCHRAN: Mr. Sarvey?

MR. SARVEY: No, I have no cross-examination.

HEARING OFFICER COCHRAN: Thank you.

As I mentioned during the Prehearing Conference, we are going to offer the parties the opportunity to provide up to ten minutes for a closing argument or summation. We will start with staff, then go to Mr. Sarvey. And as the Applicant bears the burden of proof, end with the Applicant.
So, Ms. DeCarlo are you ready to present a closing statement?

MS. DECARLO: Yes. Thank you, Hearing Officer Cochrane.

Staff reaffirms its conclusion that the Sequoia Backup Generating Facility would not result in any significant adverse impacts and qualifies for an exemption from CEC licensing.

The project’s conversion to Tier 4-compliant engines did not alter this conclusion, nor does the additional data that the BAAQMD provided in other proceedings regarding recent power outages.

The join letter submitted by the California Air Resources Board and BAAQMD are the last comments these agencies have provided in this proceeding. And the letter specifically states that CARB and BAAQMD agree the use of Tier 4 engines is adequate in this case.

We strongly encourage the Project Applicant to modify the project to include this technology and the Committee to revise its decision to reflect that change.

The project has been so revised and staff encourages the Committee to affirm staff conclusion that the project would result in less than significant adverse impacts and to grant the requested exemption. Thank you.

HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.
Mr. Sarvey? Mr. Sarvey, if you’re speaking we can’t hear you.

MR. SARVEY: Okay, I’m ready. Thank you.

HEARING OFFICER COCHRAN: Sorry.

MR. SARVEY: There’s currently 25 data centers in this Census tract where this data center is located, according to Exhibit 313 (indiscernible). The Census tract is in the upper 90 percent of communities exposed to these particulates. You have already approved two new data centers with over 250 megawatt diesel generators inside the Census tract. Now, with Sequoia we’ll potentially had another 121 megawatts of diesel engines.

In 2018, in the McLaren case I’ve argued to this Commission requiring emergency and cumulative air quality impacts. CARB and BAAQMD have recently supported the requirement in several other data center siting cases, initially in this one.

They’ve removed their objection to not doing it mainly because of the time, in my belief, but they’re not here to testify so we’ll leave that out.

Staff and Applicant are still refusing to conduct an air quality impact assessment of emergency operations at the Sequoia Project. BAAQMD’s outage data, I encourage the (loss of audio) -- to take a good look at it.

Exhibit 314 and 315 demonstrates the probability of
any data center in the Santa Clara area to operate in emergency mode is over 20 percent, and that’s with all the 39 data centers from Santa Clara that haven’t reported their emergency activity to BAAQMD.

Staff’s cumulate health risk assessment does not consider the Lafayette Data Center, which CEC staff has been processing for almost a year. And the Santa Clara Data Center sited by the CEC in 2011 is not included, or the existing (indiscernible) data center, which was constructed before McLaren.

Therefore, there’s many remaining questions about SPD’s ability to supply the energy necessary for this massive data center build up in Santa Clara.

I’m convinced by the fact that we had all these power outages in 2020, in August.

The CEC’s been advocating for many years for reductions in GHG emissions and has now passed on an opportunity to achieve substantial GHG emission reductions by not requiring the Applicant to enroll this project in the Santa Clara Clean Energy Program, using less GHG-producing backup generators. That’s a failure by this Commission.

Staff filed this original IS/MND in 2020, over 14 months ago. Since that time the project’s been modified. The IS/MND has over 80 additional pages of testimony which state responsible agencies are not allowed to comment on when
the IS/MND was issued in January of 2020 (indiscernible).
Clearly the IS/MND should be refiled with the clearing house
(phoneic).

No discovery was allowed on the project modification.
So many questions remain for myself and possibly the other
agencies. Though, the other agencies were not offered an
opportunity to comment on it at hearing.

Unfortunately, I still dispute the project’s
eligibility for SPPE treatment and I await a court decision
in the Laurelwood case which is still outstanding.
CARB and BAAQMD continue to advocate for air quality
assessment and cumulative impact assessments in other
proceedings. This does not go unnoticed. They should
require it here.

Thank you.

HEARING OFFICER COCHRAN: Now, I was struggling to
unmute myself. I apologize. Thank you, Mr. Sarvey.
Mr. Galati?
MR. GALATI: Thank you for conducting this
Evidentiary Hearing so quickly and efficiently, we really
appreciate it.

Wanted to remind the Committee that a decision in
June would be very, very helpful to us.

And also remind the Committee that this Applicant has
done everything that it was asked to do, when asked to do it.
It has designed a project that meets all requirements and it’s designed a project that previously didn’t have any significant impacts, and even with modification continues to not have any significant impacts.

It is very easy for an Intervenor to say there are questions or to raise questions about what should -- what they think they should have done. But please, look closely as to what your staff has said. They have looked at the issue of emergency operations at least six times, three times in this case, and have written extensively of why emergency operation modeling is not appropriate, and is speculative under CEQA. The Commission got it right the last several SPPEs and got it right in this project as well.

The information that the Bay Area Air Quality Management District circulated in its survey doesn’t change that conclusion. And it doesn’t change that conclusion because the vast majority of those operating hours were done voluntarily pursuant to an Executive Order by the Governor’s Office. Which, as you know, is a very, very rare occasion.

That makes our point exactly is emergency operations are rare. The best way to continue to make emergency operations rare is to stabilize the grid. The Commission, the California Public Utility Commission, the Cal ISO have worked hard so far to do that and we are confident that they will.
Mr. Sarvey raised in his -- whether or not -- you know, in our cross-examination questions whether the Applicant would agree to a condition that says it wouldn’t voluntarily operate pursuant to an Executive Order or participate in the CPUC limited pilot program, allowing diesel generators to generate during emergencies voluntarily to do load shedding.

That is not our plan. We don’t intend to do that. And we’re fine, we’re ambivalent whether the Commission makes it a condition because we don’t intend to do it.

But I would be careful about whether the Commission actually imposed such a condition because there might be other applicants who might.

So, from this perspective we leave you with that we’re still ready and committed after all this time to build this project. And we think that getting this project done in June would sort of turn a page as to what happened to this project and, hopefully, doesn’t happen to other projects or, hopefully this Applicant would consider doing another project in California.

So, that’s all we have to say, thank you.

HEARING OFFICER COCHRAN: Thank you, Mr. Galati.

The next slide, please. We are now to the public comment portion of today’s Evidentiary Hearing, where the public may -- has three minutes, up to three minutes to
comment on the proceedings today.

Ms. Avalos, I am again turning this portion over to you, to run for us on behalf of the Public Advisor’s Office. Thank you again for helping us today.

MS. AVALOS: Thank you, Susan. Again, I will repeat that I will first call on attendees using the raised hand feature on Zoom. And then, please state your name and affiliation, and spell your first and last name. Also, do not use the speaker feature because we may not be able to hear you clearly.

I’m looking at the list of attendees and I do not see any raised hands. But I’d like to remind those that are on the phone that if you dial *9, you can raise your hands. So, let me take a look here.

Okay, seeing there are no raised hands, I’ll turn to you, Susan, Hearing Officer Cochran.

HEARING OFFICER COCHRAN: Thank you so much, Ms. Avalos.

At this time the Committee will now adjourn to a Closed Session in accordance with California Government Code Section 11126(c)(3), which allows a state body to hold a Closed Session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

We anticipate that we will return from Closed Session in about an hour, would be my best guess. Maybe a little
longer. Please pause the recording during this time.

And I would instruct the parties to please stay, as there may be something reportable coming out of this Closed Session. I don’t know, but in the interest of allowing you to hear it more quickly than we might be able to with a written order, you might want to stay.

So, with that --

MS. DECARLO: Just one --

HEARING OFFICER COCHRAN: I’m sorry?

MS. DECARLO: One question, sorry, Hearing Officer Cochran.

HEARING OFFICER COCHRAN: Yes.

MS. DECARLO: Would you like the witnesses to stay as well? We have half a dozen or so.

HEARING OFFICER COCHRAN: I don’t believe we need any of the witness, Ms. DeCarlo. Thank you for having them available to us today. Again, this was a new process for us with written questions as opposed to having cross-examination. But if the Commissioners believe they need to hear from a witness, please let me know. But otherwise, I would say let the witnesses -- the witnesses may be released.

MS. DECARLO: Thank you so much.

HEARING OFFICER COCHRAN: So, with that we are adjourned to Closed Session. Again, we’ll be back in about an hour. Thank you for your patience.
(Off the record for a Closed Session at 11:03 a.m.)
(On the record in Public Session at 12:07 p.m.)

COMMISSIONER DOUGLAS: Yes, so we’re back from Closed Session and I think I will turn it over to you, now, Susan.

HEARING OFFICER COCHRAN: Thank you. We have two items of reportable action from the Closed Session.

First, the Committee has declined the request to have briefing from the parties.

Second, we anticipate consideration and adoption of a Revised Committee Proposed Decision on a Business Meeting that is schedule for June 25, 2021, which is a Friday.

That is all of the reportable action.

Thank you all for participating today and for your attention.

Commissioner Douglas, do you want to adjourn us or do you want me to?

COMMISSIONER DOUGLAS: I will go ahead and adjourn us. I just wanted to join in the thanks to everybody for their participation. And with that, we’re adjourned.

(Thereupon, the Conference was adjourned at 12:08 p.m.)