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STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION

In the Matter of: ) Docket No. 20-SPPE-01
Great Oaks South Backup )
Generating Facility: )
Small Power Plant Exemption )
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PREHEARING CONFERENCE

REMOTE ACCESS ONLY

VIA ZOOM VIRTUAL MEETING PLATFORM

TUESDAY, SEPTEMBER 07, 2021

10:00 A.M.

Reported by:

Elise Hicks
APPEARANCES

Commissioners and Commissioner Advisors:

Karen Douglas, Commissioner, Presiding Member
David Hochschild, Chair, Associate Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Le-Quyen Nguyen, Advisor to Chair Hochschild
Terra Weeks, Advisor to Chair Hochschild
Ken Rider, Advisor to Chair Hochschild

Staff:

David Gay, Technical Advisor to the Commission on Siting Matters
Ralph Lee, Hearing Officer for this Proceeding
Susan Cochran, Hearing Officer for this Proceeding
Noemi Gallardo, Public Advisor
Jon Hilliard, Siting Advisor
Kerry Willis, Staff Counsel
Lisa DeCarlo, Staff Counsel
Lisa Worral, Project Manager
RoseMary Avalos, Public Advisor’s Office

Applicant:

Masoud Zafaripour, Director, Construction, Equinix
Scott Galati, Applicant Representative, Attorney, DayZen

Intervenor:

Robert Sarvey

Agencies:

Ellen Peters, California Air Resources Board
Craig Segall, California Air Resources Board
Wesley Dyer, California Air Resources Board
Tom Andrews, California Air Resources Board
Courtney Graham, California Air Resources Board
Jakub Zielkiewicz, Bay Area Quality Management District
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COMMISSIONER DOUGLAS: Great. All right. Well, this is Commissioner Douglas, and it is now about 10:07 a.m. and we are on the record. This is the Prehearing 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 the presiding member of this Committee. We're all participating remotely today using Zoom, and at this point, I'll introduce some people in attendance today. David Hochschild, the Chair of the Energy Commission and the associate member for the Committee is here, along with his advisor Le-Quyen Nguyen, and my advisors Kourtney Vaccaro and Eli Harland are attending as well. Ralph Lee and Susan Cochran are the assigned hearing officers. I would also like to introduce Noemi Gallardo, the Energy Commission's public advisor, and RoseMary Avalos may be here as well. And at this point, I'll ask the parties to please introduce themselves and their representatives, starting with the Applicant.

MR. GALATI: Good morning. This is Scott Galati. I am representing SV1, LLC, which is owned by Equinix for
the Great Oaks South Backup Generating Facility in the Data Center. I have a bunch of people on the line as attendees that could be promoted to panelists should the discussion lead to that. We're pleased to be here. Thank you very much.

COMMISSIONER DOUGLAS: Thank you very much. I'll turn now to Staff.

MS. DECARLO: Good morning. Lisa DeCarlo, Energy Commission Staff attorney here. Also with me is Lisa Worrall, Energy Commission project manager for this proceeding. And we have a number of Staff and supervisors available as well, should the discussion lead to that, as Mr. Galati said.

COMMISSIONER DOUGLAS: All right. Thank you very much. And now Intervenor Robert Sarvey. Are you here?

INTERVENER SARVEY: Yes. This is Rob Sarvey, intervener. Thank you.

COMMISSIONER DOUGLAS: All right. Thank you. Now I invite any public agencies or representatives of any Native American tribes or nations to please raise your hand so we can unmute you. Once you are unmuted, you'll have an opportunity to introduce yourselves. Is the public advisor aware of any public agencies in attendance?

All right. Public agencies, anyone from federal or state government, aside from the Energy Commission.
Anyone representing Native Americans. I'm sorry, go ahead.

MS. GALLARDO: Commissioner Douglas?

COMMISSIONER DOUGLAS: Any hands up? Yeah.

Mm-hmm.

MS. GALLARDO: Noemi Gallardo from the Public Advisor’s Office. We did not receive any public comments --

COMMISSIONER DOUGLAS: Okay.

MS. GALLARDO: -- from the Public Advisor’s Office.

COMMISSIONER DOUGLAS: And do you see any hands up or are you aware of any government agencies?

MS. GALLARDO: At this time, no.

COMMISSIONER DOUGLAS: Okay. I'll just call through it. Anyone representing Native American tribes or nations? Any elected or appointed officials from state, county or local jurisdictions? City of San Jose? Bay Area Air Quality Management District? Any others? All right, I will now turn the proceeding over to Ralph Lee, one of the hearing officers for this proceeding.

HEARING OFFICER LEE: Yeah, thank you. Good morning. This is Ralph Lee. I'm a hearing officer with the California Energy Commission. My role is to assist the Committee, including with the conduct of Committee events like today's Prehearing Conference. The Energy Commission
has created an online docket for documents associated with this proceeding, Docket number 20-SPPE-01. Notice of today's Prehearing Conference was filed in that docket on June 24th, 2021, in English, Spanish, and Vietnamese. This notice and the other documents I may refer to today, as well as future documents related to this proceeding, are available on the online docket for this proceeding. Before we move to the substance of the Prehearing Conference, I need to discuss some housekeeping matters. Consistent with Governor Newsom's Executive Order N-08-21, in order to continue to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic, we are conducting this Prehearing Conference remotely using Zoom.

We have set up this Zoom meeting so that most participants will not be able to speak, mute or unmute themselves to speak. Anyone who wants to speak will have an opportunity to do so during the public comment period later today, as I'll describe in a moment. You may still mute your phone by pressing *6, and you should still be able to hear this Prehearing Conference if you do so.

Today, we have a court reporter transcribing all the statements made and the questions asked. Therefore, I must ask that only one person speak at a time. If you wish to be recognized, please use the raise hand feature. If you're on your phone, press *9 to raise your hand. If
you’ve muted your phone by pressing *6, please be sure to unmute yourself again by pressing *6 again. The raise hand feature creates a list of speakers based on the time when your hand was raised. We will call on you in that order, and I will summarize these directions 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 to identify yourself. That's important for me and for the court reporter. And if you don't identify yourself, either the court reporter or I may interrupt you to ask that you do so to ensure that we have a complete and accurate record for today's Committee Conference.

If you run into any technical difficulties, please contact the Public Advisor's Office or Zoom's help center. Contact information for both is listed on Page nine of the notice of today's Prehearing Conference. At this time, let me ask you, everyone, are there any questions? If you have any questions, please use the raise hand feature. And that’s *9 if you’re on the phone.

Seeing none, the purpose of today's Prehearing Conference is to assess the parties readiness for Evidentiary Hearing, to clarify areas of agreement or dispute, to identify witnesses and exhibits, to determine the topics which the parties wish to provide oral
testimony, and to cross-examine other party’s witnesses, and to discuss procedural and other matters related to the upcoming Evidentiary Hearing, as needed.

I’ll start by providing a background. I’ll briefly describe the application that’s the subject of this proceeding. Then I’ll describe the Small Power Plant Exemption known as an SPPE, and then I’ll describe where we are in this particular SPPE proceeding. After I give that background, as stated in today's agenda, the Committee and the parties may discuss their readiness for the upcoming Evidentiary Hearing, including identifying any disputed subject areas, the order the Committee will call testimony for the disputed subject areas, a discussion of proposed testimony and witnesses, the use of the formal hearing procedure, and any other matters related to preparing for the Evidentiary Hearing. There will then be an opportunity for public comment. The Committee has also given notice that it may hold a closed session. And following that closed session, if any, we will adjourn the Prehearing Conference. And now turning to my summary of the Application.

On March 19th, 2020, SV1, LLC, the Applicant in this proceeding, which is a wholly owned subsidiary of Equinix, LLC, sub -- it submitted the Application to the Energy Commission to obtain an exemption from the Energy
Commission's exclusive jurisdiction to license thermal powerplants with generating capacities of 50 megawatts or more of electricity. This exemption, as I mentioned, is known as a Small Power Plant Exemption, or SPPE, for short. The Applicant seeks to construct and operate the Great Oaks South Data Center, the Great Oaks South Backup Generating Facility, and related accessories, which are collectively called the Project. The Project site is located in the City of San Jose, California, at 123, 127, and 131 Great Oaks Boulevard.

The proposed Data Center would consist of three two-story buildings totaling approximately 547,000 square feet, that would house computer servers in secure and environmentally controlled structures.

The Great Oaks South Backup Generating Facility would ensure reliable backup power to the Data Center in the event of loss of power from the local electric utility, with Pacific Gas and Electric Company, commonly known as PG&E. Normally, the Backup Generating Facility would operate only for testing and maintenance. The Backup Generating Facility would consist of 36 3.25 megawatt diesel-fired emergency backup generators, six of which would be redundant and also three 0.5 megawatt life-safety emergency generators. All generators would be located on site. No electricity that's generated from the Backup
Generating Facility could be distributed offsite. The Backup Generating Facility would generate up to 99 megawatts of power, which is the maximum load of the Data Center.

Under the Warren-Alquist State Energy Resources Conservation and Development Act, commonly known as the Warren-Alquist Act, specifically Public Resources Code Section 25541, the Energy Commission may grant an SPPE only when it makes three separate and distinct findings, which are: that the proposed power plant has a generating capacity of no more than 100 megawatts; that no substantial adverse impact on the environment will result from the construction or operation of the power plant; and that no substantial adverse impact on energy resources will result from the construction and operation of the power plant.

In addition to meeting these Warren-Alquist Act requirements, the Energy Commission must also analyze SPPE applications under the California Environmental Quality Act, known as CEQA. The Energy Commission is the CEQA lead agency and considers the whole of an action. For this application, the whole of an action means not just the Backup Generating Facility, but also the entire Data Center complex that the Backup Generating Facility would support and includes the other Project features such as landscaping. This whole of the action is collectively
called the Project, which again, includes the Backup Generating Facility, the Data Center, and other Project features.

Staff prepared a draft Environmental Impact Report, known as the draft EIR, which Staff prepared in furtherance of legal requirements and to aid in the consideration of the Application under both the Warren-Alquist Act and CEQA. Staff published the draft DIR on May 21st. The draft EIR was subject to a public review and comment period that ended on July 26, 2021. Comments were received from the Bay Area Air Quality Management District, the Project Applicant, the City of San Jose, Claire Warshaw, and an entity called Enchanted Rock. No comments were received from the intervenor. On July 28, 2021, Staff filed a final EIR, which included responses to comments. On August 18th, 2021, Staff filed an Addendum to the final EIR, which contained a Mitigation Monitoring and Reporting Program and a Modified Proposed Mitigation Measure, MM GHG-1. That concludes my overview of the Application and of this proceeding.

Now we can move on to a discussion of the upcoming Evidentiary Hearing. Ms. Lopez, yeah, could you -- if this a notice of today's Prehearing Conference, can I see page five, please? Well, before we discuss how the Evidentiary Hearing will be conducted, I want to
discuss the timing of the Evidentiary Hearing.

Currently, the Evidentiary Hearing is scheduled for next Monday, September 13th. Unfortunately, the full Committee is unable to attend as currently scheduled. The Committee intends to reschedule the Evidentiary Hearing by pushing it back eight days to Tuesday, September 21st. We apologize for this inconvenience. Before we move on, I want to -- the Committee wants to make sure that the parties are able to attend on September 21st. So I would ask the parties to please take a moment and check your calendars, if that's possible, and to let us know if you and your witnesses would be unable to attend an Evidentiary Hearing on Tuesday, September 21st. And again, in responding, please do consider the availability of your witnesses. And let me just give the parties a minute to check their calendars. I'll call on each of the parties in just a moment. Or if you're ready to answer, please raise your hand.

I'm not seeing any raised hands. I'm not sure if I've given them enough time. Let me just -- let me just ask Mr. Galati first, for the Applicant. Do you think that, will your part -- would your party witnesses be unable to attend on September 21st, Mr. Galati.

MR. GALATI: I am polling them now. I probably need another minute or so, please.
HEARING OFFICER LEE: Oh, yeah. And again, I apologize for this inconvenience and if it's not possible to completely figure this out at this moment, we might be able to return to this later on in the Prehearing Conference. But let me just give the parties another couple of minutes to check their calendars.

Yes, please, Mr. Galati.

MR. GALATI: Yes. It looks like the witnesses that I am certain to use have already responded positively. So I think so. If there's another witness that can't, I think we can -- we can figure that out. So I think that work -- date works for us.

HEARING OFFICER LEE: Okay. Thanks so much, Mr. Galati.

Mr. Sarvey, do you have -- are you able -- are you able to attend on the 21st?

INTERVENER SARVEY: The 21st is fine, Mr. Lee.

HEARING OFFICER LEE: Okay, great. Let me just give Staff one more second. Staff.

MS. DECARLO: Oh Ralph, I'm ready.

HEARING OFFICER LEE: Okay. Ms. DeCarlo, please.

MS. DECARLO: Yes. Yes. All of our staff appear to be available on that day, and I will note it is my birthday. So no need to bring presents, but we'll be happy to attend.
HEARING OFFICER LEE: Okay. Great. The Committee will make a final decision about scheduling and will issue a revised notice of Evidentiary Hearing following this Prehearing Conference, but at this point, it looks like the Committee will be rescheduling, and that date will be September 21st.

The Committee also notes that the Applicant filed a motion in limine on August 27th, as stated in the Committee's Order. On September 3rd, the Committee will issue a written ruling on Applicant’s motion, prior to the Evidentiary Hearing. I just wanted to remind the parties that any response to the Applicant's motion must be filed no later than tomorrow, September 8th at 5:00 p.m..

As set forth in the notice, the Evidentiary Hearing will be conducted using a formal hearing procedure modified to fit the remote nature of the hearing. We will be using Zoom. The Committee intends to share screen to display documents such as exhibits. We may also be sharing live video of ourselves. We ask, but do not require, that the parties and the witnesses share video of themselves also.

Regarding direct examination, we will deem all parties opening reply and response testimony as their direct examination. If it's admitted into evidence, there's no need to discuss the expert's resumes if we have them in...
writing and if no party objects to the witness as an expert. If witnesses testify who have not filed written testimony, please have them identify themselves by their name, title, and employer. Such as John Doe, air quality environmental specialist, California Energy Commission. If any party has objection to a witnesses qualifications, please be prepared to state the objection and its basis during the Evidentiary Hearing. Any objections will be decided during the Evidentiary Hearing or taken under submission.

As set forth in the notice for today's Prehearing Conference, pages 6 through 8, you may only use a document that has been previously identified as an exhibit when questioning a witness. When asking your questions, start by identifying the document either by exhibit number or -- and/or or its TN number and identify the specific page number that you will be referencing. Allow each party representative to finish questioning the witness before asking -- making an objection. Allow the witness to finish answering before moving onto the next question. For the benefit of the court reporter and the transcript, please remind your witness to identify themselves each time they speak. If testifying as a panel, remind the panel to answer each question individually and not to talk over each other or over the person asking the questions.
As a reminder, the general order of presentation and questioning will be as follows: first, the Applicants, then Staff, and then Mr. Sarvey. The Committee will consider allowing way for further questions, if you want to rebut something that was raised for the first time after your witness testified. Have you all, get to the question to the parties, have you all had a chance to review the notice that sets force -- forth the process for the Evidentiary Hearing, and are there any questions? Mr. Galati for Applicant?

MR. GALATI: Yes. I have a question. I was intending to, if possibly, depending on what the Committee rules on the motion to strike, augment exhibit, my exhibits, for purposes of cross-examination, I can do that within one day of the Committee issuing an order. And I would like to leave to be able to do that.

HEARING OFFICER LEE: Okay. Would you be augmenting it if the motion’s granted or augmenting it if the motion’s denied?

MR. GALATI: Only if the motion is granted?

Excuse me. Only if the motion is denied.

HEARING OFFICER LEE: Okay. Well, I’m not having the benefit of seeing what you want to include and also not having a ruling on the motion to strike, I’ll just have to say we will consider that. We note that you’ve given
notice. You know, I think it would be nice if the parties, the other parties had as much notice as possible of what exhibits you might be including in the record, but we'll have to take that at the time that it's identified.

MR. GALATI: Okay. And my commit will be I will file it within one day of the Committee's decision, if I intend to use any exhibits.

HEARING OFFICER LEE: Okay. Thank you. Ms. DeCarlo, did you have any questions?

MS. DECARLO: Just one. I was wondering if the Committee would consider requiring cross-examination questions in writing prior to the Evidentiary Hearing, with the opportunity to respond in writing as well so that the Evidentiary Hearing could be focused on those issues that weren't satisfactorily addressed.

HEARING OFFICER LEE: I'll take that question into submission.

MS. DECARLO: All right, thank you.

HEARING OFFICER LEE: Thank you. And Mr. Sarvey, did you have any questions?

MR. SARVEY: No, I don't. Thank you.

HEARING OFFICER LEE: Thank you. One other note. So Mr. Galati, I noticed the Applicant identified a panel of witnesses that are going to testify in disputed topic areas. I just wanted to remind the Applicant that we are
using the formal hearing procedure here, so witnesses
should testify and respond to specific questions
individually and not as a group. Do you understand what I
mean?

MR. GALATI: Yes. And I'm fine with that as
well. There's -- it's very likely that I -- that I
would -- all of our direct and reply testimony would
have -- would be what has been previously submitted into
the record. That's all I would do is identify them and
then I would only use them for rebuttal testimony or
answering any of the Committee's questions. So
it's -- would you like me to refile which -- so you
wouldn't allow any of them to testify as a panel, even
though they're on the same subject matter?

HEARING OFFICER LEE: Well, the way I was
envisioning this going is we would -- we could call them
and swear them all in and, you know, have them ready to
answer questions, but the questions would be addressed to
one person at a time and answered by one person at a time.

MR. GALATI: Yeah. That's fine. I understand
that. That works fine for me.

HEARING OFFICER LEE: Okay. Great.

MS. DECARLO: Yeah. Mr. Lee, just if I could
weigh in here, just on Staff's side. So Mr. Sarvey has
identified Mr. Hughes and Mr. Kerr for cross-examination,
but those are the supervisors, and they will definitely be available, but we would also like the individual Staff people who actually wrote the sections to participate in the cross-examination, should it be live. The problem that we've had in the past is that sometimes the questioner doesn't know exactly who to ask the question to. So it would be nice, as you said, to swear everyone in as a panel and let the, or I'm sorry, not as a panel, but altogether, and let the individual witness answer who's most appropriate to answer the proffered question. If that makes sense.

HEARING OFFICER LEE: Yeah, I was calling it -- yeah, I was calling it a panel, and I think that does make sense to have the witnesses there that would be most knowledgeable if that's not Mr. Hughes or Mr. Kerr, and then they could direct the question to the most knowledgeable person. And Mr. Sarvey could decide who he would like to question.

MS. DECARLO: Okay. Although sometimes -- right, right. I mean, obviously, yeah, yeah. Okay, that'll work. Thank you.

HEARING OFFICER LEE: Yeah. You would -- you would have -- Staff would, of course, have the opportunity for a rebuttal or redirect.

MS. DECARLO: Right, and if the Staff person that
Mr. Sarvey’s directing the question too isn't the appropriate person to respond, that Staff person can say, I did not write that portion of the testimony. Right. And we can provide a list of who those Staff people would be ahead of time if the Committee is interested in that, or we could just make sure that they're available at the -- at the Evidentiary Hearing, whatever your preference is.

HEARING OFFICER LEE: Well, you know it's Mr. Sarvey's questions in your offer. Mr. Sarvey, does that make sense to you?

MR. SARVEY: I’m satisfied with whatever Ms. DeCarlo wants to present [indiscernible]. We can muddle through it, probably.

HEARING OFFICER LEE: Yeah. Okay. It might be a safe, but we like to know who's going to be testifying in advance.

MS. DECARLO: And I could say -- I could say that now or we can submit something formally in writing. However -- whatever your preference is.

HEARING OFFICER LEE: If you know offhand, that this would -- that would be fine.

MS. DECARLO: Yes. For Air Quality, GHG, and Public Health, it would be Tao Jiang and Wenjun Qian. And then for alternatives, it would be, and that's in addition to Mr. Hughes. For alternatives, in addition to Mr. Kerr,
it would be Kenneth Salyphone, Shahab Khoshmashrab, Brett Fooks, and Karim Abulaban.

HEARING OFFICER LEE: Okay, great. And do we have all of their CVs in the -- in the record?

MS. DECARLO: Yes. They were all provided.

Their declarations and their CDs were provided in the draft EIR, or the final EIR.

HEARING OFFICER LEE: Okay. That sounds fine.

Thank you. Okay. Next, while we'll be using the formal hearing procedure, we're not going to be specifically describing the exhibits when they're moved into evidence during the Evidentiary Hearing, and we're not going to describe the topics covered by declarations that are admitted. The Exhibit List displayed here on the screen, thank you, has been compiled by the Hearing and Advisory Unit and is a complete list of the exhibits identified by the parties so far.

Mr. Galati, a quick question. I noticed that the Applicant has not identified as an exhibit, the response to Committee questions filed September 2nd. Does the Applicant intend to sponsor that document as an exhibit with the declaration?

MR. GALATI: No. We don't have a declaration from that. That was more like a legal brief. Unless you want my declaration, I'm happy to testify.
HEARING OFFICER LEE: Well, I'll leave that to the Applicant, but I was just asking. I had a question --

MR. GALATI: Yeah. I didn't put any additional testimony there. I thought that all of those questions were one of more argument.

HEARING OFFICER LEE: Okay. Thank you.

MR. GALATI: So our response is prepared like a legal brief.

HEARING OFFICER LEE: Thank you. And I had a similar question to Staff, Ms. DeCarlo. On a September 3rd Staff filed a document with additional declarations. I notice that it has not then identified as an exhibit yet, the document submitted on September 3rd. Do you want --

MS. DE CARLO: Yes, we would like to add. I'm sorry. We would like to add that to our Exhibit List. Now, I can refile an updated Exhibit List if you need that formerly produced or if this is sufficient to add that.

HEARING OFFICER LEE: I think at this point, I don't need an updated Exhibit List unless we add more. Okay, fine. Yeah, that would probably be helpful if at the end of this Prehearing Conference, since there are -- there is at least one additional exhibit, please do file an updated Exhibit List.
MS. DE CARLO: Okay, great. And we'll add the TN number to the previously identified response to Mr. Survey's reply testimony as well.

HEARING OFFICER LEE: Right. Yeah, I was thinking of that. And back to Ms. DeCarlo, for Staff. On August 18th, Staff filed an addendum to the final EIR. It's currently listed as Exhibit 202 for identification, but I didn't see a declaration sponsoring it. If Staff believes that a declaration's appropriate and if one hasn't been filed that I missed, then Staff may want to add that one too. Do you know off hand if Staff intends to file a declaration sponsoring Exhibit 202, and if you could --

MS. DE CARLO: I will double check, and if there's nothing that's already covers it, we will file that as well.


MS. DECARLO: Yeah, thank you for identifying that.

HEARING OFFICER LEE: Yeah. So with those modifications to the Exhibit List, does the Exhibit List contain the exhibits the parties intend to rely on at Evidentiary Hearing? Let me just ask the parties one more time. Mr. Galati.
MR. GALATI: At this point, it certainly does. There might be some additional exhibits intended only to be used for cross-examination, depending on the outcome of the motion.

HEARING OFFICER LEE: All right. Yeah, thank you. Ms. DeCarlo for Staff.

MS. DECARLO: Yes, with the additions noted previously, this encompasses all of our intended exhibits at this time.

HEARING OFFICER LEE: Thank you. And Mr. Sarvey. Mr. Sarvey, are you able to unmute?

MR. SARVEY: Yes.

HEARING OFFICER LEE: Yeah. Does the exhibit -- does the Exhibit List represent all the exhibits you as the intervenor wish to use at the Evidentiary Hearing?

MR. SARVEY: At this time, Yes.

HEARING OFFICER LEE: Okay, thank you.

To conduct this Prehearing Conference efficiently, we require that each party file a Prehearing Conference statement if that party wanted to participate in the Prehearing Conference and if the party wanted to present evidence to cross-examine witnesses at the Evidentiary Hearing. On August 31st, 2021, the Committee received Prehearing Conferences from all the parties,
including Applicant, Staff, and the intervenor, Mr. Sarvey. Mr. Sarvey filed a revised Exhibit List on September 2nd, and the Staff will be filing an updated revised Exhibit List.

But to summarize the Prehearing Conference statements, the Applicant filed a Prehearing Conference statement stating its agreement with Energy Commission Staff on every issue. The Applicant identified the disputed issues as those that are disputed by the intervener, Mr. Sarvey, and I'll describe those in a moment. The Applicant identified a panel of four witnesses that the Applicant will offer to testify regarding the disputed subject areas, and the Applicant reserved the right to cross-examine Mr. Sarvey about each of the subjects that he’s disputed. Mr. Galati, for the Applicant, did I -- did I get that right?

MR. GALATI: Yes, you did, Commission Hearing Officer.

HEARING OFFICER LEE: Thank you. And similarly, Staff, Staff filed a Prehearing Conference statement also stating that there are no disputed issues between Staff and the Applicant, but Staff acknowledged that the intervener, Mr. Sarvey, disputed certain subject areas. Staff’s Prehearing Conference statement proposes not to sponsor any live testimony at the Evidentiary Hearing nor to question
Mr. Sarvey. Staff, Ms. DeCarlo, is that still correct?

MS. DECARLO: Yes, that's correct.

HEARING OFFICER LEE: Okay. The intervener, Mr. Sarvey, also filed a Prehearing Conference statement in which he identified the following technical areas as being disputed and requiring live testimony at the Evidentiary Hearing: air quality, cumulative impacts, greenhouse gas emissions, and alternatives. Additionally, Mr. Sarvey proposes to question various witnesses during the Evidentiary Hearing. Specifically, he wants to question a witness from the Bay Area Air Quality Management District regarding emergency operations and cumulative impacts. He'd like to question Staff witnesses Joseph Hughes, Steven Kerr. Joseph Hughes regarding emergency operations Mitigation Measure, MM GHG-1 and cumulative impacts. Mr. Kerr, regarding the technical areas of alternatives. And as we discussed earlier, Staff may have some additional witnesses there.

Mr. Sarvey also proposes to question the Applicants’ witnesses, Michael Lisenbee regarding emergency operation modeling and the topic of air quality, and Applicant witness Bruce Frandsen regarding Mitigation Measure MM GHG-1. He also proposed to question another Applicant witness that he didn't identify, or one or more witnesses, regarding the technical area of alternatives. I
have a question, a follow up for Mr. Sarvey.

But first, did I accurately state the scope of
the witnesses you want to question and the technical areas
you want to question them in, Mr. Sarvey?

MR. SARVEY: Yes, you did.

HEARING OFFICER LEE: Okay, thank you. So you
state in that Prehearing Conference statement that you
wanted to question a witness from the Bay Area Air Quality
Management District, and I note that Staff, neither Staff
nor the Applicant, identified the Bay Area Air Quality
Management District as a witness. So have you arranged to
have someone from the Bay Area Air Quality Management
District be present at the Evidentiary Hearing?

MR. SARVEY: No, I haven't. Traditionally Staff
has presented them as a witness. Staff’s -- I mean I
suppose I could contact them, see if I could arrange to
have them [indiscernible].

HEARING OFFICER LEE: Yeah. At this point, you
might want to reach out to the Bay Area Air Quality
Management District if that's your plan.

MR. SARVEY: Okay.

MS. DECARLO: Yeah, this is Lisa DeCarlo. Just
for clarification, we present Air District personnel as
witnesses in Application for Certification proceedings
because we are sponsoring the determination of compliance
from them, but that does not occur in Exemption proceedings because we're not proposing to certify the project with an air quality component.

HEARING OFFICER LEE: Yeah, thank you for that.

MR. SARVEY: [Indiscernible] if they’re not going to, I’ll contact them myself.

HEARING OFFICER LEE: I'm sorry, Mr. Sarvey, I didn't quite catch what you said there.

MR. SARVEY: Oh, I said that every SPPE proceeding we've had on these cases has had the Bay Area Air Quality Management District as a witness by Staff, but if Staff doesn’t want to do that, I will contact [indiscernible].

HEARING OFFICER LEE: Okay. Well, yeah. Anyway, I'm glad that I brought it up. Yeah, so. I had another question on cumulative impacts, Mr. Sarvey.

You said that you want to question a couple of the witnesses about cumulative impacts.

MR. SARVEY: Mm-hmm.

HEARING OFFICER LEE: You said in your Prehearing Conference statement you listed that topic for Joseph Hughes and for the Bay Area Air Quality Management District witness. By cumulative impacts, are you talking about cumulative impacts in the topic of air quality?

MR. SARVEY: Yes, I am.
HEARING OFFICER LEE: That was a yes, right?

MR. SARVEY: Yes.

HEARING OFFICER LEE: Mr. Sarvey, I'm having a little trouble hearing you, but I believe you said yes there. So let me ask.

MR. SARVEY: Yeah, I said yes.

HEARING OFFICER LEE: Okay, thank you. Are there any other technical areas that you want to question witnesses about potential cumulative impacts about the Project other than air quality?

MR. SARVEY: No.

HEARING OFFICER LEE: Okay. So I'm going to put cumulative -- I'm going to list cumulative impacts within the topic of air quality. Is that acceptable?

MR. SARVEY: Yes, it is.

HEARING OFFICER LEE: Okay, thank you. And one last question for Mr. Sarvey. Were you planning to testify at the Evidentiary Hearing yourself?

MR. SARVEY: I probably will if my reply testimony’s stricken, I definitely will.

HEARING OFFICER LEE: Okay. I understand what you mean if your -- if your testimony’s stricken that you'll be testifying. But if you -- if your testimony isn't stricken and so all of that would still be in the hearing record, what would you be testifying about?
MR. SARVEY: Just providing a summary of my testimony in my introductory.

HEARING OFFICER LEE: Okay, so that's fine. Yeah. We do -- we do consider your, everything filed indirect, if admitted, is going to be deemed your direct examination anyway. So that would not be necessary. But I'll leave it to you.

I see Mr. Galati's hand is up. Let me -- let me ask, go ahead and speak, Mr. Galati.

MR. GALATI: So in advance of what, in advance of the hearing, I thought I would just clarify this objection. The objection is that the reply testimony that was filed was really opening testimony which prevented us from replying. If Mr. Sarvey believes that if that is stricken, he can just orally testify at the Evidentiary Hearing, he'd be not complying with another rule, which is that there needs to be pre-filed written testimony. So I just wanted to be clear that I'll be objecting if the motion is granted, and the testimony is stricken, I don't believe that allows Mr. Sarvey to testify. He certainly can make all of the public comments he likes to testify in areas in which he has not filed pre-written -- pre-filed written testimony.

HEARING OFFICER LEE: Okay. Thank you, Mr. Galati, for clarifying the Applicant's position on that.
We do have your -- we have your written motion taken under
submission.

MR. SARVEY: Robert Sarvey.

HEARING OFFICER LEE: Yeah, go ahead, Mr. Sarvey.

MR. SARVEY: I wanted to offer this to the
Applicant in public. If the Applicant’s willing to accept
GHG-1 as originally written, draft EIR, where they enroll
in the San Jose Clean Energy 100% Green Energy Program, I'm
willing to drop out of this proceeding and stipulate. I
just wanted to offer the Applicant that. If he's looking
for an easy Evidentiary Hearing, this makes it real easy.
That's the reason I intervened, and I'm going to make that
offer to the Applicant publicly, and I'm hoping he's going
to accept it.

HEARING OFFICER LEE: Yeah. Well, thank you, Mr.
Sarvey. This is a Prehearing Conference. It's not
a -- it's not a Settlement Conference, and I don't think
that we really want to -- we want to go there, but I think
the Applicant heard you and if there's -- if you want to
continue that conversation, I think that would be best
offline.

MR. SARVEY: Thanks, Mr. Lee.

HEARING OFFICER LEE: Okay. For the topics I
have for the Evidentiary Hearing are air quality, including
cumulative impacts; greenhouse gas emissions, and
alternatives. This is to all the parties, are there any
other technical areas that I didn't list that the parties
wish to address at the Evidentiary Hearing? Mr. Galati, go
ahead.

MS. DECARLO: Lisa DeCarlo for Staff. Oh, I'm
sorry.

HEARING OFFICER LEE: Let's take Mr. Galati
first. He had his hand up.

MR. GALATI: Sorry, I'm a little quicker to click
on that than you were, Lisa. But first of all, thank you
Lisa, for inviting me to spend part of your birthday with
you. Second is, I also need to understand whether the
Committee might have some questions in other areas. For
example, I didn't bring a noise expert and there were some
questions that we responded to the Committee in noise. And
so if there's any of those kinds of experts in areas
outside of the areas that you listed, we certainly can have
them available. And so that would be the only caveat was
whether the Committee wanted another subject matter added
to the to the list of areas that need to be explored.

HEARING OFFICER LEE: Yeah, thanks Mr. Galati,
for that offer. I think the Committee will let you know
about matters like that in some kind of notice or order
filed after this Prehearing Conference, but we would let
you know.
MR. GALATI: Thank you.

HEARING OFFICER LEE: Staff, Ms. DeCarlo, did you have something to say?

MS. DE CARLO: Thank you. Yes. I don't have any additional technical areas that we would be proposing to present witnesses for availability at cross, but certainly if the Committee directs us to provide in other technical areas, we're more than willing. I do -- I would like some clarification as to the testimony that BAAQMD would be presenting on if Mr. Sarvey is able to produce a BAAQMD witness. They have not presented formal testimony. I'm assuming Mr. Sarvey wants to have them testify based on their comments previously submitted. I would just request that the testimony be limited to the scope of those comments. I mean the testimony really is direct testimony, even though it appears that Mr. Sarvey is presenting it as cross. But so anyway, I would just like that confirmation, for the record, that if BAAQMD participates, they would be testifying to their previously produced comments.

HEARING OFFICER LEE: Thank you, Ms. DeCarlo. I think that's a good and reasonable question to answer here. And you know, I had assumed that Mr. Sarvey’s witnesses would be testifying. He listed it in the Prehearing Conference statement that he’d -- that he would be questioning BAAQMD, or the Bay Area Air Quality Management
District, on cumulative and emergency operations and I had assumed that it would be within the scope of his reply testimony because that's his reply testimony. I hadn't considered that maybe he would be offering these witnesses, this witness as some something additional. Mr. Sarvey, are you able to give us an overview of the subject areas that you wish to have the Bay Area Air Quality Management District testify about?

MR. SARVEY: I would only be asking questions on their comments that they submitted on the NOP and the DEIR.

HEARING OFFICER LEE: Okay. Their written comments?

MR. SARVEY: Their written comments. I listed them as exhibits. They’re in my Exhibit List.

HEARING OFFICER LEE: Okay. Does that -- does that clarify your question, Ms. DeCarlo?

MS. DECARLO: Yes, thank you.

HEARING OFFICER LEE: Okay, and I guess this is an easier question. Does it make sense to call the, all of the testimony by subject area in the order I just mentioned? First air quality, then GHG emissions, and last alternatives? Does that makes sense? Does that make sense to everyone, that order? Unless -- I’ll leave -- I’ll say, if anybody -- if it doesn't make sense, please raise your hand.
And same thing, do we have any witnesses with time constraints? If so, please raise your hand right now.

And we have covered a few things. Is there anything else that we need to discuss about the Evidentiary Hearing before I move on? If so, please go ahead and raise your hand. This is -- this is the time. Okay, I'm not seeing any raised hands.

One final matter that I wanted to mention is briefing for the Evidentiary Hearing and the verbal closing statements at the end of testimony. In his Prehearing Conference statement, Mr. Sarvey requested leave to file a post-hearing brief. Staff and the Applicants’ Prehearing Conference statement said no briefing is necessary. The Committee intends to allow an opportunity for voluntary post hearing briefing. The briefs shall be limited to discussing how the evidence that was admitted into the Hearing record applies to the law of this proceeding. The brief shall be limited to 15 pages and are due no later than seven business days after the reporter's transcript from the Evidentiary Hearing is filed in the docket. The Committee will give any further details later at the Evidentiary Hearing or in a written order after this hearing.

And at the conclusion of the Evidentiary Hearing, the Committee will permit an optional 10-minute closing
statement from each of the parties, beginning with Staff, and then Mr. Sarvey, and concluding with the Applicant. Right. That concludes our discussion of the schedule, status issues, next steps for the Evidentiary Hearing. We'll move on now to public comment. Comments will be --

MS. AVALOS: Okay, thank you.

HEARING OFFICER LEE: Oh, yeah. That’s Ms. Avalos. She can help with the -- or from the Public Advisor's Office, she can assist with public comment. But let me first say, comments are limited to three-minutes per person. If you're on your computer, you can use the raise hand feature to let us know you'd like to make a comment. If you change your mind, you can lower your hand. We'll call on you in the order that your hand was raised. We’ll open your line so that you can state your comment. For those on the phone, you can dial *9 to raise your hand. If you've muted yourself, make sure you press *6 to unmute your phone and we’ll unmute your phone line from our end. We'll tell you, if you're on the phone, we’ll tell you that your line is open, and we’ll identify you by reading the last three numbers of your phone number. Ms. Avalos, can you assist with public comment?

MS. AVALOS: Yes. Thank you, Hearing Officer Lee. I will start with Zoom raised hand. So first, I'll
call on users of Zoom. Right now if you’re not --

HEARING OFFICER LEE: Excuse me. Ms. Avalos, excuse me. Just one second. I see that Lisa DeCarlo had raised her hand. Did you have something to say before we move into public comment?

MS. DECARLO: I'm very sorry. I forgot to ask something that my project manager had requested we get clarification on. We have status reports due in a few days, and we just wanted to get confirmation that the Committee was not expecting us to file those because we're in the middle of Evidentiary Hearings now.

HEARING OFFICER LEE: Yeah, I think we know the status. That's fine.

MS. DECARLO: Okay, thank you.

HEARING OFFICER LEE: Sorry to interrupt Ms. Avalos. Please continue.

MS. AVALOS: All right. Thank you. I’l first call on folks using the raise hand feature on Zoom. And for the record, say and spell your name and state your affiliation if any. And I'm looking at the list and I don't see any raised hands. So I will go ahead and move on to those phone users. If you are interested in making a comment, please raise your hand by dialing *9. And you'll need to unmute yourself by using the *6 feature. Okay, I'll give a few seconds for people to raise their hand.
All right, seeing that there are no raised hands, that completes the public comment period. And I turn to you now, Officer Lee, Hearing Officer Lee.

HEARING OFFICER LEE: Yeah, thank you. At this time, I want to turn to the Commissioners, the Committee members, and I'll ask whether Commissioner Douglas or Chair Hochschild would like to make any final remarks. Let me start with Commissioner Douglas. Did you have any final remarks?

COMMISSIONER DOUGLAS: Yeah, thank you. I do not have any final remarks. Just no. Looking forward to the Evidentiary Hearing, that's all.

HEARING OFFICER LEE: Well thank you.

CHAIR HOCHSCHILD: Yeah, no remarks from me either. Thank you, everyone.

HEARING OFFICER LEE: Well, thank you. And one final question for the members of the Committee. Would we like to have a -- hold a closed session? This would be the time, Commissioner Douglas.

COMMISSIONER DOUGLAS: Yes. Yes. I do think a closed session would be helpful.

HEARING OFFICER LEE: Okay. Well, with that, then 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. And Commissioner Douglas, if you're still on, can we give an estimate of what time we will not return before? Can we say that, you know, we wouldn't return before noon? Are you able to come back sometime at noon or later to help adjourn?

COMMISSIONER DOUGLAS: Yes. Let's say -- let's say 11:50 so that, because I do have a 12:00 o'clock call that I -- to get on, and I think that should leave us plenty of time.

HEARING OFFICER LEE: Oh yeah.

COMMISSIONER DOUGLAS: Even 11:45 should be fine. Why don't we say that.

HEARING OFFICER LEE: Yeah, let's say that. I just don't want everyone waiting around if they don’t have to.

COMMISSIONER DOUGLAS: Yep.

HEARING OFFICER LEE: So we won't return any earlier than 11:45. And we will return to adjourn.

COMMISSIONER DOUGLAS: Perfect, thank you.

HEARING OFFICER LEE: Okay, and with that, we’re in closed session. Thank you.

(The Committee adjourned into closed session at 11:04 a.m.)
(The Committee returned to open session at 11:45 a.m.)

HEARING OFFICER LEE: Hello, this is Ralph Lee. The time is 11:45. Do we have Commissioner Douglas online? It looks like Commissioner Douglas needs to be promoted to panelist.

COMMISSIONER DOUGLAS: All right, thank you. This is Commissioner Douglas. I am on, and we’ve returned from our closed session and have no report out. Hearing Officer Lee, is there anything else you wanted to add before we adjourn?

HEARING OFFICER LEE: No, just that the closed session ended about 11:38.

COMMISSIONER DOUGLAS: Perfect. All right. In that case, with that, we’re adjourned. Thank you all very much.

(Whereupon the Prehearing Conference adjourned at 11:46 a.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 20th day of September, 2021.

ELISE HICKS, IAPRT CERT**2176
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IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of September, 2021.

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