

DOCKETED

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BEFORE THE
CALIFORNIA ENERGY COMMISSION

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

GREAT OAKS SOUTH BACKUP GENERATING FACILITY

SPPE (20-SPPE-01)

EVIDENTIARY HEARING AND CLOSED SESSION

REMOTE VIA ZOOM

TUESDAY, SEPTEMBER 21, 2021

10:00 A.M.

Reported by:
Elise Hicks

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo, California 94572 (510) 224-4476

APPEARANCES

Committee Members

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

Hearing Officers

Ralph Lee

Advisors Present

Le-Quyen Nguyen, Advisor to Chair Hochschild
Terra Weeks, Advisor to Chair Hochschild
Ken Rider, Advisor to Chair Hochschild
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas

Staff Present:

David Gay, Technical Advisor to the Commission on Siting
Matters
Rosemary Avalos, Public Advisor's Office
Jon Hilliard, Siting Advisor
Kerry Willis, Assistant Chief Counsel
Lisa DeCarlo, Senior Staff Counsel
Lisa Worrall, Project Manager
Liza Lopez, Secretariat & Legal Support Supervisor

For Applicant:

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

Intervenor

Robert Sarvey

APPEARANCES (Cont.)

Staff Witnesses:

Tao Jiang
Wenjun Qian
Joseph Hughes, Supervisor
Kenneth Salyphone
Shahab Khoshmashrab
Steven Kerr, Supervisor
Brett Fooks

Applicant Witnesses:

Masoud Zafaripour, Equinix
David Smith, Equinix
Bruce Frandsen, Equinix
Michael Lisenbee, David J. Powers & Associates
Gregory Darvin, Atmospheric Dynamics

Agencies:

Adam Petersen, City of San Jose

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	Consider and rule on any motion related to the Evidentiary Hearing that is raised before or during the Evidentiary Hearing.	
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EXHIBITS

IDENTIFICATION EVIDENCE WITHDRAWN

1 Commissioner Douglas. I think we are ready to proceed, so
2 it is 10:12 a.m. now and we are on the record. This is the
3 Evidentiary Hearing regarding application for a small power
4 plant exemption for the Great Oaks South Backup Generating
5 Facility.

6 The California Energy Commission has assigned a
7 committee of two commissioners to conduct these
8 proceedings. I'm Karen Douglas, the Presiding Member of
9 this Committee. We are all participating remotely today,
10 using Zoom and I would like to introduce some people in
11 attendance today. David Hochschild, Chair of the Energy
12 Commission and Associate Member for the Committee; Kourtney
13 Vaccaro and Eli Harland, my Advisors; Le-Quyen Nguyen,
14 Chair Hochschild's Advisor and Ralph Lee, one of the
15 assigned hearing officers for this case. I'd also like to
16 introduce Rosemary Avalos from the Public Advisor's Office.

17 And at this point I'd like to ask the parties to
18 please introduce themselves and their representatives
19 starting with the Applicant.

20 MR. GALATI: Good morning, this is Scott Galati.
21 I represent SV1, LLC, which is owned by Equinix and we're
22 the Applicant in this process for the Great Oaks South Data
23 Center and Backup Generating Facility. I have several
24 members with us, Commissioner. It'd probably be better if
25 I introduce them as they testify. Would that be okay?

1 COMMISSIONER DOUGLAS: Yes.

2 MR. GALATI: Thank you. That'd be great.

3 COMMISSIONER DOUGLAS: Thank you.

4 Let me turn now to staff.

5 MS. DECARLO: Good morning, Commissioner, Chair,
6 Hearing Officer Lee. Lisa DeCarlo, Energy Commission Staff
7 Attorney. With me today is Lisa Worrall, Energy Commission
8 Project Manager, along with various staff and the staff we
9 have identified as potential witnesses. And I will
10 identify them specifically as they testify.

11 COMMISSIONER DOUGLAS: Good. All right, thank
12 you very much.

13 And now, Intervenor Robert Sarvey.

14 MR. SARVEY: Yes. This is Robert Sarvey on the
15 line with public, thank you.

16 COMMISSIONER DOUGLAS: Thank you very much.

17 Now, I'd like to invite any public agencies or
18 representatives of Native American tribes or nations to
19 please speak up or raise your hand so that we can unmute
20 you. Once you are unmuted, if anyone is there please
21 introduce yourselves. (No audible response.)

22 Is the Public Advisor aware of any public
23 agencies or Native American tribes or nations in
24 attendance?

25 HEARING OFFICER LEE: Commissioner Douglas, this

1 is Ralph Lee. I see one hand raised and the name is Adam
2 Peterson from the City of San Jose.

3 COMMISSIONER DOUGLAS: Great, could you unmute
4 him to allow him to introduce himself?

5 MR. PETERSON: Yes, hello. I'm not a tribal
6 representative, but I am Adam Peterson from the City of San
7 Jose, a contract environmental planner for this project.

8 COMMISSIONER DOUGLAS: Great, welcome. Thanks
9 for participating.

10 Do we have anyone else from the City of San Jose
11 or the Bay Area Air Quality Management District? Or any
12 other local, state, federal, tribal entities? (No audible
13 response.)

14 All right, I will now turn the proceeding over to
15 Ralph Lee.

16 HEARING OFFICER LEE: Thank you, and good morning
17 everyone. My name is Ralph Lee. I'm the Hearing Officer
18 with the California Energy Commission. My role is to
19 assist the Committee, including with the conduct of
20 Committee events like today's Evidentiary Hearing.

21 The Energy Commission has granted an online
22 docket associated with this proceeding: Docket number 20-
23 SPPE-01. The Committee filed a notice for the Prehearing
24 Conference, Evidentiary Hearing and related orders on June
25 24th, 2021.

1 At the Prehearing Conference the Committee
2 informed the parties that it would reschedule the
3 Evidentiary Hearing. The Committee published a revised
4 notice on September 10, 2021 rescheduling the Evidentiary
5 Hearing to today. Both the original notice and the revised
6 notice were filed in English, Spanish, and Vietnamese.
7 These notices and the other documents that I may refer to
8 today, as well as future documents related to this
9 proceeding are available online in the docket for this
10 proceeding.

11 And before we begin the substance of today's
12 Evidentiary Hearing, I want to discuss some housekeeping
13 matters. Consistent with Governor Newsom's Executive Order
14 N-08-21, in order to continue to help California respond
15 to, recover from, and mitigate the impacts of the COVID-19
16 pandemic we are conducting this Evidentiary Hearing
17 remotely using Zoom.

18 We have set up this Zoom meeting, so that most
19 participants will not be able to mute or unmute themselves
20 to speak. Anyone who wants to speak will have an
21 opportunity to do so during the public comment period later
22 today. You may mute your phone by pressing *6 and you
23 should still be able to hear the Evidentiary Hearing if you
24 do so.

25 Today, we have a court reporter transcribing all

1 the statements made and the questions asked. Therefore, I
2 must ask that only one person speak at a time. If you wish
3 to be recognized, please use the "raise hand" feature. If
4 you are on your phone, please press *9 to raise your hand.
5 If you've muted your phone by pressing *6, please be sure
6 to unmute yourself by pressing *6 again. The "raise hand"
7 feature creates a list of speakers based on the time when
8 your hand is raised. We will call you in that order.

9 I will summarize these directions before we start
10 the public comment period. Please identify yourself before
11 you speak. When you speak for the first time, please say
12 and spell your name slowly to identify yourself. That's
13 important for me and for the court reporter. If you do not
14 identify yourself either the court reporter or I may
15 interrupt you to ask that you would do so to ensure that we
16 have a complete and accurate record of today's Evidentiary
17 Hearing.

18 If you run into any technical difficulties,
19 please contact the Public Advisor's Office or Zoom's help
20 center. Contact information for both is listed on pages 3
21 and 4 of the original June 24th notice for today's
22 Evidentiary Hearing.

23 At this time let me ask if anybody has any
24 questions. You may raise your hand and on the phone that's
25 *9. (No audible response.)

1 Seeing none, the primary purpose of today's
2 Evidentiary Hearing is to receive exhibits and testimony
3 from the parties. I'll start by providing an overview of
4 the Application and this proceeding. And after that, I'll
5 confirm the topics, which we are going to take testimony on
6 today.

7 Next, I'll ask for any motions on exhibits, then
8 the Committee will call testimony on any disputed subject
9 areas. There will be an opportunity for public comment
10 towards the end of the meeting. And the Committee has also
11 given notice that it may hold a closed session. Following
12 closed session, we will adjourn.

13 Now turning to a summary of the Application, on
14 March 19, 2020, SV1, LLC, the Applicant in this proceeding,
15 which is a wholly owned subsidiary of Equinix, LLC,
16 submitted the Application to obtain an exemption from the
17 Energy Commission's exclusive jurisdiction to license
18 thermal power plants with generating capacities of 50
19 megawatts or more of electricity. This exemption is known
20 as a Small Power Plant Exemption or an SPPE for short.

21 The Applicant seeks to construct and operate the
22 Great Oaks South Data Center, the Great Oaks South Backup
23 Generating Facility and related accessories, which are
24 collectively called the Project. The Project site is
25 located in the City of San Jose, California at 123, 127 and

1 131 Great Oaks Boulevard.

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

6 The Great Oaks South Backup Generating Facility
7 would ensure reliable backup power to the Data Center in
8 the event of loss of power from the local electric utility,
9 the Pacific Gas and Electric Company commonly known as
10 PG&E. Normally, backup generating facilities would operate
11 only for testing and maintenance. The Backup Generating
12 Facility would consist of 36 individual 3.25 megawatt
13 diesel-fired emergency backup generators, six of which
14 would be redundant and also three 0.5 megawatt life safety
15 emergency generators. All generators would be located
16 onsite. No electricity that is generated from the Backup
17 Generating Facility could be distributed offsite. The
18 Backup Generating Facility would generate up to 99
19 megawatts of power, which would be the maximum load of the
20 Data Center.

21 Under the Warren-Alquist State Energy Resources
22 Conservation and Development Act, commonly known as the
23 Warren-Alquist Act, specifically Public Resources Code
24 Section 25541, the Energy Commission may grant an SPPE only
25 when it makes three separate and distinct findings, which

12

1 are that the proposed power plant has a generating capacity
2 of no more than 100 megawatts; that no substantial adverse
3 impact on the environment will result from the construction
4 or operation of the power plant; and that no substantial
5 impact upon energy resources will result from the
6 construction or operation of the power plant; and that no
7 substantial adverse impact upon energy resources will
8 result from construction or operation of the power plant.

9 In addition to meeting these Warren-Alquist Act
10 requirements, the Energy Commission is also the lead agency
11 under the California Environmental Quality Act, known as
12 CEQA. The Energy Commission considers the whole of an
13 action. For this application, the whole of the action
14 means not just the Backup Generating Facility, but also the
15 entire Data Center complex that the Backup Generating
16 Facility would support. That includes other project
17 features such as landscaping. This whole of the action is
18 collectively called the Project, which once again includes
19 the Backup Generating Facility, the Data Center and other
20 project features.

21 Early in the proceeding on July 13th, 2020 the
22 Committee conducted a committee conference to review the
23 current status of the proceeding, and to address any
24 outstanding issues and to develop a schedule.

25 Thereafter, staff prepared a draft Environmental

1 Impact Report known as the draft EIR, which staff prepared
2 in furtherance of legal requirements and to aid in the
3 consideration of the Application under the Warren-Alquist
4 Act and CEQA. Staff published the draft EIR on May 21st,
5 2021. The draft EIR was subject to public review and
6 comment and ended on July 6, 2021. Comments were received
7 from the Bay Area Air Quality Management District, the
8 Project Applicant, the City of San Jose, Claire Warshaw and
9 entity called the Enchanted Rock. On July 28th, 2021 staff
10 filed a final EIR, which included responses to comments.
11 On August 18th, 2021 staff filed an Addendum to the final
12 EIR, which contained a mitigation monitoring or reporting
13 program and modified the proposed mitigation measure, MM
14 GHG-1.

15 That concludes my overview of the project,
16 application and of this proceeding.

17 As set forth in the original June 24th notice,
18 this Evidentiary Hearing is being conducted using a formal
19 hearing procedure modified to suit the remote nature of the
20 hearing. The Committee intends to share screens to display
21 documents such as exhibits. Also we ask, but do not
22 require that the parties and the witnesses share video of
23 themselves when they're presenting evidence and testifying.
24 But witnesses should not share video when you're not
25 testifying.

1 Regarding direct examination, we will do all
2 parties' opening and reply testimony as their direct
3 examination if admitted into evidence. There is no need to
4 discuss experts' resumes if we have them in writing and if
5 no party objects to the witness as an expert.

6 If witnesses testify who have not filed a written
7 testimony please have them identify themselves by their
8 name, title, and employer such as John Doe, Air Quality
9 Environmental Specialist, California Energy Commission. If
10 any party has an objection to a witness qualification,
11 please be prepared to state the objection and its basis.
12 Any objections will be decided today during the Evidentiary
13 Hearing, or taken under submission.

14 As set forth in the original June 24th notice
15 pages 6 through 8, you may only use a document that has
16 been previously identified as an exhibit when questioning a
17 witness. If you are going to ask questions about an
18 exhibit before you start, let me know so that I can have it
19 put on screen. When asking your questions, start by
20 identifying the document either by exhibit number and/or
21 its TN number and identify the specific page number you
22 will be referencing. Allow each party representative to
23 finish their question before making an objection. Allow
24 the witness to finish answering before moving on to the
25 next question.

1 And for the benefit of the court reporter and the
2 transcript please remind your witnesses who testify
3 themselves, to identify themselves each time they speak.
4 If testifying as a panel, remind your witness panel to
5 answer each question individually and not to talk over each
6 other or to talk over the person asking the questions.

7 At the conclusion of testimony, as we discussed
8 at the Prehearing Conference, we will allow the parties to
9 make a closing statement of up to two minutes starting with
10 staff, then Mr. Sarvey, and finally the Applicant.

11 At the Prehearing Conference we discussed that
12 the topics we will hear testimony on today are as follows:
13 air quality including cumulative impacts, GHG emissions,
14 and alternatives. Additionally, the Committee would like
15 to address the topic of noise.

16 And next, I have a question for Mr. Sarvey if
17 he's ready. Mr. Sarvey?

18 MR. SARVEY: Yes, I'm ready.

19 HEARING OFFICER LEE: Do you have a witness here
20 today from the Bay Area Air Quality Management District?

21 MR. SARVEY: I invited the Bay Area Air Quality
22 Management to come, but they didn't respond, so I hadn't
23 planned a witness. I know we've always had the Bay Area at
24 all hearings, all of the SPPE proceedings of the Data
25 Center, but for some reason the staff (indiscernible).

1 HEARING OFFICER LEE: Right. Yes, staff had made
2 a statement about that at the Prehearing Conference and I
3 believe the statement was that in Applications for
4 Certification as opposed to Small Power Plant Exemption
5 proceedings the Air District attends. That they may attend
6 voluntarily Small Power Plant Exemption proceedings, but
7 are not required to.

8 So with that, are there any topics that I didn't
9 list that the parties wish to address today? I have air
10 quality first, greenhouse gas emission, next alternatives
11 and finally the topic of the noise. Is there anything
12 else? (No audible response.) Okay, great.

13 MR. SARVEY: This is Robert Sarvey, no. I don't
14 have any.

15 HEARING OFFICER LEE: No, and I'm not hearing
16 anybody, so I'll assume that's the testimony that we'll
17 hear today.

18 As a reminder, the general order of presentation
19 of questioning will be as follows: Applicant, then staff,
20 and then Mr. Sarvey. The Committee will consider allowing
21 further questions if you want to rebut something that was
22 raised for the first time after your witnesses have
23 testified.

24 Ms. Lopez, would you please display the Exhibit
25 List?

1 At this time, I'm going to ask the parties
2 individually if they wish to move the exhibits into
3 evidence. On screen, we have the Exhibit List that has
4 been prepared by the Hearing Unit. It's the state of the
5 exhibits as of the last Exhibit List update filed in the
6 Docket. And it does reflect one compromise I believe. The
7 Applicant and staff both identify the same TN number as an
8 exhibit, and so I allotted that to the Applicant, because
9 the Applicant identified it first.

10 So what I have from this Exhibit List, and what
11 all the parties have the opportunity to see online and
12 anybody from the Project web page is that Applicant has
13 identified Exhibits 1 through 35.

14 Mr. Galati, does the Applicant have a motion
15 regarding its exhibits?

16 MR. GALATI: Yes, I move Exhibits 1 through 35
17 into the record.

18 HEARING OFFICER LEE: Okay. Does any party
19 object to admission of Exhibits 1 through 35? Ms. DeCarlo,
20 for staff?

21 MS. DECARLO: No objection from staff.

22 HEARING OFFICER LEE: And Mr. Sarvey, any
23 objection?

24 MR. SARVEY: No objection.

25 HEARING OFFICER LEE: Okay, with that we admit

1 Applicant's Exhibits 1 through 35 into evidence.

2 (Applicant Exhibits 1 through 35 are
3 admitted.)

4 HEARING OFFICER LEE: Next, staff identified
5 Exhibits 200 through 209. And that excludes the one
6 document that I allotted to the Applicant, which I will
7 state for the record is Exhibit 34 that was just submitted,
8 TN-239752, the City of San Jose 2030 Greenhouse Gas
9 Reduction Strategy August 2020. So that leaves 200 through
10 209 for staff.

11 And, Ms. DeCarlo, do you have a motion regarding
12 your exhibits?

13 MS. DECARLO: Yes, staff moves to move Exhibits
14 200 to 209 into the record.

15 HEARING OFFICER LEE: Does anybody object to the
16 admission of Exhibits 200 through 209? Mr. Galati for
17 Applicant?

18 MR. GALATI: No objection.

19 HEARING OFFICER LEE: And Mr. Sarvey?

20 MR. SARVEY: No objection.

21 HEARING OFFICER LEE: Okay, great. With that we
22 admit Applicant's [sic] Exhibits 200 through 209 into
23 evidence.

24 (Staff Exhibits 200 through 209 are
25 admitted.)

1 HEARING OFFICER LEE: And finally the Intervenor
2 Mr. Sarvey identified Exhibits 300 through 305. Mr.
3 Sarvey, do you a motion regarding your exhibits?

4 MR. SARVEY: Yeah, I'd like to move Exhibits 300
5 to 305 into the record, please.

6 HEARING OFFICER LEE: And does any party object
7 to admission of Exhibits 300 through 305?

8 MR. GALATI: Yes, Applicant objects to Exhibit
9 304 and 305 as they are not the project before the Energy
10 Commission. They both refer to a different Equinix project
11 that was built, approved, and operating.

12 HEARING OFFICER LEE: And just to be specific,
13 it's a different project. What would be the specific
14 objection?

15 MR. GALATI: It's irrelevant.

16 HEARING OFFICER LEE: And staff, did you have any
17 response or objection?

18 MS. DECARLO: Staff does not object.

19 HEARING OFFICER LEE: Mr. Sarvey, do you have any
20 response to that objection?

21 MR. SARVEY: Yeah, Exhibit 304 and 305 are just
22 reinforcements to my reply testimony that I refer to the
23 project and sensitive receptors that could be included in
24 the cumulative impacts.

25 HEARING OFFICER LEE: Yes. They do show the

1 location of sensitive receptors. Objection overruled.

2 Any further objections? (No audible response.)

3 Okay, hearing none I'll admit Mr. Sarvey's Exhibits 300
4 through 305 into evidence.

5 (Intervenor Exhibits 300 through 305 are
6 admitted.)

7 HEARING OFFICER LEE: And that concludes the
8 exhibits. Now we'll take testimony. As I mentioned, we'll
9 start with the topic of Air Quality.

10 And Mr. Galati, Applicant, will be going first in
11 presentation of evidence. And you said that you may want
12 to offer testimony on topics that were disputed by Mr.
13 Sarvey. Do you have any testimony to offer on the topic of
14 air quality?

15 MR. GALATI: Now, I do have a witness that Mr.
16 Sarvey asked to cross-examine and we probably should swear
17 that witness in. It's Michael J. Lisenbee.

18 HEARING OFFICER LEE: I'm fine with that.

19 Mr. Sarvey, were you going to call on Applicant's
20 witnesses?

21 MR. SARVEY: Yes. I had a few questions on
22 emergency operations.

23 HEARING OFFICER LEE: Okay. And that's fine, but
24 I think what I'd like to do is take that under Mr. Sarvey's
25 turn instead of the Applicant's turn. And I'll turn first

21

1 than to staff testimony.

2 MS. DECARLO: Thank you, Hearing Officer Lee. So
3 we are in a similar position to the Applicant. We have
4 witnesses available for Mr. Sarvey to testify -- or I'm
5 sorry -- to cross-examine. And they've prepared a short
6 summary of their response to Mr. Sarvey's previous
7 testimony to situate the issues should Mr. Sarvey wish to
8 cross-examine them.

9 HEARING OFFICER LEE: Understood, so let's move
10 on to Mr. Sarvey. And it seems like Mr. Sarvey has
11 testimony he'd like to offer, and not just on Applicant's
12 or staff's witnesses. He may have others. He may wish to
13 testify himself.

14 MR. SARVEY: At this point I just have questions
15 to ask witnesses.

16 HEARING OFFICER LEE: Okay, well then let's start
17 with Applicant's witness.

18 And was that Mr. Lisenbee?

19 MR. GALATI: Yes, Mr. Lisenbee was identified
20 specifically in the Prehearing Conference statement, Mr.
21 Sarvey, to talk about emergency operations.

22 HEARING OFFICER LEE: Okay, great. I call Mr.
23 Lisenbee to the stand.

24 MR. LISENBEE: Good morning, Commissioner or
25 Hearing Officer Lee.

1 HEARING OFFICER LEE: Good morning. Can you
2 please state and spell your name for the record.

3 MR. LISENBEE: Yes, my name is Michael Lisenbee,
4 M-I-C-H-A-E-L L-I-S-E-N-B-E-E.

5 HEARING OFFICER LEE: And thank you. Now I'll
6 administer the oath.

7 (Michael Lisenbee was sworn.)

8 HEARING OFFICER LEE: Okay, great.

9 Mr. Sarvey, you may proceed.

10 MR. SARVEY: My questions for this topic are
11 centered on Exhibit 19.

12 HEARING OFFICER LEE: Excuse me. Did you say
13 Exhibit 19?

14 MR. SARVEY: Exhibit 19, yes.

15 HEARING OFFICER LEE: Okay, and what page?

16 MR. SARVEY: The first question is about the
17 overall exhibit and the next question is about page 3.

18 So in Exhibit 19 the Applicant's Supplemental
19 Response to Data Request 62, the Applicant provides
20 generator runtime in existing Equinix data centers in San
21 Jose due to utility outages.

22 Those data centers are SV1, 5 and 10, which are
23 located about 2,000 feet from the Project. What other
24 reasons did the generators run in emergency mode outside of
25 utility outages during that 4.7-year period?

1 MR. GALATI: I have to object at this point, Mr.
2 Lee. Mr. Lisenbee is not the correct witness. He's not an
3 Equinix employee. We were unsure why he identified Mr.
4 Lisenbee.

5 I do have other witnesses that can address the
6 outages that were provided in Data Request 62. I would ask
7 Mr. David Smith to be sworn. Mr. Lisenbee doesn't be
8 doesn't have that information.

9 HEARING OFFICER LEE: Is that agreeable Mr.
10 Sarvey?

11 MR. SARVEY: Oh yes, thank you.

12 HEARING OFFICER LEE: Then I call Mr. Smith to
13 the stand.

14 MR. SMITH: Hello, Hearing Officer Lee. My name
15 is David Smith.

16 HEARING OFFICER LEE: Hi, good morning.

17 MR. SMITH: Good morning. D-A-V-I-D S-M-I-T-H.
18 I am Design Director with Equinix.

19 HEARING OFFICER LEE: Great, let me swear you in.

20 (David Smith was sworn.)

21 HEARING OFFICER LEE: Okay. Mr. Sarvey, you may
22 proceed.

23 MR. SARVEY: Would you like me to repeat the
24 question, Mr. Smith?

25 MR. SMITH: Yes, please.

1 MR. SARVEY: Okay, in Exhibit 19 the Applicant's
2 Supplemental Response to Data Request 62, the Applicant
3 provides generator runtime in existing Equinix data
4 centers. What other reasons did generators run in
5 emergency mode outside of utility outages at SV1, 5 and 10
6 during the 4.7-year period?

7 MR. SMITH: None that I'm aware.

8 MR. SARVEY: Thank you. In Exhibit 19, page 3
9 you list an outage on May 8, 2020, SV5. That outage does
10 not appear in BAAQMD's outage data submitted in Exhibit
11 302. Did Equinix Data Center participate in BAAQMD's
12 emergency outage reporting.

13 MR. SMITH: I do not know the answer to that
14 question. I'll have to go back and speak with my
15 operations teams.

16 MR. SARVEY: Okay. The next question is the
17 same, so it's probably going to be the same answer. So SV5
18 would be one of the 20 data centers in BAAQMD's
19 jurisdiction that do not report to BAAQMD, but still
20 experience outages not related to any electrical emergency
21 or ESP event in May of 2020; is that correct.

22 MR. SMITH: I'm sorry, say that again, please.

23 MR. SARVEY: So SV5 would be one of the 20 data
24 centers in BAAQMD's jurisdiction that do not report to
25 BAAQMD, but still experience outages not related to any

1 electrical emergency or ESP event in May of 2020; is that
2 correct?

3 MR. SMITH: I can't confirm that. I don't know
4 whether or not other data centers are reported to BAAQMD.

5 MR. SARVEY: I'm asking whether you guys report
6 it to BAAQMD, not other data centers.

7 MR. SMITH: You mention 20 other data centers.
8 I'm not aware, as I said I do not do the reporting to
9 BAAQMD. I collected the information from our operations
10 teams.

11 MR. SARVEY: But can you answer that question?

12 MR. SMITH: I cannot.

13 MR. SARVEY: Okay, thank you.

14 I have other air quality questions for the
15 Applicant. Should we move to staff questions on emergency
16 modeling or should we continue with the other air quality
17 questions for the Applicant?

18 MR. SARVEY: I have a few questions for the
19 Applicant on their Cumulative Impact Analysis. And I want
20 to start with Exhibit 5, page 18 of 464, Table 26-1.

21 (Exhibit is put onscreen.)

22

23 In Exhibit 5, page 18 of 464, Table 26-1 has an
24 asterisk in the footnote that states that initial risk of
25 24.49 was refined using BAAQMD distance tool, but I see no

26

1 asterisk in that table. What facility does that asterisk
2 pertain to?

3 MR. GALATI: Mr. Lee, this is Scott Galati. This
4 is one of the problems when the Prehearing Conference did
5 not identify air quality modeling for us. I have a person
6 available who has not filed testimony in this proceeding
7 that could probably answer that question. None of the
8 witnesses that I listed are available for that, could do
9 that. Mr. Lisenbee and Mr. Smith did not prepare that
10 portion of the document.

11 HEARING OFFICER LEE: And who would that be, Mr.
12 Galati?

13 MR. GALATI: It's Gregory Darvon who is currently
14 I think participating as an attendee.

15 HEARING OFFICER LEE: Mr. Sarvey, would you like
16 to a question, Mr. Darvon?

17 MR. SARVEY: Certainly.

18 HEARING OFFICER LEE: Okay, then then I'll call
19 to the stand Gregory Darvon.

20 MR. GALATI: He probably needs to be promoted to
21 a panelist.

22 HEARING OFFICER LEE: Okay. Mr. Darvin, if you
23 there can you raise your hand, so we can we can find you?
24 There we go. And just let me know when you can speak.

25 MR. GALATI: And Mr. Lee, may I have just a

1 moment to be able to send this exhibit to Mr. Darwin? It's
2 kind of hard to see on the screen and the context of it.

3 HEARING OFFICER LEE: Yes, that's fine. How long
4 do you need?

5 MR. GALATI: Just a few minutes, it is -- what
6 exhibit was it?

7 MR. SARVEY: Exhibit 5, Page 18 of 464, Table 26-
8 1.

9 MR. GALATI: Yeah. Mr. Darwin, I just sent it to
10 you when you get a chance to review. I know all that's
11 showing on the screen is this particular table, but when
12 you get a chance to review what you need to review above it
13 and below it to put it in context, please let us know when
14 you're ready to answer the question.

15 MR. DARVIN: Scott, this is Greg Darwin. It's
16 going to take me a few minutes to dig up some of the
17 background data that went into generating that table.

18 HEARING OFFICER LEE: Okay, Mr. Darwin, we will
19 give you the time that you need to review the exhibit. But
20 before I forget, can you please state and spell your name
21 for the record and let me swear you in?

22 MR. DARVIN: Yes, my name is Greg Darwin, that's
23 G-R-E-G D-A-R-V-I-N.

24 (Greg Darwin was sworn.)

25 HEARING OFFICER LEE: Yes, thank you and take

1 your time, Mr. Darwin.

2 MR. DARVIN: I'm going to hit the mute button, so
3 you don't hear me typing in the background.

4 (Pause while Mr. Darwin reviews Exhibit 5.)

5 MR. DARVIN: This is Greg Darwin. It's going to
6 take me a bit longer. I've got to dig up the individual
7 risk numbers to find out where that missing asterisk would
8 be assigned. So I don't know if you want to continue to
9 wait for me, but it's going to take a few, but I can dig it
10 up. I just need some time to do that. Would it be easier
11 if I came back and respond to this once I can determine
12 which source it applied to?

13 HEARING OFFICER LEE: Yes, that's fine.

14 Mr. Sarvey, did you have any other questions for
15 Mr. Smith or Mr. Lisenbee while we wait?

16 MR. SARVEY: I had a couple more questions for
17 Mr. Darwin that he might be able to answer it.

18 HEARING OFFICER LEE: For Mr. Darwin, okay.

19 MR. DARVIN: I can try, Bob, go ahead.

20 MR. SARVEY: Table 26-1 one does not include the
21 China Mobile Data Center or any track emissions from
22 streets and highways; is that correct.

23 MR. DARVIN: In that table, no. If we didn't
24 include the roads or additional freeways they were beyond
25 the distances required for the analysis.

1 MR. SARVEY: Thank you, Mr. Darwin. That was the
2 only other question.

3 HEARING OFFICER LEE: Well, I think it might
4 cause more confusion than help if we leave to staff
5 witnesses, and then try and come back to Mr. Darwin. So
6 let's go ahead and Commissioner Douglas and Commissioner
7 Hochschild, would you object if we just let everybody free
8 for five minutes?

9 COMMISSIONER DOUGLAS: Yes, Hearing Officer Lee,
10 I think that sounds fine. Why don't you check that 5
11 minutes is the right amount of time, because we could also
12 give them 15 minutes or whatever seems reasonable.

13 MR. DARVIN: I would prefer that. It's just this
14 is going to take a bit. The data is a year old. I just
15 have to go back to the individual risk numbers and find the
16 missing data points, so it might take a bit longer than 15.

17 HEARING OFFICER LEE: Longer than 15?

18 MR. DARVIN: Possibly, it's just I just have to
19 go through and I've archived some of the older risk runs,
20 so I just have to plop in the hard drive and download the
21 data again and then go through it so.

22 HEARING OFFICER LEE: I see.

23 MR. DARVIN: I could prepare a written response
24 if that's --

25 MR. SARVEY: Yeah, he could provide a written

1 response, that would be acceptable, after the hearing. We
2 don't need to take up all this hearing time on just one
3 question.

4 HEARING OFFICER LEE: Well, hold on. I don't
5 want to leave the record open if that's not necessary. I'd
6 prefer to have it dealt with during the testimony. So
7 let's just --

8 MR. SARVEY: Mr. Lee?

9 HEARING OFFICER LEE: Yes?

10 MR. SARVEY: Let me just withdraw the question.
11 I'll just withdraw the question. It's not critical and I
12 already have the information that I -- thank you.

13 HEARING OFFICER LEE: Okay, well that works too.

14 Okay, so with that I release I think Mr. Lisenbee
15 and Mr. Smith and Mr. Darvin. You're released from the
16 stand for now, but you will remain sworn in for the
17 remainder of this hearing.

18 Okay, and that would bring us to staff's
19 witnesses. Mr. Sarvey, you mentioned you had some
20 questions for staff's witnesses?

21 MR. SARVEY: Yeah, I have a few questions
22 starting with Exhibit 200, page 519 of 580.

23 HEARING OFFICER LEE: Thank you, hold on.

24 Ms. DeCarlo, would that be --

25 MS. DECARLO: If it's solely on the issue of air

1 quality, not leading into greenhouse gas emissions, then
2 that would just be Dr. Wenjun Quian and Joseph Hughes would
3 be our two witnesses for air quality.

4 HEARING OFFICER LEE: Okay, thank you, yes. I
5 would prefer to take greenhouse gas separately, if we have
6 any questions there. And so this would be this would be
7 air quality questions for Dr. Quian and Mr. Hughes.

8 MS. DECARLO: And Dr. Quian has a brief summary of
9 her testimony to lead into the cross-examination questions
10 if that's acceptable.

11 HEARING OFFICER LEE: Well out, I would prefer
12 them to -- well, is that acceptable Mr. Sarvey?

13 MR. SARVEY: Yes, Mr. Lee.

14 HEARING OFFICER LEE: Okay, that would be fine.
15 So I call to the stand Dr. Quian and Mr. Hughes. Let me
16 know when you're there, please.

17 MR. HUGHES: Hi, Joseph Hughes is here. I think
18 Wenjun Qian is joining.

19 HEARING OFFICER LEE: And it could be that you're
20 not promoted. If you need to be promoted, please use the
21 raise hand feature.

22 DR. QIAN: Can you hear me?

23 HEARING OFFICER LEE: Yes, I can. Thank you.

24 And Dr. Qian, can you please state and spell your
25 name for the record?

1 DR. QIAN: This is Wenjun Qian, W-E-N-J-U-N Q-I-
2 A-N.

3 HEARING OFFICER LEE: Thank you.

4 And Mr. Hughes, would you please state and spell
5 your name for the record?

6 MR. HUGHES: Yeah, Joseph Hughes, J-O-S-E-P-H,
7 Hughes, H-U-G-H-E-S.

8 HEARING OFFICER LEE: Okay, and let me swear you
9 in together. I'll ask you each if you agree, after.

10 (Wenjun Qian and Joseph Hughes are sworn.)

11 HEARING OFFICER LEE: Okay. And well let's hear
12 -- I'll let you decide who goes first with your preliminary
13 statement summary.

14 DR. QIAN: So I will go ahead with is my opening
15 statement.

16 HEARING OFFICER LEE: Please.

17 DR. QIAN: Yeah, my name is Wenjun Qian. My
18 areas of expertise include air quality, air dispersion
19 modeling and health risks modeling. I prepared the Air
20 Quality Section, including public health emergency
21 operation in Appendix B and Appendix C of the final EIR,
22 exhibit 200, and to the air quality part of the responses
23 to Committee questions in Exhibit 204. And the air quality
24 part of the responses to Mr. Sarvey's required testimony in
25 Exhibit 205, which represents my written testimony, my

1 declaration, and the qualifications that were previously
2 filed in this proceeding.

3 In my written testimony covering air quality and
4 public health impacts I concluded after an independent
5 analysis that the Project would not have any significant
6 cumulative impacts with mitigation incorporated in the
7 areas of air quality and public health.

8 My detailed responses to Intervenor Sarvey's
9 reply testimony is on pages 2 to 4 in Exhibit 205. I would
10 like to focus your attention on two issues addressed in my
11 response to Mr. Sarvey's required testimony as well as the
12 cumulative air quality impacts from the Santa Teresa
13 Substation.

14 The first issue is about emergency operations
15 modeling. Staff discussed the issue in detail in Section
16 4.3 Air Quality of the final EIR. And specifically
17 addressed the request for modeling of emergency operations
18 from the Bay Area Air Quality Management District, BAAQMD
19 comment B-4 in Section 7 of the final EIR.

20 Staff consulted with BAAQMD and other air
21 districts and concluded that emergency operations are
22 typically not evaluated during facility permitting and air
23 districts do not normally conduct an air quality assessment
24 of such impacts. That BAAQMD does not currently model
25 emissions of equipment during emergencies.

1 Staff followed the example analysis done by the
2 BAAQMD permitting staff and the BAAQMD CEQA guidelines to
3 do the final EIR of the Project. Staff assessed the
4 likelihood of emergency events, but finds that assessing
5 the air quality impacts of emergency operations would
6 require a host of unvalidated, unverifiable, and
7 speculative assumptions about when, and under what
8 circumstances, such a hypothetical emergency would occur.
9 Such a speculative analysis is not required under CEQA, and
10 most importantly would not provide meaningful information
11 by which to determine Project impacts.

12 Appendix B of the final EIR also provides a
13 detailed analysis of the "nontesting/non-maintenance"
14 engine operations data provided by the BAAQMD. The BAAQMD
15 review confirms that these types of events remain
16 infrequent, irregular and unlikely. And the resulting
17 emissions are not easily predictable or quantifiable and
18 cannot be modeled in an informative or meaningful way.
19 Nothing in the Intervenor's estimate contradicts this key
20 conclusion.

21 In addition, there's no clear significance
22 thresholds to apply to emergency operations and no agency
23 has -- can you hear me clearly?

24 MR. SARVEY: I didn't hear much of it, but I read
25 your testimony so I don't need to hear anymore.

1 DR. QIAN: Oh, sorry.

2 HEARING OFFICER LEE: Yeah, I can hear you. This
3 is Hearing Officer Ralph Lee, but it is going up and down
4 and that's a little bit distracting.

5 DR. QIAN: Let me try this. Can you hear me now?

6 HEARING OFFICER LEE: Yes, I can.

7 DR. QIAN: Can you hear me now?

8 HEARING OFFICER LEE: Yes.

9 DR. QIAN: In addition there's no clear
10 significance thresholds to apply to emergency operations.
11 And no agency has adopted these thresholds for use in
12 evaluating emergency situations. Staff continues to
13 believe that the best indicator that this project will not
14 result in significant adverse impact to air quality from
15 emergency operations is the continued infrequency of such
16 events and the fact that in the rare instances when they do
17 occur they are of limited duration.

18 Staff also knows that this project is consistent
19 with a joint recommendation letter from the California Air
20 Resources Board and BAAQMD that emphasizes the use of Tier
21 4 engines as a way to minimize impacts especially during
22 emergency operations.

23 And the second issue is about cumulative impacts
24 from Great Oaks Mixed Use Project. As explained in staff's
25 response to Intervenor Sarvey's reply testimony in Exhibit

1 205, the Equinix data centers SV10 and SV11 in the Great
2 Oaks Mixed Use Project were not included in staff's
3 cumulative health risk assessment, because they are outside
4 the Project's 1,000 foot radius recommended in BAAQMD CEQA
5 guidelines. However, the residential areas from the Great
6 Oaks Mixed Use Project were included in staff's modeling
7 domain for air quality and public health impacts analysis.
8 But the Project impacts at these residential areas were not
9 explicitly discussed, because they would be lower than the
10 worst-case ambient air quality impacts and health impacts
11 at maximally exposed individual receptors presented in the
12 final EIR.

13 And the third issue is about the cumulative
14 impacts from the Santa Teresa substation and the final EIR
15 provides a discussion of cumulative impacts to air quality
16 in Checklist Item B. And describes the Project's emissions
17 compared with the BAAQMD's thresholds of significance. The
18 BAAQMD thresholds of significance represent the levels at
19 which the BAAQMD has determined that a project's individual
20 emissions of criteria air pollutants or precursors would
21 result in a cumulative considerable contribution to the San
22 Francisco Bay Area Air Basin's existing air quality
23 conditions.

24 The final EIR shows that the project will not
25 exceed any applicable BAAQMD thresholds of significance

1 with mitigation incorporated. Therefore, staff concludes
2 that the Project would not result in a cumulatively
3 significant impact with mitigation incorporated.

4 The City's 2016 analysis evaluated the emissions
5 and the health impacts from the construction of the Santa
6 Teresa Substation, which were estimated to be far less than
7 the BAAQMD significance thresholds. The Santa Teresa
8 Substation would also be more than 2,000 feet away from the
9 proposed Data Center site.

10 In addition, staff does not expect there would be
11 any overlap between the construction of the Substation and
12 the Data Center as the construction of the Substation is
13 anticipated to conclude at the end of 2021, according to
14 PG&E staff. Therefore, the cumulative impacts from the
15 Santa Teresa Substation were not discussed in the final
16 EIR.

17 This concludes my opening statement.

18 HEARING OFFICER LEE: Yeah, thank you.

19 And Mr. Hughes, did you have an opening
20 statement?

21 MR. HUGHES: I actually do not. I don't have any
22 written testimony in the record. I'm supporting staff as
23 the Supervisor of the Unit and am just here to answer any
24 questions that might come my way as well.

25 HEARING OFFICER LEE: Okay, thank you.

1 HEARING OFFICER LEE: Okay, Mr. Sarvey, you may
2 proceed with your questions.

3 MR. SARVEY: Okay. Both the Bay Area Air Quality
4 Management and the Air Resources Board have indicated in
5 this proceeding that staff should model emergency
6 operations. Is that your understanding?

7 DR. QIAN: Sorry, I didn't -- I wasn't able to
8 hear anything previously. Can you repeat the question?

9 MR. SARVEY: Okay, I'll repeat it. Both the Bay
10 Area Air Quality Management District and the Air Resources
11 Board have told staff in this proceeding that emergency
12 operations should be modeled; is that correct?

13 DR. QIAN: Not the California Area Resources
14 Board, but the BAAQMD.

15 MR. SARVEY: Okay. So if staff modeled emergency
16 operations and the results demonstrated an ambient air
17 quality standard exceedance at a sensitive receptor, would
18 that not be a significant impact and a threshold of
19 significance?

20 DR. QIAN: Staff has not modeled the emergency
21 operation for this project. And no agency has determined
22 significant threshold for emergency operation.

23 MR. SARVEY: That doesn't quite answer my
24 question and I'll be repeating it again. If staff models
25 emergency operations and also demonstrated an ambient air

1 quality entered exceeds at a sensitive receptor, would that
2 not be a significant impact and a threshold of significant?

3 MR. HUGHES: This is Joseph Hughes. I don't know
4 if we know the answer to that, because that's you don't
5 generally model emergency operations. There's no guidance
6 from ARB or BAAQMD or any other agencies.

7 We actually had meetings with senior modelers
8 from other air districts like San Joaquin Valley, modelers
9 from ARB were on the call. And we discussed this topic as
10 part of the Sequoia proceeding to figure out if there was a
11 way to do it. And all of the modelers advised us that
12 there wasn't guidance and that there's not a significant
13 threshold. So I don't know.

14 I know some number of years ago BAAQMD tried to
15 take on that effort for a particular case to come up with a
16 result and then do a joint probability analysis of whether
17 that exceedance would occur during the time of an outage.
18 But there was no significant threshold. Say they came up
19 with the 1 in 10 million number. That that was what it
20 was, but they didn't know if it was significant or not, so
21 they've gotten away from that approach. And since then
22 they don't model emergency operations.

23 We consulted with the permit engineers at BAAQMD
24 on these cases to get an idea of their approach. And we
25 followed the same format that they use for recent projects

1 on the data center projects that they analyze. And we did
2 a consistent with their approach and we did a consistent
3 with their guidance. So yeah, I don't think we can attest
4 to the significance of a result during emergencies.

5 MR. SARVEY: Mr. Hughes, would that be the Santa
6 Clara Data Center you're referring to?

7 MR. HUGHES: It might be. Wenjun might know
8 better than me, I think it was back in like 2010.

9 DR. QIAN: Yes.

10 MR. SARVEY: And when BAAQMD did that modeling
11 they were at that time the CEQA lead agency, not the
12 responsible agency; is that correct?

13 MR. HUGHES: I don't know. The point I was
14 trying to make is that they don't do that anymore. They
15 realized that the results were insignificant and somewhat
16 meaningless and so now they don't take that approach

17 After we consulted them on that then they advised
18 that that type of modeling isn't done.

19 MR. SARVEY: And BAAQMD is the responsible agency
20 in this proceeding, correct? They're not the CEQA lead,
21 correct?

22 MR. HUGHES: I'm sorry, I don't know. Can you
23 rephrase the question, or maybe that's more of a legal-

24 MR. SARVEY: Yes, BAAQMD in this proceeding is
25 not the CEQA lead, the Energy Commission is, correct?

1 MR. HUGHES: Yeah, correct. I mean, it's exempt
2 from our proceeding, but yeah we do that level of
3 evaluation.

4 MR. SARVEY: And BAAQMD has asked you in this
5 proceeding, maybe more than once, to model emergency
6 operations; is that correct?

7 MR. HUGHES: I don't know if that's correct.
8 We've gotten comment letters from other offices in BAAQMD
9 that suggests that we look at that type of work, but when
10 we work with the permit engineers that permit these
11 facilities they aren't suggesting that same type of work.
12 So I don't know it, so it depends on who you're talking to.

13 And I don't know if there's been a formal request
14 from BAAQMD saying that this needs to be done or have they
15 provided us any guidance on how it should be done and what
16 the threshold of significant should be. So no, I don't
17 think that we've been asked by them to do that.

18 MR. SARVEY: Okay, thank you. Exhibit 200, page
19 19 of 580. (Pause while Exhibit 200 is put on screen.)
20 Okay, on page 19 of 580 the testimony states that staff at
21 BAAQMD gathered information from 45 data center facilities
22 under its jurisdiction. And the attachment to BAAQMD
23 scoping comments listed 20 facilities that reported some
24 level of non-testing/non-maintenance diesel engine use in a
25 13-month period. Of 20 of the 45 facilities experienced

1 outages, the chance of an outage in the Bay Area Data
2 Center due to all causes over 13 months would be 20 over 45
3 or 44 percent.

4 Does CEC staff agree with that, or do they have a
5 different opinion?

6 MR. HUGHES: Over that particular 13 months?

7 MR. SARVEY: Over that 13-month period 20 to 45
8 facilities experience outages, so the chance of an outage
9 at any of those facilities would be 20 over 45 or 44
10 percent. Do you disagree with that or agree with that?

11 DR. QIAN: The total facilities under BAAQMD
12 jurisdiction is 66 and the BAAQMD data only collected 45 of
13 them. And 20 of them responded with some level of non-
14 testing and non-attendance use?

15 MR. SARVEY: Okay, so 20 out of 45 responded, had
16 emergency operations so it's 44 percent of those that
17 responded had emergency operations during that 13-month
18 period; is that correct?

19 DR. QIAN: You can interpret like that, yes.

20 MR. SARVEY: Okay, thank you. So according to
21 your testimony on page 521 and 522, it states engine hours
22 of runtime outside of extreme events was spread across 10
23 data centers out of 45 data centers, covered by BAAQMD's
24 review. So if we consider only the data center emergency
25 operations outside of the electrical emergencies, the

1 chance of any of the 45 data centers operating in emergency
2 mode is 10 over 45 or 22 percent over a 13-month period.

3 Would you agree with that or disagree?

4 DR. QIAN: Where are you reading that?

5 MR. SARVEY: Exhibit -- that's page 521 and 522.

6 DR. QIAN: And did do you do your own
7 calculation?

8 MR. SARVEY: Well, no they're actually your
9 numbers. And I'm saying that 10 out of the 45 data centers
10 had emergency operations outside of electrical emergencies
11 and that's 22 percent of the data centers reported
12 emergency operations for a 13-month period outside of
13 electrical emergencies. And I was asking if you agreed or
14 disagreed.

15 DR. QIAN: I cannot find -- let me look. Yeah,
16 so we said the 473.7 engine hours of runtime outside of
17 extreme events was spread across 10 data centers out of the
18 45 data centers, yes.

19 MR. SARVEY: Yeah, I understand that. I was
20 asking a different question, but I'll move on
21 (indiscernible) apparent that's true.

22 Page 524 of 580, testimony states in addition,
23 the Applicant provided data showing the generator runtime
24 of nearby existing Equinix data centers SV1, SV5 and SV10
25 due to utility outages from 2016 to September 2020,

1 approximately 4.7 years. Did the Applicant provide you any
2 data showing generator runtime that was not from a utility
3 outage?

4 DR. QIAN: I think we've heard the testimony
5 provided by the Applicant they didn't see any operation
6 outside the scope that were provided in the data responses.

7 MR. SARVEY: In your testimony on page 541 of
8 580, concerning the reliability of PG&E it states Equinix,
9 beginning from 2016 up until a few months ago, there have
10 been a total of four hours of backup generator runtime or
11 unplanned outages at three data centers: SV1, 5 and 10.

12 If you had for outages over 4.7 years at three
13 data centers, it's an 85 percent chance a year that one of
14 these three data centers would experience an outage from
15 just power loss. Do you consider an 85 percent chance of
16 emergency operations at the Great Oaks South three data
17 centers to infrequent or improbable?

18 DR. QIAN: Sorry, I don't think I wrote to that
19 section. I think it was kind of like in the preliminary
20 response from the Applicant. A total of four unplanned
21 outages, I think it's not a total of four hours, it should
22 be two hours of the four instances.

23 MR. SARVEY: Okay. Exhibit 205, page 2, their
24 testimony states the overall number of hours of operation
25 for the less than half of the facilities in BAAQMD's review

1 that did run was .07 percent of the available time. .07
2 percent of the available time is 6.65 hours; is that
3 correct?

4 DR. QIAN: I have to go back to my calculation to
5 confirm that number.

6 MR. HUGHES: Yeah, if I recall I thought that was
7 a capacity factor, based on actual runtime compared to
8 available runtime over that 13-month period. And I mean
9 it's explained in detail in the Appendix.

10 DR. QIAN: Yes.

11 MR. SARVEY: No, I'm asking you what .07 percent
12 of the available time means, how many hours is that?
13 That's what I'm asking.

14 MR. HUGHES: Let's go back to that Appendix. We
15 can see, I think it was 13 months, so it was like 9,504
16 hours.

17 MR. SARVEY: Right.

18 MR. HUGHES: And then the engines, all engines,
19 there were 288 engines that ran. And they ran for a total
20 combined 1,877 hours. So yeah, I mean it's explained in
21 detail. I mean I don't want to conflate any of the
22 statistics up here like arguing about it on the stands.

23 MR. SARVEY: No. I'm just trying to understand,
24 you're saying that there's an average amount of time,
25 available time that these facilities ran. And I computed

1 in 6.65 hours and I'm just asking you if that's correct.

2 MR. HUGHES: Yeah, well the available time was
3 over the 13 months, which is where the 9,504 hours, that it
4 would have been available to run.

5 MR. SARVEY: So if you multiply 9,504 times .07
6 percent that's 6.65 hours; is that correct?

7 MR. HUGHES: I don't know. I don't have a
8 calculator in front of me, and like Wenjun said we're
9 probably not prepared to do calculations on the stand. We
10 can go back and see where the calculations were done.

11 MR. SARVEY: One simple question, trying to
12 figure out what your figures mean, they don't make any
13 sense to me.

14 DR. QIAN: So we used the whole data set from the
15 BAAQMD and came up with a probability of emergency
16 operation. It takes into -- like the emergency operation
17 for a total of 1,877 engine hours divided by the number of
18 engines.

19 MR. SARVEY: Yes, I understand how you did it.
20 I'm just trying to figure out what the duration of the time
21 was. And by my calculations it's 6.65 hours, but if you
22 don't have a calculator we can verify that later.

23 Let's see next would be Exhibit 200, page 21 of
24 580. (Pause to put document on the screen.)

25 MS. LOPEZ: Can you repeat the page number,

1 please?

2 MR. SARVEY: 21 of 580, no that's not -- that's
3 not the page. Strike that question, that's fine.

4 In staff's testimony it states on August 16, 2020
5 Governor Newsom declared a State of Emergency, because of
6 the extreme heat wave in California and surrounding Western
7 states. Thus the data set provided by BAAQMD is not
8 necessarily representative of an average 13-month period
9 from which one could extrapolate average backup facility
10 use in the future.

11 On June 17, 2021 Governor Newsom declared another
12 emergency due to extreme heat. Does that change your
13 testimony in any way?

14 DR. QIAN: I think that this year is much better
15 than last year and we haven't seen any -- much operation of
16 the diesel engines like what was operated last year. So
17 last year is still an extreme year and does not represent a
18 normal year.

19 MR. SARVEY: So you don't believe that conditions
20 are worsening due to climate change?

21 DR. QIAN: Well, it's speculative to expect the
22 same thing would be would happen in the future.

23 MR. SARVEY: That's all the questions I have for
24 emergency operations. I have a couple for cumulative
25 impacts. Do we want to take those now or whatever you

1 like.

2 HEARING OFFICER LEE: This is Ralph Lee, do you
3 mean cumulative impacts within the --

4 MR. SARVEY: Questions for staff on cumulative
5 impacts, we took some from the Applicant already, so.

6 HEARING OFFICER LEE: Right, and this is it's
7 cumulative impact within the air quality?

8 MR. SARVEY: Within the air quality, yes air
9 quality.

10 HEARING OFFICER LEE: Yeah, let's just do that
11 now please.

12 MR. SARVEY: Okay. So in Exhibit 5, page 17 it
13 contains Staff's Data Request No. 27, which asked the
14 Applicant to provide an analysis of all reasonably
15 foreseeable new projects with a potential to emit five tons
16 per year or more prior to criteria pollutants located
17 within a six-mile radius to the proposed project. The
18 Applicant requested that staff withdraw the Data Request 27
19 through 30 concerning Allison's (phonetic). Did staff
20 withdraw Data Request 27 to 30.

21 DR. QIAN: We didn't withdraw that. According to
22 history of the SPPE projects the District would not provide
23 such information. And we as I explained in the opening
24 statement, the final EIR provides a discussion of
25 cumulative impacts to air quality under Checklist Item B,

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1 which describes the Bay Area Air Quality Management
2 District thresholds of significant. So the Project's
3 emissions would not exceed any applicable significant
4 thresholds with mitigation incorporated.

5 Therefore, staff concludes that the project would
6 not result in a cumulatively significant impact with
7 mitigation incorporated.

8 MR. SARVEY: Okay, thank you. That's all I have.

9 HEARING OFFICER LEE: Okay, thank you, Mr.
10 Sarvey.

11 Mr. Galati, does the Applicant have any questions
12 for these witnesses on the topic of air quality?

13 MR. GALATI: No, I do not. I would like to let
14 you know that that I believe Mr. Darwin is ready to testify
15 on that one question if Mr. Sarvey wants to reinstate it.

16 HEARING OFFICER LEE: Okay, let me finish with
17 staff's panel and I'll check with Mr. Sarvey at the end.

18 Ms. DeCarlo, does staff have any questions for
19 these witnesses on the topic of air quality?

20 MS. DECARLO: Yes, I just have a couple of
21 redirect questions, if I may?

22 HEARING OFFICER LEE: Yes, please.

23 MS. DECARLO: So, Mr. Sarvey, Intervenor Sarvey
24 asked some questions about the data set that BAAQMD had
25 provided on outages that they surveyed in that 13-month

1 period. Is this the same data set that staff used in the
2 Sequoia proceeding?

3 MR. HUGHES: Yes.

4 DR. QIAN: Yes.

5 MS. DECARLO: And were there any additions to
6 this data set that were provided by BAAQMD or anyone else
7 for analysis, specifically in this proceeding?

8 MR. HUGHES: I think there might have been like a
9 few more details, but none of the engine hours or anything
10 like that I don't think change. The tables were almost
11 identical from the Sequoia. I think Jakub Zielkiewicz with
12 BAAQMD provided a revised table a few weeks later on
13 another project, but it was essentially identical that just
14 had additional details and whatnot.

15 MS. DECARLO: And --

16 MR. HUGHES: That's my recollection.

17 MS. DECARLO: Thanks, and is there any reason you
18 believe that that this project would result in a different
19 conclusion with regard to the probability of emergency
20 operations, than was reached in the Sequoia proceeding?

21 DR. QIAN: No.

22 MS. DECARLO: All right, thank you. That's all I
23 have.

24 HEARING OFFICER LEE: Thank you.

25 Mr. Sarvey, did you have any rebuttal to that?

1 MR. SARVEY: No, I'm fine Mr. Lee. Thank you.

2 HEARING OFFICER LEE: Thank you.

3 Okay, I think that concludes our questions for
4 staff's panel. So we thank staff's air quality panel.
5 You're released through the stand, but you will remain
6 sworn in for the remainder this hearing.

7 And then that takes us to Mr. Galati's question.
8 Do we have any further testimony? Mr. Sarvey, did you want
9 to follow up on that question?

10 MR. SARVEY: No, that's not necessary, Mr. Lee.
11 Thank you.

12 HEARING OFFICER LEE: Okay, thank you.

13 And now that now that Mr. Sarvey's had his chance
14 to take testimony, I would invite -- and staff just
15 testified -- so I would I would invite Applicant Mr.
16 Galati, if he wishes to present any rebuttal testimony to
17 what we've heard today.

18 MR. GALATI: No, I do not. Thank you.

19 HEARING OFFICER LEE: Okay, thank you.

20 Well then, we're finished with the topic of air
21 quality and we'll move on to the topic of greenhouse gas
22 emissions. I will note it's 11:30 and some people were
23 probably starting before 10:00. I'll ask Commissioner
24 Douglas and Chair Hochschild if they would like to take a
25 break now, or if they have a plan for a break.

1 CHAIR HOCHSCHILD: I'm fine to continue, but will
2 defer to Commissioner Douglas.

3 Commissioner Douglas: I'm fine to continue as
4 well. I think, why don't you check with the parties, but
5 I'm fine to continue.

6 HEARING OFFICER LEE: Yeah, well let's take it in
7 order. Mr. Galati?

8 MR. GALATI: Yes, personally we're fine to
9 continue.

10 HEARING OFFICER LEE: Ms. DeCarlo?

11 MS. DECARLO: Yes, we're fine to continue, thank
12 you.

13 HEARING OFFICER LEE: And Mr. Sarvey?

14 MR. SARVEY: Yes, keep it moving.

15 HEARING OFFICER LEE: All right, well thank you.
16 Then we'll push on at least until noon. Okay, and with
17 that we start the topic of air -- greenhouse gases, excuse
18 me.

19 So, then, I would call to the stand, let me ask
20 Mr. Galati, do you wish to present evidence in the topic of
21 greenhouse gas emissions?

22 MR. GALATI: We've already produced our direct
23 evidence, but I would like you to swear in Mr. Frandsen,
24 because he may be helpful in any of the additional
25 questions that Committee or (indiscernible) may have.

1 We've previously filed testimony in this proceeding on this
2 topic.

3 HEARING OFFICER LEE: Thank you.

4 Mr. Frandsen, can you please state and spell your
5 name for the record?

6 MR. FRANDSEN: Yes, Bruce Frandsen, B-R-U-C-E, F-
7 R-A-N as in Nancy-D as in David-S as in Sam-E-N as in
8 Nancy.

9 HEARING OFFICER LEE: Thank you.

10 (Bruce Frandsen was sworn.)

11 HEARING OFFICER LEE: Thank you. Okay.

12 MR. GALATI: Mr. Lee, just as a housekeeping
13 matter, Mr. Lisenbee has also co-authored that testimony.
14 So if we could just make sure they testify as a panel? I
15 understand that might get individual questions, but they
16 both know which questions are for them.

17 HEARING OFFICER LEE: Sure, and well if Applicant
18 doesn't have direct to start with I'll move on to staff.

19 Ms. DeCarlo, do you wish to present any witness
20 testimony on the topic of greenhouse gas emissions?

21 MS. DECARLO: No, similar to the last one we're
22 available for cross-examination and we have a short summary
23 of our testimony to present initially if we are cross-
24 examined.

25 HEARING OFFICER LEE: Okay, great. Thank you.

1 And Mr. Sarvey, do you wish to offer testimony on
2 the topic of greenhouse gas emissions?

3 MR. SARVEY: I have no testimony. I just have
4 one question for Mr. Frandsen and that's it.

5 HEARING OFFICER LEE: One question for Mr.
6 Frandsen, did you say?

7 MR. SARVEY: That's all I have.

8 HEARING OFFICER LEE: Okay. Well then let's take
9 that. I call to the stand Mr. Frandsen and let me know
10 when you're ready.

11 MR. FRANSEN: Yes, I'm ready, Mr. Hearing
12 Officer.

13 HEARING OFFICER LEE: Thanks.

14 And you may proceed, Mr. Sarvey.

15 MR. SARVEY: Yes, the question is on Exhibit 1,
16 page 135. Okay, in Exhibit 1, Page 135 it states that
17 Equinix intends to opt into this SJCE 80 percent renewable
18 energy supply auction through PG&E as the distribution
19 company delivering the power to the site.

20 Why is Equinix now proposing GHG mitigation
21 outside of the SJCE Clean Energy Power Program? Is it
22 related to costs or other reasons?

23 MR. FRANSEN: Well, the reason why is we manage
24 our program on a portfolio basis. And as we do with all of
25 our facilities in the US, we will roll this facility into

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1 that program and manage it through that mechanism. And
2 that program includes looking at all local utility offered
3 operations or options as part of our considerations, but
4 it'll be handled in the fashion we handle all of our
5 facilities.

6 MR. SARVEY: Great. Thank you, Mr. Frandsen,
7 that's all I have.

8 HEARING OFFICER LEE: Okay. Mr. Galati, does the
9 Applicant have any questions for this witness?

10 MR. GALATI: No, I do not. Thank you.

11 HEARING OFFICER LEE: Ms. DeCarlo, does staff
12 have any questions for this witness?

13 MS. DECARLO: No questions, thank you.

14 HEARING OFFICER LEE: Well, okay. We thank
15 Mr. Frandsen for testifying. And you're released for the
16 stand for now, but you will remain sworn in for the
17 remainder of this hearing.

18 And I think that might bring us to the end of
19 greenhouse gas emissions. Does any party need to offer any
20 additional witness testimony on the topic of greenhouse gas
21 emissions, Mr. Galati?

22 MR. GALATI: Do not, thank you.

23 HEARING OFFICER LEE: Ms. DeCarlo?

24 MS. DECARLO: We do not. Thank you.

25 HEARING OFFICER LEE: And Mr. Sarvey?

1 MR. SARVEY: No, that's fine. Thank you.

2 HEARING OFFICER LEE: Okay, thank you. We are
3 finished with the topic of greenhouse gas emissions and
4 we'll move on to the topic of alternatives. And starting
5 with the Applicant, Mr. Galati, do you wish to present
6 evidence on the topic of alternatives?

7 MR. GALATI: No, I do not. And I don't believe
8 that anyone wanted to cross-examine any of our particular
9 is. If so, I could swear and another witness.

10 HEARING OFFICER LEE: Okay. Well, let's wait and
11 see.

12 Ms. DeCarlo for staff, do you wish to present any
13 direct testimony?

14 MS. DECARLO: No, we have witnesses available for
15 cross-examination and a summary testimony if we are cross-
16 examined.

17 HEARING OFFICER LEE: And, Mr. Sarvey, do you
18 wish to present testimony on the subject of alternatives?

19 MR. SARVEY: No, I don't want to present any
20 testimony. I have three questions for staff and that's it.

21 HEARING OFFICER LEE: Three questions for staff?

22 MR. SARVEY: That's it, simple questions.

23 HEARING OFFICER LEE: Okay.

24 Well, Ms. DeCarlo, can you let me know who would
25 best answer questions for Mr. Sarvey?

1 MS. DECARLO: Yes, we have four experts
2 sponsoring the alternatives testimony and it depends on
3 what aspects of alternatives he wants to question on. So
4 we probably should just swear in all four and then they'll
5 be available to respond if necessary. And those would be
6 Steve Kerr, Kenneth Salyphone, Shahab Khoshmashrab and
7 Brett Fooks.

8 HEARING OFFICER LEE: Okay, thank you.

9 So I'll call to the stand those four witnesses.
10 Let me start with Mr. Salyphone. Can you please state and
11 spell your name for the record?

12 MR. SALYPHONE: Kenneth Salyphone, Kenneth, K-E-
13 N-N-E-T-H, Salyphone, S-A-L-Y-P-H-O-N-E

14 HEARING OFFICER LEE: Thank you.

15 Mr. Kerr, would you please state and spell your
16 name for the record?

17 MR. KERR: Steven Kerr, S-T-E-V-E-N K-E-R-R.

18 HEARING OFFICER LEE: And Mr. Fooks, would you
19 please state and spell your name for the record? (No
20 audible response.) Mr. Fooks? I see him. He's muted.

21 And there was one more. Who was that again?

22 MS. DECARLO: That was Shahab Khoshmashrab.

23 HEARING OFFICER LEE: Okay. And Mr.
24 Khoshmashrab, would you mind stating and spelling your name
25 for the record, please?

1 MR. KHOSHMAHRAB: Shahab Khoshmashrab, S-H-A-H-
2 A-B last name K-H-O-S-H-M-A-S-H-R-A-B

3 HEARING OFFICER LEE: Great. Thank you.

4 And did we get Mr. Fooks back? Okay, I'm not
5 hearing Mr. Fooks. He's probably -- maybe he stepped away
6 for a second. Let's see if we can proceed without him. If
7 the witnesses believe that the question is appropriately
8 directed to Mr. Fooks let's circle back for him.

9 So I'm going to start by swearing in the
10 witnesses.

11 (Kenneth Salyphone, Shahab Khoshmashrab and Steven
12 Kerr are sworn.)

13 HEARING OFFICER LEE: Okay.

14 And then, Mr. Sarvey, then please proceed.

15 MR. SARVEY: Okay. Does CEC staff disagree with
16 the Applicant that natural gas lines are a feasible
17 alternative to the proposed diesel generators?

18 MS. DECARLO: I'm sorry, before we begin Mr.
19 Salyphone has prepared a short summary of his testimony, if
20 that's acceptable?

21 HEARING OFFICER LEE: Yeah, if that's okay with
22 Mr. Sarvey?

23 MR. SARVEY: Sure.

24 HEARING OFFICER LEE: Go ahead, Mr. Salyphone.

25 MR. SALYPHONE: All right. Good morning, Chair,

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1 Commissioners and all in attendance. My name is Kenneth
2 Salyphone. I am a mechanical engineer in the Engineering
3 Office of the STEP Division.

4 The following is a summary of my testimony
5 related to the topics brought up by the Intervenor Mr.
6 Sarvey as viable alternative generating technologies for
7 the Great Oaks South Backup Generating Facility. I will
8 begin by saying that Bloom Energy solid oxide fuel cell
9 technology or SOFC being developed for Equinix's SV11 Data
10 Center was referenced as a viable alternative for the
11 project.

12 However, SOFCs require high operating
13 temperatures to reach desired output capacity, which means
14 that they are slow to respond in the event of a utility
15 grid failure. And are therefore more suitable for primary
16 and baseload power needs.

17 For the Great Oaks South Project the power grid
18 would provide the primary baseload power and any fuel cells
19 used would only provide backup power. Since the project
20 would need fast startup from its backup generating
21 facility, the SOFCs are not suitable.

22 The other fuel cell option is a polymer or proton
23 exchange membrane, also known as PEM fuel cells. They can
24 provide the quick start up necessary for the Data Center.
25 But they need 13 times the volume requirements of diesel

1 and the hydrogen pipeline infrastructure that would provide
2 fuel is too limited. Therefore, attaining and storing the
3 needed supply of hydrogen maybe problematic.

4 Mr. Sarvey also claims that natural gas fuel
5 supplies are more reliable than diesel fuel. This is
6 misleading. Onsite diesel storage is viable and provides
7 the assurance that fuel can be sustained for a
8 predetermined duration while storing large amounts of
9 natural gas onsite is not practical.

10 In the event the natural gas pipeline becomes
11 unavailable fuel quantity and pressure remaining in the
12 pipeline may not be adequate to last long enough for the
13 utility's electricity or natural gas is restored.
14 Therefore, access to a second pipeline is needed to ensure
15 the reliability requirements of the Data Center are met.

16 As included in the FEIR internal combustion
17 engines using natural gas would be potentially feasible if
18 a second independent fuel line is available for the
19 project. The reliability needs of each data center may be
20 significantly different, based on their business model and
21 customers' needs.

22 An IT service provider that has newer sites may
23 be able to afford a lower reliability requirement than one
24 that does not, and with solely rely on one backup facility.
25 Thus, a technology that works -- excuse me, a technology

1 that works for one data center does not necessarily work
2 for another. Staff has concluded that these two
3 technologies do not meet the reliability needs of the
4 proposed project.

5 The argument, the above arguments not
6 withstanding even if staff were to conclude that one of
7 these alternative technologies were feasible here the issue
8 is moot, because staff has concluded that the proposed
9 project would not result in any significant adverse impacts
10 to the environment.

11 This concludes my summary and I'm here. I'm
12 available for any questions. Thank you.

13 HEARING OFFICER LEE: Good. Thank you.

14 And before we take Mr. Sarvey's questions, let me
15 just double check with Mr. Fooks. Is Mr. Fooks on, able to
16 unmute? Okay. Hearing nothing, Mr. Sarvey, please proceed
17 with your witnesses.

18 MR. SARVEY: Well, Mr. Salyphone answered most of
19 my questions. I have one or two more and I should be real
20 quick. Exhibit 200, page 561 of 580, here I am. On page
21 561 staff references a 2017 White Paper by Burns McDonnell,
22 which concludes that pipeline natural gas is more reliable
23 than diesel generation, even in earthquake prone areas. Do
24 you disagree with that conclusion?

25 MR. SALYPHONE: Let me add some context to that.

1 So it says natural gas it's an ideal option for data center
2 backup power, right? That's the statement you're referring
3 to?

4 MR. SARVEY: Yes.

5 MR. SALYPHONE: Okay, but some operators have
6 been reluctant to rely on natural gas main 24/7 service,
7 because they're connected. They're concerned about the
8 resiliency of the pipeline infrastructure, especially in
9 earthquake prone areas.

10 Okay, so the context here is that this White
11 Paper goes on to say that over 36 hours natural gas may be
12 slightly more reliable. But the project can increase their
13 reliability by having more onsite fuel storage, right? So
14 over 36 hours natural gas pipeline maybe like 1 to 2
15 percent. I'm just quoting, I don't know the exact figures,
16 1.1 or 2 percent more reliable.

17 But the project can increase their storage
18 capacity to meet their reliability up to 100 percent. So
19 if they need more than 36 hours, say 46, then they'll
20 increase their storage 46 hours. Therefore they'll have
21 100 percent reliability, whereas with natural gas supply
22 over that 46 hours it'd still be like you'd still have 99
23 percent roughly or 98 percent reliability. So that's the
24 context that I wanted to present here, but can you repeat
25 your question again?

1 MR. SARVEY: I just wondered, the paper concludes
2 that pipeline natural gas is more reliable than diesel and
3 I just wondered if you disagreed with that conclusion?

4 MR. SALYPHONE: Do I disagree with this
5 conclusion?

6 MR. SARVEY: They provide various tables in that
7 saying the reliability --

8 MR. SALYPHONE: Yeah, I do.

9 MR. SARVEY: -- is higher for natural gas, so I
10 just wondering if you disagree with that?

11 MR. SALYPHONE: So this is the -- yeah so like I
12 said based on the business model and their business needs.
13 So the data center needs 46 hours of backup onsite supply,
14 then obviously for 46 hours onsite storage would be more
15 reliable than natural gas, right? So it just depends on
16 the business model and what their requirements are.

17 I would say that if you have more than one
18 pipeline supply you increase your reliability for the
19 project. But outside of that I'm pretty impartial to -- I
20 don't agree or disagree with the statement.

21 MR. SARVEY: So if staff did find that there was
22 a significant impact related to the diesel generators would
23 staff recommend the Project use natural gas or would you
24 make a different recommendation?

25 MR. SALYPHONE: We wouldn't necessarily make that

1 recommendation. What we do is determine if it has a
2 significant impact on the environment. And in this case,
3 it has no adverse or any significant or adverse impacts to
4 the environment. So their recommendations are necessary
5 here.

6 MR. SARVEY: Did staff considered dual fuel
7 engines when they were doing their alternatives analysis,
8 where you could have these stored onsite, but you'd be
9 burning natural gas?

10 MR. SALYPHONE: Explain to me the technology that
11 would work behind that.

12 MR. SARVEY: Dual fuel engines like they're using
13 at the Humboldt Generating Station.

14 MR. SALYPHONE: But what engines are they using
15 though (indiscernible)?

16 MR. SARVEY: Dual fuel, half diesel and natural
17 gas.

18 MR. SALYPHONE: Is it like engines right, regular
19 combustion engines?

20 MR. SARVEY: Yeah, they're engines. They have
21 diesel stored onsite and they run a combination. They have
22 a diesel pilot, then when the natural gas fails, which they
23 had a problem up north quite often, they burn diesel. That
24 would be a logical alternative for one of these projects,
25 because you could be burning natural gas and have 97

1 percent less NOx admissions and 95 percent less PM
2 emissions. But you could still have (indiscernible).

3 MR. SALYPHONE: Well, what we did look at was we
4 looked at alternative fuels. We looked at renewable fuels.
5 These are a lot cleaner burning than what you suggested as
6 a dual fuel, right? Because you're still using diesel and
7 natural gas diesel is being more pollutant I guess. That's
8 not my area of expertise.

9 But we looked at something that would be more
10 environmentally friendly rather than the combination. And
11 of the two that we looked at, the alternative fuels
12 biodiesel and renewable, we determined that renewable was
13 environmentally friendlier. And that's what we carried
14 forward in our analysis.

15 So looking at something dual fueled, I mean if
16 you have a better solution why bother looking at something
17 that's a little less better.

18 MR. SARVEY: Okay, thank you. That's all I have
19 okay.

20 MR. SALYPHONE: Okay.

21 MR. KHOSHMAHRAB: Okay. And this is Shahab
22 Khoshmashrab. May I please add something?

23 HEARING OFFICER LEE: Yes, please.

24 MR. KHOSHMAHRAB: Mr. Sarvey talks about a power
25 plant that uses dual fuel versus when we look at these, you

1 know versus a data center. Power plants do not require as
2 high a reliability factor as most of these data centers.

3 So a power plant may have a requirement of about.
4 95, in the mid-90s reliability, while a data center does
5 not. Because they cannot compromise losing data at
6 anytime, so there is the difference between that.

7 So the dual fuel type engines do not have the
8 widespread history of operations for data center or data
9 centers, so it would be somewhat speculative to say that
10 they will provide the same level of reliability.

11 MR. SARVEY: Okay, thank you.

12 HEARING OFFICER LEE: Thank you.

13 Any further questions, Mr. Sarvey?

14 MR. SARVEY: No, that's it. Thank you, Mr. Lee.

15 HEARING OFFICER LEE: Okay, it looks like Mr.
16 Fooks may be available, but it's not clear if we need
17 testimony from him. I'll let staff decide when I call
18 staff of it.

19 But first, let me call Mr. Galati. Does the
20 Applicant have any questions for these witnesses on the
21 topic of alternatives?

22 MR. GALATI: No, I do not. Thank you.

23 HEARING OFFICER LEE: And Ms. DeCarlo, does staff
24 have any questions for these witnesses on the topic of
25 alternatives?

1 MS. DECARLO: No questions from staff. Thank
2 you.

3 HEARING OFFICER LEE: Thank you.

4 Mr. Sarvey, was there anything further from any
5 of the witnesses?

6 MR. SARVEY: Nothing further.

7 HEARING OFFICER LEE: Okay, thank you.

8 Well we thank the Applicant -- excuse me, the
9 staff's panel on alternatives. And you're released from
10 the stand, but you will remain sworn in for the remainder
11 of this hearing.

12 And it seems that we may have finished testimony
13 on alternatives. Do any of the parties need to offer
14 additional witness testimony on the topic of alternatives?
15 Mr. Galati?

16 MR. GALATI: We don't have any. Thank you.

17 HEARING OFFICER LEE: And Ms. DeCarlo?

18 MS. DECARLO: None from staff. Thank you.

19 HEARING OFFICER LEE: Okay, and Mr. Sarvey?

20 MR. SARVEY: No additional questions.

21 HEARING OFFICER LEE: Okay. We're finished with
22 the topic of alternatives. We'll now move on to the topic
23 of noise, which was a topic that the Committee added to the
24 list today.

25 Earlier on September 15, 2021 the Committee

1 issued requests for information on four subjects. And the
2 first request asked about the duration of noisy
3 construction. On September 17th, we received responses
4 from staff and Applicant. Staff responded that noisy
5 construction would last 32 months. Applicant seemed to
6 respond, it would last fewer than 12 months. And my
7 question would be if there's a conflict between staff's
8 response and the Applicant's response or whether there's a
9 way of understanding those responses together?

10 And what I'd like to do is turn to Ms. DeCarlo
11 and ask if staff has any witnesses that can testify on that
12 subject?

13 MS. DECARLO: Yes, our staff witnesses for noise
14 are Kenneth Salyphone and Shahab Khoshmashrab and they both
15 already have been sworn in.

16 HEARING OFFICER LEE: That's right. Thank you.

17 And I'll remind you both that you're still under
18 oath. Do we do we have Mr. Salyphone?

19 MR. SALYPHONE: Yes. I'm here, Mr. Lee.

20 HEARING OFFICER LEE: And Mr. Khoshmashrab?

21 MR. KHOSHMAHRAB: Yes, sir.

22 HEARING OFFICER LEE: Thank you. Okay. And let
23 me just ask you both, have you reviewed the September 17th
24 responses to the Committee from staff and Applicant, Mr.
25 Salyphone?

1 MR. SALYPHONE: Yes.

2 HEARING OFFICER LEE: And Mr. Khoshmashrab?

3 MR. KHOSHMAHRAB: Yes.

4 HEARING OFFICER LEE: Okay. And can one of you
5 please explain, which part of the construction is going to
6 be noisy within the within the meaning of general plan
7 policy EC-1.7 and how long does those parts of construction
8 last?

9 MR. SALYPHONE: So the less noisy period would be
10 approximately 17 months. And that would consist of
11 building interior, construction equipment, and material
12 delivery, electrical work, concrete leveling, fencing. And
13 there are other less noisy things going on. The Applicant
14 would probably be best to identify those if you need a
15 list, the list to go on any further.

16 But and then there's also -- sorry, give me a
17 second. And then there's also two 15-month periods where
18 no construction would occur and that would total about 30
19 months.

20 HEARING OFFICER LEE: Okay, well it seemed that
21 the -- that staff identified in its response on September
22 17th that the noisy parts of construction would last 32
23 months.

24 MR. SALYPHONE: Oh, okay. So you want us to
25 identify the noisy period of the construction, sorry?

1 HEARING OFFICER LEE: Well, it's either one. I
2 mean we'd have to know that -- you'd have to tell us the
3 total number of months of construction and we can subtract,
4 but.

5 MR. SALYPHONE: Yeah, so the entire construction
6 for the project would take approximately 81 months, the
7 noisy construction work. So let me answer that question.
8 So the noisy construction work would occur during a total
9 of approximately 34 months.

10 This construction period consists of
11 approximately 32 months of trenching, building exterior and
12 paving, two months of site excavation and grading, site
13 preparation, excavation and grading for the entire site
14 occurs once before the construction of the first building.
15 So and that would be -- what is that? Two months for the
16 site prep, excavation and grading, which is the noisiest.
17 Construction work would occur for about two months
18 trenching, building exterior, and interior.

19 And paving would occur three times, once for each
20 phase of the construction. And that would be less than 12
21 months per phase.

22 HEARING OFFICER LEE: Does that conflict with the
23 Applicant's September 17th response?

24 MR. SALYPHONE: We don't think so.

25 HEARING OFFICER LEE: Okay and what I understood

1 from the Applicant was that the noisy part of construction
2 would be 12 months. And I thought I just heard you say 34?
3 How do we understand those two responses together?

4 MR. SALYPHONE: See, so let me go back to their
5 table and how they're breaking it down.

6 MR. KHOSHMAHRAB: This is Shahab Khoshmashrab.
7 I can answer that.

8 HEARING OFFICER LEE: Yes, please go ahead.

9 MR. KHOSHMAHRAB: So it's just under 12 months
10 per phase, so there are going to be three phases of
11 construction, one for each building. So the total would be
12 about 32 months, so it's not quite 12 months. And then the
13 two months, that would be for the excavation and grading
14 will add to it. There is really, you know, I don't know if
15 we can agree on an exact number, but I think what the
16 Applicant has provided is pretty close to what we
17 understand.

18 HEARING OFFICER LEE: Okay, thank you.

19 Let me ask one more question for staff and then
20 I'll give other people a chance to talk.

21 The Committee's second request in it's September
22 15th Order asks the parties about the Project's
23 contribution to area noise. And what I understood from
24 reading those is that the staff and Applicant agreed that
25 the Project's operational noise would be less than ambient

1 noise and less than the City's threshold of 55 decibels A,
2 I think that's how you say that, is more restrictive than a
3 threshold that would measure the increase over ambient.

4 And I also thought I saw that the Applicant says
5 the Project's modeled contribution to ambient noise would
6 be de minimis.

7 My main question, I suppose, is does the staff
8 agree that the contribution of the Project's operational
9 noise to ambient would be de minimis.

10 MR. KHOSHMAHRAB: But this is Shahab
11 Khoshmashrab, yes we do. And if I can explain that a
12 little bit?

13 The average daytime, actually the lowest of the
14 average daytime ambient in the area is specifically looking
15 at the residential receptors. I think it was somewhere in
16 the last 60s. The Project contribution is not going to
17 into exceed 47 decibels. And so when you add the two you
18 really can't hear the 47 decibel source, because the
19 difference is so great.

20 HEARING OFFICER LEE: Okay, thank you. Those are
21 the only questions I had.

22 Ms. DeCarlo, did you have any questions for these
23 witnesses on the topic of noise?

24 MS. DECARLO: I do not. Thank you.

25 HEARING OFFICER LEE: And Mr. Galati, do you have

1 any questions for these witnesses on the topic of noise?

2 MR. GALATI: No, I do not.

3 HEARING OFFICER LEE: And Mr. Sarvey, do you have
4 any questions for these witnesses on the topic of noise?

5 MR. SARVEY: No questions.

6 HEARING OFFICER LEE: Thank you.

7 And let me, let me offer it up for anybody else
8 on the topic of noise. Mr. Galati for Applicant, do you
9 have any witnesses that you would like to present on the
10 subject of noise?

11 MR. GALATI: No, I do not. I'll handle this in
12 my closing statement.

13 HEARING OFFICER LEE: Okay, thank you.

14 And Mr. Sarvey, do you have any witness testimony
15 to offer on the topic of noise?

16 MR. SARVEY: No, I do not.

17 HEARING OFFICER LEE: Okay. That concludes my
18 questions and that concludes the testimony on the topic of
19 noise. So we're finished with the topic of noise. And
20 that concludes all the testimony that my understanding
21 would be provided today. I'll just check with the parties
22 one last time.

23 Mr. Galati for Applicant, is there any further
24 testimony we need to call today?

25 MR. GALATI: No, there is not. Thank you.

1 HEARING OFFICER LEE: Ms. DeCarlo?

2 MS. DECARLO: Nothing from staff, thank you.

3 HEARING OFFICER LEE: And Mr. Sarvey?

4 MR. SARVEY: Nothing further. Thank you.

5 HEARING OFFICER LEE: Okay, so that concludes
6 testimony. We will allow the parties an opportunity to
7 make a closing statement of up to 10 minutes starting with
8 staff, then Mr. Sarvey and finally the Applicant.

9 Let me ask Chair Hochschild and
10 Commissioner Douglas, are you ready to proceed with closing
11 testimony?

12 COMMISSIONER DOUGLAS: Thank you Hearing Officer
13 Lee, I am.

14 CHAIR HOCHSCHILD: I am as well, yes.

15 HEARING OFFICER LEE: Okay, let's dive in.

16 Ms. DeCarlo, if you're ready and you have a
17 closing statement you may proceed.

18 MS. DECARLO: Thank you, Hearing Officer Lee and
19 Commissioners.

20 Staff has conducted a thorough analysis of the
21 Great Oak South Backup Generating Facility and its Data
22 Center. And has concluded that it meets the requirements
23 of Section 25541 of the Warren-Alquist Act for an exemption
24 from the CEC's jurisdiction. The Project would generate up
25 to 99 megawatts of electricity within the boundaries

1 established by 25541 for an exemption. And no substantial
2 adverse impact on the environment or energy resources would
3 result from construction or operation of the proposed
4 facility.

5 Staff appreciates Intervenor Sarvey's continued
6 interest and participation in these exemption proceedings,
7 but we fundamentally disagree with his arguments concerning
8 impacts. And his testimony does not constitute substantial
9 evidence that the project would have a significant impact
10 on the environment in the technical areas he's chosen to
11 focus on: air quality and greenhouse gas emissions.

12 In the air quality analysis, staff concluded that
13 the probability of a power outage occurring at any
14 particular data center including the proposed, remains low
15 and does not support the speculation required to attempt
16 modeling emergency operations. The CEC agreed with this
17 conclusion in the recently approved Sequoia Backup
18 Generating Facility exemption proceeding. And the
19 rationale applies equally here.

20 In the GHG analysis, staff concluded that
21 mitigation measure GHG-1 requiring the Project to purchase
22 electricity through the San Jose Clean Energy's Total Green
23 Plan, or to participate in a clean energy program that
24 accomplishes the same goals of 100 percent carbon-free
25 electricity, will ensure that the Project complies with the

1 City's GHG reduction strategy in conformance with Section
2 15183.5 of the CEQA guidelines. And will not result in a
3 significant adverse impact due to greenhouse gas emissions
4 from the Project's electricity use.

5 Lastly, staff testified that neither fuel cells
6 and nor natural gas internal combustion engines are viable
7 alternatives to the proposed technology, given the
8 parameters and objectives specified by the Applicant for
9 this project. And even if they were the Project would not
10 result in any unmitigated significant adverse impacts that
11 would allow the CEC to deny an exemption, based on the
12 availability of one of these technologies.

13 For all these reasons, staff recommends the
14 Committee grant the requested exemption from CEC
15 jurisdiction, allowing the project to obtain the necessary
16 permits from the City of San Jose and the Bay Area Air
17 Quality Management District. That concludes my statement.
18 Thank you.

19 HEARING OFFICER LEE: Thank you, Ms. DeCarlo.

20 And that brings us to Mr. Sarvey, and Mr. Sarvey,
21 do you wish to make a closing statement?

22 MR. SARVEY: I'd like to ask one question before
23 I make my statement, please?

24 HEARING OFFICER LEE: A question to me?

25 MR. SARVEY: Yes, sir.

1 HEARING OFFICER LEE: Okay.

2 MR. SARVEY: Will we still be briefing these
3 issues?

4 HEARING OFFICER LEE: Yes.

5 MR. SARVEY: Then my closing statement is very
6 brief. I just want to thank the Committee for allowing me
7 to participate and I appreciate the Energy Commission's
8 public process. And I just want to thank the staff. I
9 think they did a very good job. I have a couple of small
10 disagreements, but overall, they did a very good job and
11 they can be proud of that document. That's all I have,
12 thank you.

13 HEARING OFFICER LEE: Good, thank you Mr. Sarvey.

14 Mr. Galati, you said you had a closing statement.
15 If you're ready to go, please proceed.

16 MR. GALATI: Yes, I do. I think I would start by
17 saying remember where this Project came from. This Project
18 was previously approved to build basically the exact same
19 Project in front of the Energy Commission. What changed
20 was their ability to have greater power density, so they
21 needed new generators. It's on the same site. The
22 buildings are generally laid out the same way. The only
23 thing that really happened is they moved slightly, and the
24 project went to Tier 4, which is a positive impact. And
25 reduced its water use by using air-cooled chillers.

1 So this Project has been in front of the Energy
2 Commission even though it was an improvement upon the
3 project that was previously approved by the City of San
4 Jose pursuant to CEQA and issued a permit to construct.

5 What we saw today here in this hearing is
6 opportunity that's created for one person and it's for our
7 Intervenor. I don't believe that there's a single member
8 of the public on any of the attended lists here. I don't
9 believe that there will be public comment on this project.
10 Yet we spent a lot of time here today allowing for
11 Mr. Sarvey, and for one particular area, which is emergency
12 operations, to make the same arguments that he has made
13 since 2017 or '18 when we brought the first power plant
14 exemption here.

15 And now we're going to be sent back to do briefs.
16 In my opinion, and the way that this Commission used to act
17 before, briefs were not an opportunity to summarize how you
18 think the project should be decided. Briefs were for
19 purposes of identifying legal issues where there is a legal
20 difference of opinion or the Committee needs authority. In
21 this case we don't have that.

22 So what we're doing now is allowing Mr. Sarvey to
23 file something in briefs that we will not have an
24 opportunity to respond to, unless I ask for more delay to
25 get a reply brief. So this is not fair and many of the

1 issues that were brought up today in this hearing could
2 have been brought up as comments on the draft EIR. And in
3 every other proceeding, but this one, that is the sole
4 purpose and the sole way that a member of the public or
5 somebody who opposes the project could actually
6 participate.

7 So what's happening in my opinion, is these
8 proceedings are getting longer and longer for no
9 environmental benefits. They are becoming more and more
10 adjudicatory when there are not things that need to be
11 adjudicated.

12 Let's take into account Equinix is actually
13 participating voluntarily in a way to buy renewable energy
14 and renewable energy credits, such that it has offset all
15 of its electrical use in North America. It did it
16 voluntarily. It should be applauded, not hit with a
17 mitigation measure that we had to go to Evidentiary Hearing
18 about. That is what we want to encourage these and other
19 applicants to do, is something voluntary that is positive
20 for the environment.

21 In this case we're using San Jose Clean Energy as
22 well for our electricity. We're just not using the total
23 green level. So, to put this in perspective the emissions
24 that we are being tagged with, are indirect emissions from
25 electricity use. Those emissions are created at a power

1 plant. That power plant is either a non-fossil source or a
2 fossil source. For those power plants that are a fossil
3 source, the vast majority are off setting their GHG
4 emissions. But we get hit with the carbon-indirect
5 emissions, based on an average carbon footprint of our
6 utility. But when it comes to determine whether or not we
7 have significant impacts, it's not taken into account that
8 the vast majority of those GHG emissions are already
9 offset.

10 But it doesn't matter, because Equinix has gone a
11 step further. In its program it actually gets renewable
12 energy directly, or renewable energy credits, that account
13 for 100 percent of its electricity use even if some of that
14 electricity use is already renewable. They should be
15 applauded and I would like to hope the final decision
16 congratulates them on doing that. They've set of very good
17 goal and other applicants should follow them.

18 The question on noise, Mr. Lee, was one in which,
19 when do you think the absence of noise would occur?

20 The vast majority of the site -- the whole site
21 will be graded during the first phase. There will be a
22 break before Building 2 is built. And there will be a
23 break before Building 3 is built. We can't tell you when
24 those are. We did the right thing by telling you what our
25 master plan was is to build all three buildings and that's

1 what we're going to do.

2 So I think that what staff said today, and what
3 we said today, can be pretty much summarized as the only
4 difference might be did you factor in the breaks or not
5 factor in the breaks for purposes of 12 months and whether
6 it was continuous? Either way, the Project's noise is
7 mitigated by the mitigation measures, which we proposed.
8 That the City of San Jose asked us to put, and put in the
9 last ISN&D, (phonetic) which requires notification. And
10 requires us to use equipment to minimize noise to the
11 extent practical.

12 We urge the Committee to write a decision
13 quickly. This Project got hung up in -- went from Tier 2
14 to Tier 4 -- has been delayed due to coven and we asked the
15 Committee to issue their decision as soon as possible, so
16 we can get to work.

17 So, again if the Committee would revisit the
18 concept of briefing, we never got an opportunity to argue
19 it. I don't think staff believes that we need to brief,
20 and certainly I don't need to have to do briefs. And we
21 think allowing Mr. Sarvey the opportunity to do briefs
22 instead of making his closing statement, we think is
23 unfair.

24 That's all I have. Thank you.

25 HEARING OFFICER LEE: Thank you, Mr. Galati. We

1 are going to allow briefing and I understood from the
2 Prehearing Conference that Applicant and staff didn't think
3 that it was necessary. But Mr. Sarvey requested it and
4 we'll give the parties an opportunity, so following this
5 Evidentiary Hearing we'll allow the optional briefing by
6 the parties.

7 Any party wishing to file a brief may do so no
8 later than seven business days after the reporter's
9 transcript from the Evidentiary Hearing is filed in the
10 Docket. All briefs should be limited to 15 pages, shall be
11 in a font size no less than 12 points, and shall not
12 include any attachments. Briefs shall apply the law to
13 only the evidence in the hearing record, citing evidence by
14 reference to the transcript and exhibit and page number.

15 And I will, for my part try to have the
16 transcript -- see if I can have the transcript prepared and
17 filed by this Friday.

18 That concludes our evidentiary portion of today's
19 evidentiary hearing. We will now take public comments.
20 Comments are limited to three minutes per person.

21 If you're on your computer, use the raise hand
22 feature to let us know you'd like to make a comment. If
23 you change your mind, you can lower your hand. We will
24 call on you and open your lines, so that you can state your
25 comment.

1 For those on the phone, you may dial *9 to raise
2 your hand. If you've muted yourself press *6 to unmute
3 your phone line. We will unmute your phone line from our
4 end. We will call on you in the order that you raise your
5 hands. If you're on the phone we'll tell you when your
6 line is open and call on you by reading off the last three
7 numbers of your phone number.

8 And Ms. Avalos, from the Public Advisor's Office,
9 are you available to assist with taking public comments?
10 (No audible response.) That's fine.

11 At this time, I would request that if anyone
12 would like to make a public comment, please raise your hand
13 now. Again, for those on the phone, please dial *9. And
14 I'm just going to wait just a minute in case people are
15 trying to get their hands raised.

16 Okay it's been about a minute. I don't see any
17 hands raised. I'm not sure if Ms. Avalos is able to unmute
18 herself, but I will ask if you are, are you aware of anyone
19 who would like to make a public comment?

20 MS. AVALOS: Hearing Officer Lee, can you hear me
21 now?

22 HEARING OFFICER LEE: Yes, thank you.

23 MS. AVALOS: Oh, I apologize. I don't know what
24 was going on with the audio, but I'd like to state for the
25 record the Public Advisor's Office did not receive written

1 or oral comments for the Great Oaks South Data Center
2 proceeding.

3 In addition to that, I do not see any hands
4 raised on Zoom. And just a reminder to the folks on the
5 phone line to dial *9 to raise your hand and *6 to unmute.
6 And we'll give it a few seconds here. Okay, seeing that
7 there are no raised hands that concludes the comment
8 period. I turn now to Hearing Officer Lee.

9 HEARING OFFICER LEE: Thank you. At this time
10 I'll ask the members of the Committee whether they have any
11 final remark. Commissioner Douglas or Chair Hochschild,
12 would either of you like to make a final remark?

13 COMMISSIONER DOUGLAS: Nothing for me, thank you.
14 I do want to thank the parties for the organized
15 presentation of evidence today.

16 CHAIR HOCHSCHILD: You took the words out of my
17 mouth, same here. Thank you.

18 HEARING OFFICER LEE: Yes, thank you. The
19 Committee will now adjourn to a closed session in
20 accordance with California Government Code section
21 11126(c)(3), which allows a state body to hold a closed
22 session to deliberate on a decision to be reached in a
23 proceeding the state body was required by law to conduct.

24 It's almost 12:30. Let's say we won't come back
25 on the record before 1:00 p.m. And if we finish early

1 it'll be right at 1:00 pm, if that's okay with the
2 Commissioner Douglas and Chair Hochschild?

3 COMMISSIONER DOUGLAS: That sounds great.

4 HEARING OFFICER LEE: Okay.

5 CHAIR HOCHSCHILD: Sounds perfect, yes.

6 HEARING OFFICER LEE: Perfect, so with that we're
7 adjourned to closed session.

8 (The Committee adjourned into closed session at
9 12:26 p.m.)

10 (The Committee returned to open session at 1:00 p.m.)

11 COMMISSIONER DOUGLAS: I'm here, thank you. I've
12 been promoted.

13 HEARING OFFICER LEE: Okay, great.

14 We're back on the record and the closed session
15 ended at approximately 12:54-ish. There are no reportable
16 actions and I'll return the conduct of this Evidentiary
17 Hearing back to Commissioner Douglas to adjourn.

18 COMMISSIONER DOUGLAS: All right, thank you and
19 we're adjourned thanks.

20 HEARING OFFICER LEE: Thank you.

21 (The Evidentiary Hearing adjourned at 1:01 p.m.)

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23

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CERTIFICATE OF REPORTER

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 2021.



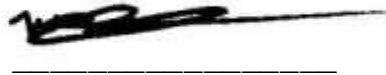
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And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 2021.



Myra Severtson
Certified Transcriber
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