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BEFORE THE
CALIFORNIA ENERGY COMMISSION

Application for Small Power)
Plant Exemption for the:)

CA3 Backup Generating) Docket No. 21-SPPE-01
Facility)
_____)

PREHEARING CONFERENCE

IN PERSON AND REMOTE VIA ZOOM VIRTUAL MEETING

WARREN-ALQUIST STATE ENERGY BUILDING

ROSENFELD HEARING ROOM, FIRST FLOOR

1516 NINTH STREET,

SACRAMENTO, CA 95814

TUESDAY, MAY 24, 2022

1:30 P.M.

Reported by:

Martha Nelson

APPEARANCES

HEARING OFFICER

Susan Cochran

COMMISSIONERS

Siva Gunda, Vice Chair, Presiding Member

Kourtney Vaccaro, Associate Member

COMMISSIONER ADVISORS

Natalie Lee, Advisor to Commissioner Vaccaro

Eli Harland, Advisor to Commissioner Vaccaro

Liz Gill, Advisor to Vice Chair Gunda

Ben Finkelhor, Advisor to Vice Chair Gunda

Erik Lyon, Advisor to Vice Chair Gunda

CEC STAFF

Lisa DeCarlo, Staff Attorney

Eric Veerkamp, Project Manager

PUBLIC ADVISOR

Dorothy Murimi

APPLICANT

Scott Galati

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P R O C E E D I N G S

1:34 P.M.

TUESDAY, MAY 24, 2022

VICE CHAIR GUNDA: Good afternoon. We are on the record. The time is 1:34 on May 24, 2022. This is the Prehearing Conference for the Application for a Small Power Plant Exemption for the CA3 Backup Generating Facility.

I'm Siva Gunda, the Vice Chair and Presiding Member of the Committee, assigned to conduct proceedings on the Application. Commissioner Kourtney Vaccaro is here today and is the Associate Member of this Committee. Commissioner Vaccaro and I, along with other members of the Staff and public, are present at the Warren-Alquist State Energy Building in Sacramento. In addition, some people are participating remotely today using Zoom.

Before we begin, I would like to make introductions of the following individuals who are participating in today's Prehearing Conference. Natalie Lee and Eli Harland, Commissioner Vaccaro's advisors, Ben Finkelor, Liz Gill, and Erik Lyon, my advisors. Susan Cochran is the Hearing Officer for the

1 proceeding.

2 I would also like to introduce Noemi

3 Gallardo --

4 MS. COCHRAN: Dorothy Murimi.

5 VICE CHAIR GUNDA: Oh.

6 MS. COCHRAN: Sorry.

7 VICE CHAIR GUNDA: Sorry. Dorothy Murimi

8 from the Public Advisor's Office.

9 I would ask the parties to introduce

10 themselves and their representatives at this

11 time, starting with the Applicant.

12 MR. GALATI: Good afternoon. I'm Scott

13 Galati. I'm very happy to be in this room.

14 Haven't been in here for quite some time. I

15 think it was about two years ago. I think the

16 last in-person hearing I did was in Santa Clara

17 in March of 2020 for one of the Small Power Plant

18 Exemption Applications, so it's good to be in-

19 person. I appreciate it. Nice to see you all.

20 I represent Vantage Data Centers. This

21 is the second Data Center that they've brought

22 before you. The first one was called McLaren

23 Data Center, which we now call CA2, and this one

24 is called CA3.

25 Thank you.

1 VICE CHAIR GUNDA: Thank you.

2 Now, Staff?

3 MS. DECARLO: Good afternoon. Lisa
4 DeCarlo, Energy Commission Staff Attorney. With
5 me is Eric Veerkamp, Energy Commission Project
6 Manager. And we have various Staff attending via
7 Zoom, as well.

8 VICE CHAIR GUNDA: Thank you.

9 And now if there are any elected
10 officials or representatives from any local,
11 state or federal governments or agencies, or from
12 any Native American tribes, please introduce
13 yourself if you are in the room or by raising
14 your hand so that we can unmute your line --
15 unmute you online, and by pressing star nine to
16 raise your hand and star six to unmute if you're
17 participating by phone. Seeing none. Seeing no
18 representatives from any other governments or
19 agencies or from any Native American tribes.

20 With that, I would like to offer some
21 opening remarks. So this is, again, Vice Chair
22 Gunda. This is the first time I'm doing this, so
23 apologies as I continue to learn the process.
24 And I look both to the Staff, the Legal Team, as
25 well as Commissioner Vaccaro and her office and

1 her expertise, to help guide some of these
2 things. I'm looking forward to being a part of
3 this proceeding and helping move this
4 expeditiously.

5 So I'll now hand over the conduct of this
6 Prehearing Conference to Hearing Officer Susan
7 Cochran.

8 HEARING OFFICER COCHRAN: Commissioner
9 Vaccaro, did you have any opening remarks that
10 you'd like to make?

11 COMMISSIONER VACCARO: You know me well.
12 Thank you, Susan. So, yeah, just really briefly.

13 It's nice to see folks in-person. Mr.
14 Galati, we talked to you on the phone in a
15 proceeding, I think a week or so ago, and I think
16 you were recovering from getting a booster, so
17 it's nice to see you in-person.

18 And Mr. Veerkamp and Ms. DeCarlo, it is
19 really nice to see you here in-person.

20 Today I'm masked up, though. Like I've
21 been so excited to be in-person but I also have
22 paid the price of being in-person over the past
23 month, but I'm glad that everybody kind of braved
24 it to be here today. It's nice.

25 HEARING OFFICER COCHRAN: Thank you.

1 And thank you, Vice Chair Gunda.

2 The Committee noticed today's Prehearing
3 Conference in the Revised Notice of Prehearing
4 Conference and Evidentiary Hearing and Revised
5 Scheduling Order that was issued on May 13, 2022.
6 The Committee wishes to express its gratitude for
7 your patience and understanding as we have had to
8 reschedule this Prehearing Conference and the
9 Evidentiary Hearing.

10 The notice for today's Prehearing
11 Conference, as well as other documents that we'll
12 be referring to today, are available in the
13 online docket system that the Energy Commission
14 uses. The Docket Number for the CA3 Backup
15 Generating Facility Project is 21-SPPE-01. In
16 addition to the online docket, the Public
17 Advisor's Office is available to help
18 with -- to help the public access documents.

19 As explained in the May 13 notice, the
20 basic purposes of today's Prehearing Conference
21 are to assess the parties' readiness for
22 hearings, to identify matters in dispute, and to
23 discuss the remaining schedule and procedures
24 necessary to conclude the SPPE process. The May
25 13 notice specifies that the Evidentiary Hearing

1 is currently scheduled for this Friday, May 27,
2 2022.

3 Before we proceed with the substantive
4 portion of the Prehearing Conference, I wanted to
5 address the housekeeping issues.

6 The Prehearing Conference is being held
7 in a hybrid format. The Commissioners and I, as
8 well as some of the parties and their
9 representatives, are present in-person here at
10 the Warren-Alquist Building in the Rosenfeld
11 Hearing Room. Other participants are using Zoom
12 to participate today.

13 We have set up the Zoom meeting so that
14 the parties and identified witnesses are
15 panelists. This means that they will be able to
16 mute and unmute themselves to speak and have the
17 option to use the video feature. Please note
18 that if you are making noise that disrupts the
19 meeting, we may mute you. When we need to
20 speak -- or when you need to speak you will need
21 to raise your hand to have your microphone turned
22 on again.

23 To find your participation options -- I
24 need you to go back one slide. Thank you.

25 To find your participation options, look

1 for the black bar at the bottom of your Zoom
2 screen. If you want to be recognized, please use
3 the raise-hand feature. If you are on your
4 phone, press star nine to raise your hand. If
5 you have muted your phone by pressing star six,
6 please be sure to unmute yourself by pressing
7 star six again. The raise-hand feature creates a
8 list of speakers based on the time when your hand
9 was raised and we will call on you in that order.

10 The general public will have an
11 opportunity to speak today. The public comment
12 period will be towards the end of this Prehearing
13 Conference.

14 A court reporter is online today who is
15 taking down all the discussion and who will
16 prepare a transcript of what is said. To ensure
17 that we have a complete and accurate transcript,
18 I must first ask that only one person speak at a
19 time. Second, please identify yourself before
20 you speak. When you speak for the first time,
21 please say and spell your name slowly. Remote
22 participation, for some people, makes it harder
23 for the court reporter and me to identify who is
24 speaking or wishes to be recognized.

25 If you run into any difficulties with

1 Zoom, please contact the Public Advisor's Office
2 or Zoom's Help Center. That information is on
3 this slide and is also in the notice for today's
4 hearing.

5 Are there any questions about how to use
6 Zoom for today's Prehearing Conference? If you
7 are on Zoom, please raise your hand and we will
8 do our best to respond to your question. If you
9 are on your, remember that it's star nine.

10 Seeing no one wanting our attention,
11 we'll now turn to more substantive matters.

12 As stated in the May 13 notice, the
13 Committee may adjourn to closed session at any
14 time. At this time, the Committee will be
15 recessing to closed session as permitted under
16 California Government Code section 11126(c)(3),
17 which allows a state body to hold a closed
18 session to deliberate on a decision to be reached
19 in a proceeding the state body was required by
20 law to conduct.

21 Hold on. Excuse me for just a minute.

22 If any of the parties or the public wish
23 to comment before we recess to closed session,
24 please let me know.

25 Mr. Galati or Ms. DeCarlo?

1 MR. GALATI: No.

2 MS. DECARLO: None from Staff.

3 HEARING OFFICER COCHRAN: I believe we
4 anticipate we'll return from closed session in
5 about 30 to 45 minutes.

6 And so with that, we are recessed to
7 closed session. Please remain online and in the
8 room while we are in closed session.

9 Thank you.

10 (The Committee recessed into closed session
11 from 1:43 p.m., until 2:35 p.m.)

12 HEARING OFFICER COCHRAN: This is Susan
13 Cochran and we are back from closed session. I
14 will be discussing the reportable action from
15 that closed session. The time is now 2:35 p.m.

16 If you'll be patient with me for just a
17 minute, my computer decided to shut down while I
18 was gone.

19 I would also say that we were close to
20 the amount of time. I, too, am out of practice
21 for how long these things take once we are back
22 in-person again.

23 As previously stated by Vice Chair Gunda,
24 this Prehearing Conference concerns the
25 Application for a Small Power Plant Exemption,

1 SPPE, for the CA3 Backup Generating Facility. It
2 was filed by Applicant in April of 2021.

3 I'm now going to provide a brief
4 description of the Project.

5 The Applicant proposes to install and
6 operate 44 --

7 (Background Zoom overtalk)

8 HEARING OFFICER COCHRAN: -- 44 diesel-
9 fired backup generators to provide an
10 uninterruptable power supply to the CA3 Data
11 Center to be located at 2590 Walsh Avenue in
12 Santa Clara, California. Each generator is
13 capable of providing up to 2.75 megawatts of
14 power to meet the Data Center load of 96
15 megawatts.

16 In addition, the Applicant will also
17 construct --

18 (Background Zoom overtalk)

19 HEARING OFFICER COCHRAN: -- a substation
20 for Silicon Valley Power, the local electricity
21 provider, along the western boundary of the
22 Project site.

23 There's backtalk that I'm hearing. Can
24 we figure out who that is and mute them please?
25 Thank you.

1 The backup generators would not be able
2 to deliver power off of the Project site.
3 Instead, the generators would only serve the Data
4 Center load.

5 Public Resources Code section 25541
6 specifies that the California Energy Commission
7 may grant an SPPE only when it makes three
8 separate and distinct findings; the proposed
9 power plant has a generating capacity up to 100
10 megawatts, no substantial adverse impact on the
11 environment will result from the construction or
12 operation of the power plant, and no substantial
13 adverse impact on energy resources will result
14 from the construction or operation of the power
15 plant.

16 In addition, the Energy Commission acts
17 as the lead agency under the California
18 Environmental Quality Act, CEQA.

19 In reviewing an SPPE the Energy
20 Commission considers the whole of the action.
21 For the Application, the whole of the action
22 means the backup generators, the Data Center, and
23 other Project features, such as a Substation. I
24 will refer to them as the Project, collectively.

25 To assist the Committee in analyzing the

1 Project under both the Warren-Alquist Act and
2 CEQA, Staff prepared and circulated for public
3 review and comment a Draft Environmental Impact
4 Report on January 21, 2022 and filed errata to
5 the Draft EIR on January 27, 2022.

6 The public review and comment period
7 ended on March 9, 2022. Comments were received
8 from Applicant, the Bay Area Air Quality
9 Management District, which I will refer to as Bay
10 Area, and Andrew Ratermann.

11 Staff prepared a Final Environmental
12 Impact Report, or FEIR, and published it on March
13 24, 2022. The FEIR consisted of the Draft EIR,
14 the comments received on the Draft EIR, responses
15 to those comments, and a Mitigation Monitoring or
16 Reporting Program.

17 The Committee previously informed the
18 parties that it intended to take official notice
19 of the Justification Report adopted by the Bay
20 Area Air Quality Management District in April
21 2022. As required by the California
22 Administrative Procedure Act, Government Code
23 section 11515, the notice included the process
24 for parties to object to the taking of official
25 notice.

1 Applicant filed an objection to the
2 taking of official notice, contending that the
3 Justification Report was not relevant to any of
4 the issues in the proceeding. Applicant argued
5 that under Bay Area's implementation guidelines,
6 only projects for which a Notice of Preparation
7 had not been issued would be subject to the new
8 thresholds.

9 Staff also filed a response in the form
10 of supplemental testimony that described how the
11 Justification Report did not affect any of the
12 existing mitigation measures for greenhouse gas
13 emissions for both stationary sources, the backup
14 generators, or for other emissions largely
15 related to the Data Center.

16 The Committee ruled as follows, following
17 closed session deliberation. We are overruling
18 the Applicant's objection. And we accept Staff's
19 supplemental testimony.

20 Because we are overruling Applicant's
21 objection, we are going to give Applicant the
22 opportunity to file supplemental testimony,
23 similar to what Staff did. Applicant may do that
24 either in writing no later than 5:00 p.m. on
25 Thursday, May 25, 2022, or may provide live

1 witnesses. Failure to file written testimony
2 will not preclude the Applicant from having a
3 live witness testify on this issue.

4 Are there any questions concerning the
5 official notice?

6 Moving on.

7 In their Prehearing Conference Statements
8 neither Staff nor Applicant identified any issues
9 in dispute. Also, Staff and Applicant indicated
10 they did not propose to conduct any oral
11 testimony or examination of witnesses.

12 Is that correct, Mr. Galati?

13 MR. GALATI: Yes, that's correct. We
14 don't intend to unless you/the Committee directs
15 us to bring a witness.

16 HEARING OFFICER COCHRAN: Ms. DeCarlo?

17 MS. DECARLO: Yes, that is correct from
18 Staff, as well.

19 HEARING OFFICER COCHRAN: Ms. Tran, would
20 you please display the Exhibit List?

21 At the Evidentiary Hearing, we will not
22 take time to specifically describe the exhibits
23 that are moved into evidence during the
24 Evidentiary Hearing or to describe topics covered
25 by declaration.

1 The Exhibit List displayed on the screen
2 has been compiled by the Hearing and Advisory
3 Unit and is a complete list of exhibits
4 identified by the parties in their Prehearing
5 Conference Statements.

6 Are there -- have either -- have both
7 parties had the opportunity to prepare an Exhibit
8 List and to review it?

9 Mr. Galati?

10 MR. GALATI: Yeah, I have not reviewed
11 that but I --

12 HEARING OFFICER COCHRAN: Okay.

13 MR. GALATI: -- I promise you, if I can
14 after the hearing, I would docket, immediately,
15 any questions that I have.

16 HEARING OFFICER COCHRAN: Okay. Thank
17 you.

18 Ms. DeCarlo?

19 MS. DECARLO: Yeah. Staff has not
20 reviewed the Committee-generated Exhibit List.
21 But assuming it accurately represents what Staff
22 identified in our Prehearing Conference
23 Statement --

24 HEARING OFFICER COCHRAN: Okay.

25 MS. DECARLO: -- I'm fine with it.

1 HEARING OFFICER COCHRAN: At Friday's
2 Evidentiary Hearing, please be prepared to
3 identify and let us know of any changes to the
4 Exhibit List that may need to occur as a result
5 of today's Prehearing Conference.

6 In the prior notice for the Prehearing
7 Conference, the Presiding Member had asked a
8 question about the cumulative impacts analysis
9 for health risk based on the Project's
10 exceedances of the cancer risk and annual PM 2.5
11 emissions standards.

12 Both Applicant and Staff have filed
13 responses to questions in their rebuttal
14 testimony. While the responses differed, both
15 parties agree that the impacts from the Project
16 were not cumulative considerable and, therefore,
17 no cumulative impacts analysis or mitigation was
18 required.

19 Following deliberation in closed session,
20 the Committee offers the following.

21 The Committee is not currently persuaded
22 by either Staff or Applicant that the FEIR is a
23 legally-compliant CEQA document. We believe that
24 there continues to be a significant legal issues
25 concerning the cumulative health risk analysis

1 and the exceedances identified in that.

2 We therefore ask you to bring witnesses
3 to be able to respond to the questions that the
4 Committee continues to have. These questions
5 will be filed in writing tomorrow so that you may
6 prepare for Friday's Evidentiary Hearing.

7 At the end of the day, what the Committee
8 is looking for is either a way to make the FEIR
9 CEQA compliant or information that would indicate
10 to us how we have misunderstood the legal issues
11 concerning the exceedances identified in the
12 FEIR.

13 Are there any questions at this time?

14 MR. GALATI: Yes, I have a question.

15 HEARING OFFICER COCHRAN: Yes, Mr.
16 Galati.

17 MR. GALATI: What I think both Staff and
18 Applicant did was a conservative analysis that
19 showed an exceedance but backed up why they
20 thought that was conservative.

21 Would the Committee be interested in
22 having the analysis be redone, taking those
23 conservative items out? So for example, we did a
24 qualitative analysis. We could do a quantitative
25 analysis and a set of tables and bring it to

1 Evidentiary Hearing if that's what the Committee
2 was looking for.

3 HEARING OFFICER COCHRAN: I think that
4 we'll need to wait for the Committee questions to
5 be issued for you to understand what the
6 Committee is looking for.

7 COMMISSIONER VACCARO: Yeah. Well, I
8 think so, except for I feel like, because we teed
9 it up and then we've invited questions, now I
10 feel like we're a little bit in the space, but we
11 would -- I think the preference is to be able to
12 provide the very specific questions in writing --

13 HEARING OFFICER COCHRAN: Yes.

14 COMMISSIONER VACCARO: -- right, so that
15 there's no misunderstanding about like what we're
16 asking and what we're trying to understand. And
17 it may be that Staff and Applicant can readily
18 provide supplemental information that explains
19 and provides clarity if what it is is us
20 misunderstanding. If we're not misunderstanding,
21 you'll know what the question is and then you
22 will be able to think about how that might be
23 addressed.

24 But in the first instance the challenge
25 is what we're seeing as we look at the FEIR,

1 which is, principally, a Staff document,
2 obviously informed by information from the
3 Applicant, as well as other sources.

4 And so, you know, we're going to really
5 be challenging Staff, as well, to take a close
6 look at these questions and see how it is that
7 they might be answered, but giving both Applicant
8 and Staff a full and fair opportunity at the
9 hearing for us to sort of have this dialogue;
10 right? It's not just here's some questions, you
11 gave us answers, and then we're going into the
12 black box. It's, okay, let's have a little bit
13 of dialogue and better understanding; right? And
14 I think that's sort of what we're looking for.

15 But it would be, I think, irresponsible
16 of us to not give you the questions first before
17 saying to you, yes, please, go off and do all
18 kinds of additional work. You'll know what needs
19 to --

20 HEARING OFFICER COCHRAN: Right.

21 COMMISSIONER VACCARO: -- be done.

22 HEARING OFFICER COCHRAN: I think the
23 questions will provide you with the insight that
24 you're looking for, Mr. Galati.

25 MR. GALATI: Thank you for that.

1 HEARING OFFICER COCHRAN: So let's talk
2 about the hearing procedure that will be used on
3 Friday.

4 As stated in the notice for today's
5 Prehearing Conference, the Evidentiary Hearing
6 will be conducted using an informal hearing
7 procedure. Under this procedure, all witnesses
8 from all parties will be sworn in as one panel to
9 answer questions from the parties and the
10 Committee.

11 Witnesses will have an opportunity to
12 provide an optional opening statement, starting
13 with Applicant's witnesses, and then Staff's
14 witnesses. While the question may be directed to
15 a particular witness at the beginning, other
16 panelists may also answer the question if they
17 choose. Panelists may also ask questions of one
18 another.

19 The hearing will be conducted in a hybrid
20 format with both in-person participation and
21 participation on Zoom. The Committee will
22 display in-person and on Zoom any documents, such
23 as exhibits. We ask but do not require that
24 participants and the witnesses on Zoom share
25 video of themselves.

1 When asking questions, we will begin by
2 addressing questions to witnesses attending in-
3 person, and then ask if any witnesses on Zoom
4 wish to respond to the question. We will then
5 ask questions to witnesses attending on Zoom and
6 allow witnesses in-person to respond after
7 witnesses on Zoom provide their response.

8 The Committee reserves the right to
9 convert to a more formal process for any issues
10 and may, in its discretion, allow the parties to
11 engage in more formal direct and cross-
12 examination if circumstances so require.

13 As set forth in the notice for today's
14 Prehearing Conference on page seven, you may only
15 use a document that has been previously
16 identified as an exhibit when questioning a
17 witness. When asking your questions, start by
18 identifying the docket -- document, sorry, either
19 by the exhibit number or its TN, and identify the
20 specific page number you will be referencing. In
21 some documents, it will be a .pdf page, and some
22 there will actually be page numbers at the bottom
23 of the pages of each document.

24 Allow the witness to finish answering
25 before moving on to the next question.

1 For the benefit of the court reporter who
2 will be present that day, and the transcript,
3 please remind your witnesses to identify
4 themselves each time they speak. We ask that
5 witnesses and parties not talk over each other or
6 over the person answering the questions.

7 As a reminder, the general order of
8 presentation and questioning will be as follows,
9 first the Applicant, then Staff.

10 Have you all had a chance to review the
11 notice that set forth the process for the
12 Evidentiary Hearing? Are there any questions?

13 Mr. Galati?

14 MR. GALATI: The only question I have is
15 I might have some exhibits based on the
16 Committee's questions. If I file those on
17 Thursday night before the hearing, would they be
18 allowed into the record? Does anybody have an
19 objection to that?

20 HEARING OFFICER COCHRAN: I don't think
21 there will -- that's -- I'll ask Ms. DeCarlo.

22 MS. DECARLO: Staff doesn't have any
23 objection to that.

24 HEARING OFFICER COCHRAN: I think the
25 timing, given the timing of the questions, I

1 think that that's perfectly appropriate. And we
2 will make sure that the Exhibit List is updated
3 before we begin the Evidentiary Hearing on
4 Friday.

5 MR. GALATI: Thank you.

6 HEARING OFFICER COCHRAN: Ms. DeCarlo,
7 did you have any other questions?

8 MS. DECARLO: No questions. And we
9 reviewed the description of the procedure and are
10 comfortable with it. Thank you.

11 HEARING OFFICER COCHRAN: The parties
12 will be provided with an opportunity to offer a
13 summation or closing argument at the Evidentiary
14 Hearing. We request that you plan to limit your
15 comments to ten minutes.

16 Mr. Galati, as the Applicant bears the
17 burden of proof, would you like to provide a
18 closing argument and, if so, would you like to go
19 first or last?

20 MR. GALATI: I would rather go first.
21 And I would like to provide a closing argument.

22 HEARING OFFICER COCHRAN: Ms. DeCarlo, do
23 you want to provide a closing argument? And
24 you'll be going last, obviously, since there's
25 two of you.

1 MS. DECARLO: I guess it would have to
2 depend on what the questions are. I mean, at
3 this point, I don't necessarily feel that we need
4 to but things may change depending upon how the
5 hearing goes, so if I could reserve the
6 opportunity to do so?

7 HEARING OFFICER COCHRAN: I think that
8 that's appropriate. This is live theater, so
9 we'll all pretend.

10 MS. DECARLO: Thank you.

11 HEARING OFFICER COCHRAN: Thank you.

12 The April -- the original notice for the
13 Prehearing Conference did not call for briefing,
14 nor have any of the scheduling orders reflected a
15 need for briefing. At this point, given that we
16 don't know what the answers are, I don't know
17 that we'll have a firm answer for briefing yet.
18 That may be a topic for discussion at the
19 Evidentiary Hearing. We'll reserve on that.

20 Now, before we move to public comment,
21 does either Vice Chair Gunda or Commissioner
22 Vaccaro wish to make any comments?

23 VICE CHAIR GUNDA: Just want to say
24 thanks to all the parties for docketing the
25 information to date and I look forward for your

1 continued engagement on this in a timely fashion.

2 And thanks to the team, Susan and all.

3 HEARING OFFICER COCHRAN: Thank you.

4 Commissioner Vaccaro indicated she did
5 not have any public comments.

6 I am now going to hand over control of
7 the meeting to Ms. Murimi from the Public
8 Advisor's Office to assist in running the public
9 comment portion of the Prehearing Conference.

10 MS. MURIMI: Thank you.

11 So for individuals that are in the room,
12 go ahead and utilize the blue cards that are
13 located in the back of the room. Feel free to
14 bring them up to me directly.

15 For individuals that are on Zoom, go
16 ahead and use the raise-hand feature. It looks
17 like a high-five or an open palm at the bottom of
18 your screen or device.

19 For individuals that are calling in, go
20 ahead and press star nine to indicate that you'd
21 like to make a comment and star six to unmute on
22 your end.

23 And for individuals that are on Zoom,
24 again, use the raise-hand feature. It looks like
25 a high-five or an open palm. I'm going to give

1 that one moment.

2 Seeing no comments, I hand the mic back
3 to you.

4 HEARING OFFICER COCHRAN: Thank you, Ms.
5 Murimi.

6 At this point, I will turn it back over
7 to Vice Chair Gunda to adjourn today's Prehearing
8 Conference.

9 VICE CHAIR GUNDA: Thank you, Susan.

10 I adjourn the Prehearing Conference at
11 2:54 p.m.

12 Thank you.

13 (The Prehearing Conference hearing adjourned at
14 2:54 p.m.)

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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 3rd day of June, 2022.



MARTHA L. NELSON, CERT**367

CERTIFICATE OF TRANSCRIBER

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

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

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



MARTHA L. NELSON, CERT**367

June 3, 2022

BEFORE THE
CALIFORNIA ENERGY COMMISSION

Application for Small Power)
Plant Exemption for the:)

CA3 Backup Generating) Docket No. 21-SPPE-01
Facility)
_____)

PREHEARING CONFERENCE

IN PERSON AND REMOTE VIA ZOOM VIRTUAL MEETING

WARREN-ALQUIST STATE ENERGY BUILDING

ROSENFELD HEARING ROOM, FIRST FLOOR

1516 NINTH STREET,

SACRAMENTO, CA 95814

TUESDAY, MAY 24, 2022

1:30 P.M.

Reported by:

Martha Nelson

APPEARANCES

HEARING OFFICER

Susan Cochran

COMMISSIONERS

Siva Gunda, Vice Chair, Presiding Member

Kourtney Vaccaro, Associate Member

COMMISSIONER ADVISORS

Natalie Lee, Advisor to Commissioner Vaccaro

Eli Harland, Advisor to Commissioner Vaccaro

Liz Gill, Advisor to Vice Chair Gunda

Ben Finkelor, Advisor to Vice Chair Gunda

Erik Lyon, Advisor to Vice Chair Gunda

CEC STAFF

Lisa DeCarlo, Staff Attorney

Eric Veerkamp, Project Manager

PUBLIC ADVISOR

Dorothy Murimi

APPLICANT

Scott Galati

P R O C E E D I N G S

1:34 P.M.

TUESDAY, MAY 24, 2022

VICE CHAIR GUNDA: Good afternoon. We are on the record. The time is 1:34 on May 24, 2022. This is the Prehearing Conference for the Application for a Small Power Plant Exemption for the CA3 Backup Generating Facility.

I'm Siva Gunda, the Vice Chair and Presiding Member of the Committee, assigned to conduct proceedings on the Application. Commissioner Kourtney Vaccaro is here today and is the Associate Member of this Committee. Commissioner Vaccaro and I, along with other members of the Staff and public, are present at the Warren-Alquist State Energy Building in Sacramento. In addition, some people are participating remotely today using Zoom.

Before we begin, I would like to make introductions of the following individuals who are participating in today's Prehearing Conference. Natalie Lee and Eli Harland, Commissioner Vaccaro's advisors, Ben Finkelor, Liz Gill, and Erik Lyon, my advisors. Susan Cochran is the Hearing Officer for the

1 proceeding.

2 I would also like to introduce Noemi

3 Gallardo --

4 MS. COCHRAN: Dorothy Murimi.

5 VICE CHAIR GUNDA: Oh.

6 MS. COCHRAN: Sorry.

7 VICE CHAIR GUNDA: Sorry. Dorothy Murimi

8 from the Public Advisor's Office.

9 I would ask the parties to introduce

10 themselves and their representatives at this

11 time, starting with the Applicant.

12 MR. GALATI: Good afternoon. I'm Scott

13 Galati. I'm very happy to be in this room.

14 Haven't been in here for quite some time. I

15 think it was about two years ago. I think the

16 last in-person hearing I did was in Santa Clara

17 in March of 2020 for one of the Small Power Plant

18 Exemption Applications, so it's good to be in-

19 person. I appreciate it. Nice to see you all.

20 I represent Vantage Data Centers. This

21 is the second Data Center that they've brought

22 before you. The first one was called McLaren

23 Data Center, which we now call CA2, and this one

24 is called CA3.

25 Thank you.

1 VICE CHAIR GUNDA: Thank you.

2 Now, Staff?

3 MS. DECARLO: Good afternoon. Lisa
4 DeCarlo, Energy Commission Staff Attorney. With
5 me is Eric Veerkamp, Energy Commission Project
6 Manager. And we have various Staff attending via
7 Zoom, as well.

8 VICE CHAIR GUNDA: Thank you.

9 And now if there are any elected
10 officials or representatives from any local,
11 state or federal governments or agencies, or from
12 any Native American tribes, please introduce
13 yourself if you are in the room or by raising
14 your hand so that we can unmute your line --
15 unmute you online, and by pressing star nine to
16 raise your hand and star six to unmute if you're
17 participating by phone. Seeing none. Seeing no
18 representatives from any other governments or
19 agencies or from any Native American tribes.

20 With that, I would like to offer some
21 opening remarks. So this is, again, Vice Chair
22 Gunda. This is the first time I'm doing this, so
23 apologies as I continue to learn the process.
24 And I look both to the Staff, the Legal Team, as
25 well as Commissioner Vaccaro and her office and

1 her expertise, to help guide some of these
2 things. I'm looking forward to being a part of
3 this proceeding and helping move this
4 expeditiously.

5 So I'll now hand over the conduct of this
6 Prehearing Conference to Hearing Officer Susan
7 Cochran.

8 HEARING OFFICER COCHRAN: Commissioner
9 Vaccaro, did you have any opening remarks that
10 you'd like to make?

11 COMMISSIONER VACCARO: You know me well.
12 Thank you, Susan. So, yeah, just really briefly.

13 It's nice to see folks in-person. Mr.
14 Galati, we talked to you on the phone in a
15 proceeding, I think a week or so ago, and I think
16 you were recovering from getting a booster, so
17 it's nice to see you in-person.

18 And Mr. Veerkamp and Ms. DeCarlo, it is
19 really nice to see you here in-person.

20 Today I'm masked up, though. Like I've
21 been so excited to be in-person but I also have
22 paid the price of being in-person over the past
23 month, but I'm glad that everybody kind of braved
24 it to be here today. It's nice.

25 HEARING OFFICER COCHRAN: Thank you.

1 And thank you, Vice Chair Gunda.

2 The Committee noticed today's Prehearing
3 Conference in the Revised Notice of Prehearing
4 Conference and Evidentiary Hearing and Revised
5 Scheduling Order that was issued on May 13, 2022.
6 The Committee wishes to express its gratitude for
7 your patience and understanding as we have had to
8 reschedule this Prehearing Conference and the
9 Evidentiary Hearing.

10 The notice for today's Prehearing
11 Conference, as well as other documents that we'll
12 be referring to today, are available in the
13 online docket system that the Energy Commission
14 uses. The Docket Number for the CA3 Backup
15 Generating Facility Project is 21-SPPE-01. In
16 addition to the online docket, the Public
17 Advisor's Office is available to help
18 with -- to help the public access documents.

19 As explained in the May 13 notice, the
20 basic purposes of today's Prehearing Conference
21 are to assess the parties' readiness for
22 hearings, to identify matters in dispute, and to
23 discuss the remaining schedule and procedures
24 necessary to conclude the SPPE process. The May
25 13 notice specifies that the Evidentiary Hearing

1 is currently scheduled for this Friday, May 27,
2 2022.

3 Before we proceed with the substantive
4 portion of the Prehearing Conference, I wanted to
5 address the housekeeping issues.

6 The Prehearing Conference is being held
7 in a hybrid format. The Commissioners and I, as
8 well as some of the parties and their
9 representatives, are present in-person here at
10 the Warren-Alquist Building in the Rosenfeld
11 Hearing Room. Other participants are using Zoom
12 to participate today.

13 We have set up the Zoom meeting so that
14 the parties and identified witnesses are
15 panelists. This means that they will be able to
16 mute and unmute themselves to speak and have the
17 option to use the video feature. Please note
18 that if you are making noise that disrupts the
19 meeting, we may mute you. When we need to
20 speak -- or when you need to speak you will need
21 to raise your hand to have your microphone turned
22 on again.

23 To find your participation options -- I
24 need you to go back one slide. Thank you.

25 To find your participation options, look

1 for the black bar at the bottom of your Zoom
2 screen. If you want to be recognized, please use
3 the raise-hand feature. If you are on your
4 phone, press star nine to raise your hand. If
5 you have muted your phone by pressing star six,
6 please be sure to unmute yourself by pressing
7 star six again. The raise-hand feature creates a
8 list of speakers based on the time when your hand
9 was raised and we will call on you in that order.

10 The general public will have an
11 opportunity to speak today. The public comment
12 period will be towards the end of this Prehearing
13 Conference.

14 A court reporter is online today who is
15 taking down all the discussion and who will
16 prepare a transcript of what is said. To ensure
17 that we have a complete and accurate transcript,
18 I must first ask that only one person speak at a
19 time. Second, please identify yourself before
20 you speak. When you speak for the first time,
21 please say and spell your name slowly. Remote
22 participation, for some people, makes it harder
23 for the court reporter and me to identify who is
24 speaking or wishes to be recognized.

25 If you run into any difficulties with

1 Zoom, please contact the Public Advisor's Office
2 or Zoom's Help Center. That information is on
3 this slide and is also in the notice for today's
4 hearing.

5 Are there any questions about how to use
6 Zoom for today's Prehearing Conference? If you
7 are on Zoom, please raise your hand and we will
8 do our best to respond to your question. If you
9 are on your, remember that it's star nine.

10 Seeing no one wanting our attention,
11 we'll now turn to more substantive matters.

12 As stated in the May 13 notice, the
13 Committee may adjourn to closed session at any
14 time. At this time, the Committee will be
15 recessing to closed session as permitted under
16 California Government Code section 11126(c)(3),
17 which allows a state body to hold a closed
18 session to deliberate on a decision to be reached
19 in a proceeding the state body was required by
20 law to conduct.

21 Hold on. Excuse me for just a minute.

22 If any of the parties or the public wish
23 to comment before we recess to closed session,
24 please let me know.

25 Mr. Galati or Ms. DeCarlo?

1 MR. GALATI: No.

2 MS. DECARLO: None from Staff.

3 HEARING OFFICER COCHRAN: I believe we
4 anticipate we'll return from closed session in
5 about 30 to 45 minutes.

6 And so with that, we are recessed to
7 closed session. Please remain online and in the
8 room while we are in closed session.

9 Thank you.

10 (The Committee recessed into closed session
11 from 1:43 p.m., until 2:35 p.m.)

12 HEARING OFFICER COCHRAN: This is Susan
13 Cochran and we are back from closed session. I
14 will be discussing the reportable action from
15 that closed session. The time is now 2:35 p.m.

16 If you'll be patient with me for just a
17 minute, my computer decided to shut down while I
18 was gone.

19 I would also say that we were close to
20 the amount of time. I, too, am out of practice
21 for how long these things take once we are back
22 in-person again.

23 As previously stated by Vice Chair Gunda,
24 this Prehearing Conference concerns the
25 Application for a Small Power Plant Exemption,

1 SPPE, for the CA3 Backup Generating Facility. It
2 was filed by Applicant in April of 2021.

3 I'm now going to provide a brief
4 description of the Project.

5 The Applicant proposes to install and
6 operate 44 --

7 (Background Zoom overtalk)

8 HEARING OFFICER COCHRAN: -- 44 diesel-
9 fired backup generators to provide an
10 uninterruptable power supply to the CA3 Data
11 Center to be located at 2590 Walsh Avenue in
12 Santa Clara, California. Each generator is
13 capable of providing up to 2.75 megawatts of
14 power to meet the Data Center load of 96
15 megawatts.

16 In addition, the Applicant will also
17 construct --

18 (Background Zoom overtalk)

19 HEARING OFFICER COCHRAN: -- a substation
20 for Silicon Valley Power, the local electricity
21 provider, along the western boundary of the
22 Project site.

23 There's backtalk that I'm hearing. Can
24 we figure out who that is and mute them please?
25 Thank you.

1 The backup generators would not be able
2 to deliver power off of the Project site.
3 Instead, the generators would only serve the Data
4 Center load.

5 Public Resources Code section 25541
6 specifies that the California Energy Commission
7 may grant an SPPE only when it makes three
8 separate and distinct findings; the proposed
9 power plant has a generating capacity up to 100
10 megawatts, no substantial adverse impact on the
11 environment will result from the construction or
12 operation of the power plant, and no substantial
13 adverse impact on energy resources will result
14 from the construction or operation of the power
15 plant.

16 In addition, the Energy Commission acts
17 as the lead agency under the California
18 Environmental Quality Act, CEQA.

19 In reviewing an SPPE the Energy
20 Commission considers the whole of the action.
21 For the Application, the whole of the action
22 means the backup generators, the Data Center, and
23 other Project features, such as a Substation. I
24 will refer to them as the Project, collectively.

25 To assist the Committee in analyzing the

1 Project under both the Warren-Alquist Act and
2 CEQA, Staff prepared and circulated for public
3 review and comment a Draft Environmental Impact
4 Report on January 21, 2022 and filed errata to
5 the Draft EIR on January 27, 2022.

6 The public review and comment period
7 ended on March 9, 2022. Comments were received
8 from Applicant, the Bay Area Air Quality
9 Management District, which I will refer to as Bay
10 Area, and Andrew Ratermann.

11 Staff prepared a Final Environmental
12 Impact Report, or FEIR, and published it on March
13 24, 2022. The FEIR consisted of the Draft EIR,
14 the comments received on the Draft EIR, responses
15 to those comments, and a Mitigation Monitoring or
16 Reporting Program.

17 The Committee previously informed the
18 parties that it intended to take official notice
19 of the Justification Report adopted by the Bay
20 Area Air Quality Management District in April
21 2022. As required by the California
22 Administrative Procedure Act, Government Code
23 section 11515, the notice included the process
24 for parties to object to the taking of official
25 notice.

1 Applicant filed an objection to the
2 taking of official notice, contending that the
3 Justification Report was not relevant to any of
4 the issues in the proceeding. Applicant argued
5 that under Bay Area's implementation guidelines,
6 only projects for which a Notice of Preparation
7 had not been issued would be subject to the new
8 thresholds.

9 Staff also filed a response in the form
10 of supplemental testimony that described how the
11 Justification Report did not affect any of the
12 existing mitigation measures for greenhouse gas
13 emissions for both stationary sources, the backup
14 generators, or for other emissions largely
15 related to the Data Center.

16 The Committee ruled as follows, following
17 closed session deliberation. We are overruling
18 the Applicant's objection. And we accept Staff's
19 supplemental testimony.

20 Because we are overruling Applicant's
21 objection, we are going to give Applicant the
22 opportunity to file supplemental testimony,
23 similar to what Staff did. Applicant may do that
24 either in writing no later than 5:00 p.m. on
25 Thursday, May 25, 2022, or may provide live

1 witnesses. Failure to file written testimony
2 will not preclude the Applicant from having a
3 live witness testify on this issue.

4 Are there any questions concerning the
5 official notice?

6 Moving on.

7 In their Prehearing Conference Statements
8 neither Staff nor Applicant identified any issues
9 in dispute. Also, Staff and Applicant indicated
10 they did not propose to conduct any oral
11 testimony or examination of witnesses.

12 Is that correct, Mr. Galati?

13 MR. GALATI: Yes, that's correct. We
14 don't intend to unless you/the Committee directs
15 us to bring a witness.

16 HEARING OFFICER COCHRAN: Ms. DeCarlo?

17 MS. DECARLO: Yes, that is correct from
18 Staff, as well.

19 HEARING OFFICER COCHRAN: Ms. Tran, would
20 you please display the Exhibit List?

21 At the Evidentiary Hearing, we will not
22 take time to specifically describe the exhibits
23 that are moved into evidence during the
24 Evidentiary Hearing or to describe topics covered
25 by declaration.

1 The Exhibit List displayed on the screen
2 has been compiled by the Hearing and Advisory
3 Unit and is a complete list of exhibits
4 identified by the parties in their Prehearing
5 Conference Statements.

6 Are there -- have either -- have both
7 parties had the opportunity to prepare an Exhibit
8 List and to review it?

9 Mr. Galati?

10 MR. GALATI: Yeah, I have not reviewed
11 that but I --

12 HEARING OFFICER COCHRAN: Okay.

13 MR. GALATI: -- I promise you, if I can
14 after the hearing, I would docket, immediately,
15 any questions that I have.

16 HEARING OFFICER COCHRAN: Okay. Thank
17 you.

18 Ms. DeCarlo?

19 MS. DECARLO: Yeah. Staff has not
20 reviewed the Committee-generated Exhibit List.
21 But assuming it accurately represents what Staff
22 identified in our Prehearing Conference
23 Statement --

24 HEARING OFFICER COCHRAN: Okay.

25 MS. DECARLO: -- I'm fine with it.

1 HEARING OFFICER COCHRAN: At Friday's
2 Evidentiary Hearing, please be prepared to
3 identify and let us know of any changes to the
4 Exhibit List that may need to occur as a result
5 of today's Prehearing Conference.

6 In the prior notice for the Prehearing
7 Conference, the Presiding Member had asked a
8 question about the cumulative impacts analysis
9 for health risk based on the Project's
10 exceedances of the cancer risk and annual PM 2.5
11 emissions standards.

12 Both Applicant and Staff have filed
13 responses to questions in their rebuttal
14 testimony. While the responses differed, both
15 parties agree that the impacts from the Project
16 were not cumulative considerable and, therefore,
17 no cumulative impacts analysis or mitigation was
18 required.

19 Following deliberation in closed session,
20 the Committee offers the following.

21 The Committee is not currently persuaded
22 by either Staff or Applicant that the FEIR is a
23 legally-compliant CEQA document. We believe that
24 there continues to be a significant legal issues
25 concerning the cumulative health risk analysis

1 and the exceedances identified in that.

2 We therefore ask you to bring witnesses
3 to be able to respond to the questions that the
4 Committee continues to have. These questions
5 will be filed in writing tomorrow so that you may
6 prepare for Friday's Evidentiary Hearing.

7 At the end of the day, what the Committee
8 is looking for is either a way to make the FEIR
9 CEQA compliant or information that would indicate
10 to us how we have misunderstood the legal issues
11 concerning the exceedances identified in the
12 FEIR.

13 Are there any questions at this time?

14 MR. GALATI: Yes, I have a question.

15 HEARING OFFICER COCHRAN: Yes, Mr.
16 Galati.

17 MR. GALATI: What I think both Staff and
18 Applicant did was a conservative analysis that
19 showed an exceedance but backed up why they
20 thought that was conservative.

21 Would the Committee be interested in
22 having the analysis be redone, taking those
23 conservative items out? So for example, we did a
24 qualitative analysis. We could do a quantitative
25 analysis and a set of tables and bring it to

1 Evidentiary Hearing if that's what the Committee
2 was looking for.

3 HEARING OFFICER COCHRAN: I think that
4 we'll need to wait for the Committee questions to
5 be issued for you to understand what the
6 Committee is looking for.

7 COMMISSIONER VACCARO: Yeah. Well, I
8 think so, except for I feel like, because we teed
9 it up and then we've invited questions, now I
10 feel like we're a little bit in the space, but we
11 would -- I think the preference is to be able to
12 provide the very specific questions in writing --

13 HEARING OFFICER COCHRAN: Yes.

14 COMMISSIONER VACCARO: -- right, so that
15 there's no misunderstanding about like what we're
16 asking and what we're trying to understand. And
17 it may be that Staff and Applicant can readily
18 provide supplemental information that explains
19 and provides clarity if what it is is us
20 misunderstanding. If we're not misunderstanding,
21 you'll know what the question is and then you
22 will be able to think about how that might be
23 addressed.

24 But in the first instance the challenge
25 is what we're seeing as we look at the FEIR,

1 which is, principally, a Staff document,
2 obviously informed by information from the
3 Applicant, as well as other sources.

4 And so, you know, we're going to really
5 be challenging Staff, as well, to take a close
6 look at these questions and see how it is that
7 they might be answered, but giving both Applicant
8 and Staff a full and fair opportunity at the
9 hearing for us to sort of have this dialogue;
10 right? It's not just here's some questions, you
11 gave us answers, and then we're going into the
12 black box. It's, okay, let's have a little bit
13 of dialogue and better understanding; right? And
14 I think that's sort of what we're looking for.

15 But it would be, I think, irresponsible
16 of us to not give you the questions first before
17 saying to you, yes, please, go off and do all
18 kinds of additional work. You'll know what needs
19 to --

20 HEARING OFFICER COCHRAN: Right.

21 COMMISSIONER VACCARO: -- be done.

22 HEARING OFFICER COCHRAN: I think the
23 questions will provide you with the insight that
24 you're looking for, Mr. Galati.

25 MR. GALATI: Thank you for that.

1 HEARING OFFICER COCHRAN: So let's talk
2 about the hearing procedure that will be used on
3 Friday.

4 As stated in the notice for today's
5 Prehearing Conference, the Evidentiary Hearing
6 will be conducted using an informal hearing
7 procedure. Under this procedure, all witnesses
8 from all parties will be sworn in as one panel to
9 answer questions from the parties and the
10 Committee.

11 Witnesses will have an opportunity to
12 provide an optional opening statement, starting
13 with Applicant's witnesses, and then Staff's
14 witnesses. While the question may be directed to
15 a particular witness at the beginning, other
16 panelists may also answer the question if they
17 choose. Panelists may also ask questions of one
18 another.

19 The hearing will be conducted in a hybrid
20 format with both in-person participation and
21 participation on Zoom. The Committee will
22 display in-person and on Zoom any documents, such
23 as exhibits. We ask but do not require that
24 participants and the witnesses on Zoom share
25 video of themselves.

1 When asking questions, we will begin by
2 addressing questions to witnesses attending in-
3 person, and then ask if any witnesses on Zoom
4 wish to respond to the question. We will then
5 ask questions to witnesses attending on Zoom and
6 allow witnesses in-person to respond after
7 witnesses on Zoom provide their response.

8 The Committee reserves the right to
9 convert to a more formal process for any issues
10 and may, in its discretion, allow the parties to
11 engage in more formal direct and cross-
12 examination if circumstances so require.

13 As set forth in the notice for today's
14 Prehearing Conference on page seven, you may only
15 use a document that has been previously
16 identified as an exhibit when questioning a
17 witness. When asking your questions, start by
18 identifying the docket -- document, sorry, either
19 by the exhibit number or its TN, and identify the
20 specific page number you will be referencing. In
21 some documents, it will be a .pdf page, and some
22 there will actually be page numbers at the bottom
23 of the pages of each document.

24 Allow the witness to finish answering
25 before moving on to the next question.

1 For the benefit of the court reporter who
2 will be present that day, and the transcript,
3 please remind your witnesses to identify
4 themselves each time they speak. We ask that
5 witnesses and parties not talk over each other or
6 over the person answering the questions.

7 As a reminder, the general order of
8 presentation and questioning will be as follows,
9 first the Applicant, then Staff.

10 Have you all had a chance to review the
11 notice that set forth the process for the
12 Evidentiary Hearing? Are there any questions?

13 Mr. Galati?

14 MR. GALATI: The only question I have is
15 I might have some exhibits based on the
16 Committee's questions. If I file those on
17 Thursday night before the hearing, would they be
18 allowed into the record? Does anybody have an
19 objection to that?

20 HEARING OFFICER COCHRAN: I don't think
21 there will -- that's -- I'll ask Ms. DeCarlo.

22 MS. DECARLO: Staff doesn't have any
23 objection to that.

24 HEARING OFFICER COCHRAN: I think the
25 timing, given the timing of the questions, I

1 think that that's perfectly appropriate. And we
2 will make sure that the Exhibit List is updated
3 before we begin the Evidentiary Hearing on
4 Friday.

5 MR. GALATI: Thank you.

6 HEARING OFFICER COCHRAN: Ms. DeCarlo,
7 did you have any other questions?

8 MS. DECARLO: No questions. And we
9 reviewed the description of the procedure and are
10 comfortable with it. Thank you.

11 HEARING OFFICER COCHRAN: The parties
12 will be provided with an opportunity to offer a
13 summation or closing argument at the Evidentiary
14 Hearing. We request that you plan to limit your
15 comments to ten minutes.

16 Mr. Galati, as the Applicant bears the
17 burden of proof, would you like to provide a
18 closing argument and, if so, would you like to go
19 first or last?

20 MR. GALATI: I would rather go first.
21 And I would like to provide a closing argument.

22 HEARING OFFICER COCHRAN: Ms. DeCarlo, do
23 you want to provide a closing argument? And
24 you'll be going last, obviously, since there's
25 two of you.

1 MS. DECARLO: I guess it would have to
2 depend on what the questions are. I mean, at
3 this point, I don't necessarily feel that we need
4 to but things may change depending upon how the
5 hearing goes, so if I could reserve the
6 opportunity to do so?

7 HEARING OFFICER COCHRAN: I think that
8 that's appropriate. This is live theater, so
9 we'll all pretend.

10 MS. DECARLO: Thank you.

11 HEARING OFFICER COCHRAN: Thank you.

12 The April -- the original notice for the
13 Prehearing Conference did not call for briefing,
14 nor have any of the scheduling orders reflected a
15 need for briefing. At this point, given that we
16 don't know what the answers are, I don't know
17 that we'll have a firm answer for briefing yet.
18 That may be a topic for discussion at the
19 Evidentiary Hearing. We'll reserve on that.

20 Now, before we move to public comment,
21 does either Vice Chair Gunda or Commissioner
22 Vaccaro wish to make any comments?

23 VICE CHAIR GUNDA: Just want to say
24 thanks to all the parties for docketing the
25 information to date and I look forward for your

1 continued engagement on this in a timely fashion.

2 And thanks to the team, Susan and all.

3 HEARING OFFICER COCHRAN: Thank you.

4 Commissioner Vaccaro indicated she did
5 not have any public comments.

6 I am now going to hand over control of
7 the meeting to Ms. Murimi from the Public
8 Advisor's Office to assist in running the public
9 comment portion of the Prehearing Conference.

10 MS. MURIMI: Thank you.

11 So for individuals that are in the room,
12 go ahead and utilize the blue cards that are
13 located in the back of the room. Feel free to
14 bring them up to me directly.

15 For individuals that are on Zoom, go
16 ahead and use the raise-hand feature. It looks
17 like a high-five or an open palm at the bottom of
18 your screen or device.

19 For individuals that are calling in, go
20 ahead and press star nine to indicate that you'd
21 like to make a comment and star six to unmute on
22 your end.

23 And for individuals that are on Zoom,
24 again, use the raise-hand feature. It looks like
25 a high-five or an open palm. I'm going to give

1 that one moment.

2 Seeing no comments, I hand the mic back
3 to you.

4 HEARING OFFICER COCHRAN: Thank you, Ms.
5 Murimi.

6 At this point, I will turn it back over
7 to Vice Chair Gunda to adjourn today's Prehearing
8 Conference.

9 VICE CHAIR GUNDA: Thank you, Susan.

10 I adjourn the Prehearing Conference at
11 2:54 p.m.

12 Thank you.

13 (The Prehearing Conference hearing adjourned at
14 2:54 p.m.)

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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 3rd day of June, 2022.



MARTHA L. NELSON, CERT**367

CERTIFICATE OF TRANSCRIBER

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

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

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



MARTHA L. NELSON, CERT**367

June 3, 2022