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STATE OF CALIFORNIA

STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

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APPLICATION FOR SMALL POWER :
PLANT EXEMPTION FOR THE: :
: No. 19-SPPE-01
:
LAURELWOOD DATA CENTER :
_____ :

Pre-Hearing Conference

Art Rosenfeld Hearing Room
1516 Ninth Street
Sacramento, California

October 31st, 2019
10:00 A.M.

REPORTER: OLIVIA M. RENDON, CSR 14306

APPEARANCESCOMMISSIONER

Karen Douglas, Presiding Member

ADVISORS

Kourtney Vaccaro, Advisor to Commissioner Douglas

Eli Harland, Advisor to Commissioner Douglas

Rhetta deMesa, Advisor to Commissioner Scott

Linda Barrera, Advisor to Commissioner Scott

Kristy Chew, Technical Advisor

HEARING OFFICER

Susan Cochran

STAFF

Lisa Worrall, Project Manager

Kerry Willis, Assistant Chief Counsel

Nick Oliver, Staff Counsel

Chester Hong

PUBLIC ADVISOR

Rosemary Avalos

APPLICANT

Jeff Harris, Esquire, Ellison, Schneider, Harris & Donlan, LLC

Samantha Neumyer, Ellison, Schneider, Harris & Donlan, LLC

Jerry Salamy, Jacobs Engineering

INTERVENOR

Robert Sarvey

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Conference proceeding.....4

E X H I B I T S

(None marked.)

1 Sacramento, CALIFORNIA

2 October 31st, 2019

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4 P R O C E E D I N G S

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8 COMMISSIONER DOUGLAS: This is a prehearing
9 conference for the McLaren Small Power Plant Exemption.
10 Before we begin I'd like to make introductions, and then
11 ask that the parties identify themselves for the record.
12 So starting here, I'm Karen Douglas, commissioner presiding
13 member for this committee. To my right are my advisors,
14 Kourtney Vacarro and Eli Harland.

15

16 MS. COCHRAN: Did you say McLaren?

17 COMMISSIONER DOUGLAS: I did say McLaren.

18 MS. COCHRAN: I'm sorry.

19 COMMISSIONER DOUGLAS: That's because --

20 MS. COCHRAN: You said McLaren there. My bad.

21 COMMISSIONER DOUGLAS: Even as I read it, that is not
22 right. I am very sorry.

23 MS. COCHRAN: I am very sorry.

24 My - bad.

25 COMMISSIONER DOUGLAS: Well,

1 my filter hit that, too. All right. We did not go back
2 in time. We're still here today, and this is the
3 Laurelwood SPPE prehearing conference. So hearing
4 officer Susan Cochran to my immediate left. And
5 Commissioner Scott was not able to make it today, but
6 her advisors, Rhetta deMesa, Linda Barrera are here. And
7 also Kristy Chew, the technical adviser to the
8 commission on siting matters. The public advisor's
9 office is in the room, Rosemary Avalos. And at this
10 point, let me ask the parties to introduce themselves and their
11 representatives. Starting with the applicant.

12 MR. HARRIS: Good morning. Jeff Harris on
13 behalf of Laurelwood. Happy to be here this morning. Thank
14 you.

15 MS. NEUMYER: Good Morning. Ms. Samantha
16 Neumyer --

17 COMMISSIONER DOUGLAS: What did you do to our
18 microphone?

19 MS. NEUMYER: I'm afraid to talk now. There
20 we go. Samantha Neumyer on behalf of the applicant. To
21 my right is Christian Briggs with our office. He's our
22 law clerk. And on the phone, we have Matt Muell with the
23 project and Jerry Salamy, our technical consultant.

24 COMMISSIONER DOUGLAS: All right. Thank you very much.
25 Staff go ahead and introduce yourselves.

1 MS. WILLIS: Good morning. Kerry Willis.

2 Assistant chief counsel for staff.

3 MR. OLIVER: Hi. I'm Nick Oliver, staff

4 counsel.

5 MS. WORRALL: Hi. I'm Lisa Worrall. I'm the
6 CPU's -- CEC -- CEQA lead project manager for the project.

7 COMMISSIONER DOUGLAS: I think I started a trend here.

8 MR. SARVEY: Bob Sarvey. Happy Halloween.

9 COMMISSIONER DOUGLAS: What about California Unions for
Reliable Energy, CURE? Are you here or on the phone?

11 Let's make sure.

12 MS. COCHRAN: Is anyone here from California Unions
for Reliable Energy?

13 UNKNOWN SPEAKER: (Unintelligible.)

14 MS. NEUMYER: Glad it wasn't just me.

15 COMMISSIONER DOUGLAS: Anybody here from CURE? All right.

16 MS. COCHRAN: They were unmuted briefly.

17 They're were muted now. So -- Okay. What's happening

18 is when we unmute them all is when we get the feedback.

19 COMMISSIONER DOUGLAS: All right. Let's try one more time.

20 Could you go ahead and unmute them and then we won't talk. CURE?

21 MS. COCHRAN: Just a few moments. We're

22 having some technical issues, apparently.

23 COMMISSIONER DOUGLAS: All right...

24 I know our crew...

25 MS. COCHRAN: I believe we're not seeing the

1 name of the attorney or attorneys who represent that
2 entity. I'm afraid to turn my microphone on. I hope
3 you all can hear me. I can talk even louder if you'd
4 like.

5 COMMISSIONER DOUGLAS: Go ahead and mute the line.

6 MS. COCHRAN: Yeah, let's mute them. You need to get
7 another mic. I was a drill sergeant in a prior life.
8 And now I'm not hearing -- are you all hearing me through
9 the mics? Excellent, thank you. Okay. So we're -- we're through
10 with CURE.

11 COMMISSIONER DOUGLAS: We've established that they're either not
12 here, or -- yeah, no, they're not here at the moment.
13 So let's go onto agencies. And let's start with folks
14 in the room. Is there anyone here from the Federal
15 Government, other state agencies, Native American tribal
16 governments, Bay Area Air Quality Management District, City of
17 Santa Clara, Silicon Valley Power, or any other public agency
18 representatives in the room? Because I'm about to ask for who's
19 on the phone, and that's going to put us back into crazy land.
20 All right. Any -- any -- anyone from any of the
21 categories I just read, if you're on the phone, please
22 speak up.

23 MS. AGRAWAL: Hi. This is Ninisha, City of
24 Santa Clara.

25 COMMISSIONER DOUGLAS: Go ahead and mute it. All

1 right. We're going to take a pause and make the audio
2 work so that we can hear people on the phone.

3 (Off the record.)

4 MS. COCHRAN: Thank you folks for bearing with
5 us on our little technical glitch. I've spoken to our
6 AV folk, and this is particularly for the people who're
7 participating via the WebEx feature, we cannot unmute you
8 all on our end, that's what has been causing the reverb
9 that we're hearing throughout the system. So if you
10 wish to speak, you will need to use the raise-hand
11 feature, and we will then unmute you on our end to allow
12 you to make whatever comments you need to. The chat
13 feature, I believe, is also available. So if you have
14 any questions, Mr. Hong and Mr. Singh are available to
15 help participants in this regard. I don't know if the
16 public advisors' office has anything that they could
17 assist us with either.

18 So again, our apologies. But we think we've
19 resolved that technical issue now. So Commissioner
20 Douglas, I believe you were calling -- we -- we heard
21 Ms. Agrawal from the City of Santa Clara. Are there any
22 other participants, either from the City of Santa Clara,
23 Silicon Valley Power, or Bay Area Air Quality
24 Management District? Mr. Hong is indicating to me that
25 he is not seeing a raised hand or anything else. Okay.

1 So it does not appear that there is anyone else other
2 than Ms. Agrawal from the City of Santa Clara is
3 participating.

4 COMMISSIONER DOUGLAS: All right. So at this point,
5 I'll turn over the conduct of the hearing to the hearing
6 officer, Susan Cochran.

MS. COCHRAN: Thank you so much. This matter concerns
7 the application for a small power plant exemption, SPPE;
8 initially filed by the applicant on March 5, 2019. The
9 application and many of the other documents I will be
10 mentioning today are available in the online docketing
11 system used by the Energy Commission. The applicant
12 proposes to construct a series of backup generators in
13 the City of Santa Clara to support the Laurelwood Data
14 Center. The Data Center itself consists of two
15 four-story buildings. Building 1 is an approximately
16 279,000 square foot structure with a common building
17 that connects with Building 2.

18 Building 2 is an approximately 348,800 square
19 foot structure with two connected office common spaces.
20 Both buildings include loading docks, generator yards,
21 storm water bio swales, paved surface parking lots, and
22 landscaping features. The project will also include
23 construction of a 60-kilovolt substation for Silicon
24 Valley Power, the electric provider for properties in
25 the City of Santa Clara. To provide an uninterruptible

1 power supply to data center, the applicant proposes to
2 install 56 generators to be located in two -- two
3 generation yards outside each of the data center
4 buildings.

5 One generator of the 56 will be dedicated to
6 provide continuous power to essential energy systems
7 such as fire suppression. All generators will be Caterpillar models
8 C175-16 with a maximum generating capacity of 3.0 megawatts and a
9 continuous generating capacity of 2.725 megawatts. Each generator
10 can be independently operated based on signals from
11 the UPS system programmable logic controls. Each
12 standby generator includes an approximately
13 10,300-gallon storage tank for diesel fuel. The tank
14 will be located underneath each standby generator and
15 provides sufficient fuel storage to operate the generator
16 at a steady state, continuous load for at least 48
17 hours. None of the generators would be connected to the
18 transmission grid.

19 All power generated would be used exclusively
20 to meet the demand of the data center. Under the
21 Warren- Alquist Act, specifically Public
22 Resources Code section 25541, the commission may grant
23 an SPPE only when it -- can find that the proposed
24 project will not have a substantial impact on energy
25

1 resources or the environment. In addition, the Energy
2 Commission acts as the lead agency under the California
3 Environmental Quality Act, affectionately known as CEQA.
4 Staff prepared, and published an initial study and
5 proposed mitigated negative declaration, IS/PMND, on
6 August 28, 2019.

7 The IS/PMND was subject to a public review and
8 comment period that ended on October 3, 2019. Comments
9 were received from the applicant, intervener Robert
10 Sarvey, the California Department of Transportation, and
11 the City of San Jose Airport Department, also from the
12 city of Santa Clara. No comments were received from
13 intervener California Unions for Reliable Energy. The
14 committee noticed today's prehearing conference in the
15 Notice of Prehearing Conference Evidentiary Hearing,
16 Scheduling Order, and Further Order issued on
17 October 10, 2019. As explained in the October 10, 2019
18 notice, the basic purpose of the prehearing conference
19 is as follows: To assess the project's readiness for
20 hearings, to clarify areas of agreement or dispute, to
21 identify witnesses and exhibits, to determine the areas
22 upon which the parties need to question the other
23 parties' witnesses, and to discuss associated procedural matters.
24
25 To conduct the prehearing conference efficiently, we

1 require that any parties seeking either to participate
2 in the conference or to present evidence or
3 cross-examine witnesses at the evidentiary hearing, file
4 a prehearing conference statement. We have prehearing
5 conference statements from staff, applicant, and
6 intervener Sarvey. Mr. Sarvey also filed an amended
7 prehearing conference statement earlier this week.
8 Intervenor California Unions for Reliable Energy did not
9 file a prehearing conference statement. The first topic
10 I'd like to discuss with the parties this morning is the
11 state of the evidence. Both staff and applicant have
12 raised concerns or objections to the testimony that Mr.
13 Sarvdy has filed.

14 Before we discuss these specific issues
15 raised, I want to remind folks about the process and
16 procedures that the energy commission uses in
17 considering an SPPE. An SPPE involves both the Energy
18 Commission's regulations regarding the conduct of
19 proceedings. See for example, title 20, sections 1200 to
20 1219, the general rules of practice and procedure and
21 section 1934 and following, which specifically relate to
22 SPPEs. We are also bound by CEQA. CEQA compliance for
23 an SPPE requires that the commission abide strictly by
24 CEQA, the CEQA guidelines, and case law interpreting
25 those provisions. As a practical matter, this means that

1 the hearing record may include, but not be limited to,
2 comments on the CEQA document, testimony, documents, and
3 materials received into evidence, as well as public
4 comments.

5 With that construct in mind, let's now turn to
6 staff's prehearing conference statement and its
7 objection to portions of the treatment of Mr. Sarvey's
8 testimony contained in the October 3 filing that he made.
9 The committee had ordered that the staff respond to all
10 comments received on the IS/PMND during the comment
11 period in staff's opening testimony that was due October
12 8, 2019. On October 3, 2019, Mr. Sarvey filed a document
13 entitled, "Testimony of Robert Sarvey on the ISM -- on
14 the Initial Study," excuse me. This document was within
15 the comment period for the IS/PMND. Staff did not
16 respond to the contents of this October 3 testimony in
17 its October 8 opening testimony. Sarvey then filed a
18 motion asking the committee to direct staff to respond
19 to the contents of the October 3 testimony. He also
20 sought an extension of time to file his rebuttal
21 testimony.

22 The committee ruled on the motion on
23 October 17, 2019. By that time, staff had responded to
24 Sarvey's October 3 testimony in its rebuttal testimony.
25 Sarvey and all parties were given until October 22, 2019

1 to file rebuttal testimony. Staff now requests that the
2 committee clarify its October 17 order by having the
3 committee delineate what should be considered to be
4 testimony, and what should be considered to be comment.
5 Staff focuses on various sections of Title 20 in support
6 of this request. In response, the committee states that
7 the October 3 testimony is both comment and testimony.
8 Insofar as the comments are attested under oath, they
9 qualify as testimony. If the contents are speculation,
10 argument, conjecture, or unsupported conclusions or
11 opinions, such contents cannot form the basis of a
12 finding.

13 It is staff's responsibility to identify and
14 object to specific statements in Mr. Sarvey's testimony
15 that, in staff's view, do not qualify as evidence upon
16 which the committee may make a finding. This directive
17 applies equally to applicant and any other party wishing
18 to challenge Mr. Sarvey's testimony. Related to this
19 issue is applicant's characterization of Mr. Sarvey's
20 opening and rebuttal testimony as being legal arguments
21 and/or hearsay assertions and lay opinion that should be
22 accorded no weight by this committee. Based on my prior
23 statements, the committee will require specific
24 objections to the content.

25 I see this as preferably being handled by

1 having a continuing objection and/or any party seeking
2 to exclude or limit statements, submitting supplemental
3 briefing to outline specific objections or limitations on
4 the use of evidence. Before I go on, are there any
5 questions? Okay. So.

6 MR. HARRIS: Oh, I'm sorry.

7 MS. COCHRAN: Mr. Harris?

8 MR. HARRIS: Consulting with the smarter of
9 the two of us here. I want to make sure I understand.
10 So the extent we have concerns about -- to use our
11 words -- things being legal argument, we can address
12 those after hearing in our briefing; is that correct?

13 MS. COCHRAN: You can do it then, or you could
14 provide us with something before the evidentiary
15 hearing. What I'm hoping to avoid, though, is the
16 constant objection, objection, objection to all of the
17 content, especially because most of it has been
18 prefiled. So objections need to be really focused for
19 that testimony that may be not already -- at least
20 identified. In fact, on that point, there is an --
21 there is an exhibit list at the Public Advisor's table
22 for those of you who have not seen the exhibit list.
23 Does that clarify? Does that answer your question,
24 Mr. Harris?

25 MR. HARRIS: It does. I appreciate the

1 clarification. Thank you.

2 MS. COCHRAN: Thank you. Anyone else? Moving
3 on then. Staff has also filed objections to Mr. Sarvey's
4 rebuttal testimony that focuses on that portion of his
5 rebuttal entitled, "Utilities and Service Systems."
6 First, staff contends that Mr. Sarvey was not admitted as
7 an intervener on this topic. Second, even if the
8 committee broadly reads Mr. Sarvey's intervention, this
9 information should -- can only be read as comments.
10 Staff does not cite to any law or regulation that would
11 inform the committee as to the weight to be afforded
12 them. In responding to this, let's first review the
13 topics on which Mr. Sarvey was granted intervention: Air
14 quality, greenhouse gases, reliability, efficiency,
15 environmental justice, and I think I -- public health.

16 As intervenor Mr. Sarvey would not have party
17 status beyond what was granted in the order. Party
18 status includes the right to question other party's
19 witnesses through both direct and cross-examination.
20 For -- for CEQA purposes, however, the commission must
21 accept all comments on the environmental document until
22 final action on the project, pursuant to Public
23 Resources Code, section 21177. See also Bakersfield
24 Citizens for Local Control versus City of Bakersfield
25 2004, 124 Cal.App.4th 1184, at page 1199. Therefore, even if

1 Mr. Sarvey's statements in his rebuttal testimony are
2 comment, the committee still requires the parties to
3 address whether the information presented is substantial
4 evidence in support of a fair argument of the existence
5 of the environmental effect.

6 Finally, turning to the specifics of
7 Mr. Sarvey's rebuttal testimony, much of his testimony
8 consists of facts drawn from other sources that the
9 committee could take official notice of. To do that,
10 the committee must give the parties notice of an intent
11 to do so and offer them an opportunity to respond.
12 Please be prepared to tell us why this information
13 should or should not be officially noticed. Because this
14 prehearing conference is not when the evidence is being
15 admitted, this is an item for you to remember for
16 tomorrow's discussion at the evidentiary hearing. Any
17 questions on that? Finally -- and this is not related
18 to the filings of the parties, but instead the
19 committee's own review of the record.

20 Regarding potential witnesses, the
21 committee notes that much reliance is placed on the
22 City of Santa Clara and the Bay Area Air Quality
23 Management District. I am going to call them BAAQMD
24 from now on. Specifically, in response to comments from
25 CalTrans, staff has stated that the City of Santa Clara

1 should include the encroachment permit and other
2 proposals as part of its action on the data center if
3 the SPPE is granted. Similarly, the air quality section
4 is heavily reliant on BAAQMD's CEQA guidelines and the
5 2019 policy regarding the potential to emit for backup
6 generators. I know that Ms. Agrawal is present on the
7 phone from the City of Santa Clara, and I would like to
8 confirm that she is going to be available as a witness
9 for the evidentiary hearing.

10 MS. WORRALL: She has informed me she will be
11 available.

12 MS. COCHRAN: Also, will there be a witness
13 from Silicon Valley Power available?

14 MS. WORRALL: Yes. Yes, in person.

15 MS. COCHRAN: And finally, BAAQMD, will they
16 be available at the evidentiary hearing, as the
17 committee may have questions for those agencies?

18 MS. WORRALL: Yes. Telephone.

19 MS. COCHRAN: Thank you. Second, while the
20 BAAQMD CEQA guidelines and the 2019 petition to emit
21 policy are heavily referenced in the party's testimony,
22 these documents are not in evidence. They are not in
23 the docket, and they have not been asked to be
24 exhibited. We would ask that staff please file them in the
25 docket and sponsor them as exhibits.

1 MR. OLIVER: Excuse me. Sorry to interrupt.
2 Which policies were you referring to? I think the PTE
3 policy has been offered as an exhibit.

4 MS. COCHRAN: I'm sorry. I -- so I -- as I
5 said, I set out the exhibit list. Can you tell me which
6 exhibit is the --

7 MS. WORRALL: Yes. It's Exhibit 204.

8 MS. COCHRAN: That's the CEQA guidelines?

9 MS. WORRALL: That's the PTE.

10 MR. OLIVER: That is not the CEQA guidelines. We'd be happy
11 to include those as an exhibit, though.

12 MS. COCHRAN: Okay. Thank you for that. That
13 didn't appear -- that didn't readily appear to me when I
14 was looking through the docket, so thank you for that.
15 All parties have indicated that they are ready to -- I'm
16 sorry. Before I move on, is there anything else
17 relating to those requests?

18 MR. HARRIS: Give us a moment, please.

19 MS. COCHRAN: Certainly.

20 MR. HARRIS: With respect to the, Bay Area Air
21 Quality Management District's CEQA guidelines, we'd have no
22 objection if you just want to take official notice of those.
23 If it's easier to make an exhibit, that's fine with us as well.

24 MS. COCHRAN: I think it's easier to have them
25 be an exhibit.

1 MR. HARRIS: That's fine.

2 MS. COCHRAN: And we could sponsor it as an
3 exhibit and say we're taking official notice. It's just
4 sometimes easier if it's all within the parties. Since
5 we didn't -- we didn't create a number for ourselves.
6 Readiness for hearing. All parties have indicated they
7 are ready to proceed to evidentiary hearing,
8 currently scheduled for tomorrow, November first, at
9 10:00 a.m. here at the Warren Alquist building. In light
10 of the discussion above, is this still true? Are you
11 still ready to proceed?

12 MR. HARRIS: Yes, we are.

13 MR. OLIVER: Yes, staff is ready to proceed.

14 MS. COCHRAN: Mr. Sarvey?

15 MR. SARVEY: I have no idea, because I have no
16 idea what their objections to my testimony is. I just hear a
17 lot of "oh, it's hearsay", "oh, it's this". They haven't outlined
18 anything. I have no idea what they're talking about. So
19 until I see that, I wouldn't be prepared to respond to it.

20 MS. COCHRAN: Okay. Thank you. Based on the
21 prehearing conference statements from the parties, it
22 appears that the following items or topics are still in
23 dispute: Air quality and greenhouse gas emissions,
24 public health, energy resources, utility and service
25 system, environmental justice, and jurisdiction. Are

1 there any additions or deletions from this list?

2 MS. WILLIS: This is Kerry Willis of staff
3 counsel. Just a clarification, environmental justice
4 would appear to be just a question from Mr. Sarvey on
5 public participation. I didn't know that there was an
6 actual disputed topic. And -- and Ms. Worrall or -- can
7 answer any questions on that.

8 MS. COCHRAN: Well, because I don't know
9 the -- Mr. Sarvey, can you speak to what your issue is?
10 Obviously, we're not in a place today to take the
11 evidence for that topic.

12 MS. WILLIS: Correct. We can do that
13 tomorrow. It just didn't appear to be a disputed topic,
14 it just seemed like it was a question.

15 MS. COCHRAN: Well, to my mind, if there's a
16 question, that makes it somewhat disputed. In other
17 words, there's some issue out there that I don't know --

18 MS. WILLIS: I'm -- I'm -- I'm assuming he's
19 asking -- asking for a factual list of -- of who we've
20 contacted. If that's -- if that's what he's asking for,
21 then we do have that available today or tomorrow,
22 whenever the committee is interested in hearing that.
23 If there's something beyond that, we -- he wasn't
24 clear in his -- in his statement.

25 MS. COCHRAN: Mr. Sarvey, can you give you some

1 clarity on that, please?

2 MR. SARVEY: Yeah. In terms of environmental
3 tests, pretty much I've already stated every issue I
4 have. Number one, we haven't had a workshop in the affected
5 community. We haven't had a site visit informational
6 hearing. We haven't published initial study in various
7 languages so the minority community can -- we haven't
8 even identified what the languages of the minority
9 community are. We don't know what the conditions of the minority
10 community are. We don't have any representatives from
11 the minority community. They may have contacted them,
12 it's possible. I haven't seen that list. And those are
13 the basic issues. The minority community hasn't been
14 reached out to in this proceeding. At a minimum we
15 should have had a workshop and an initial site visit. So
16 that's basically my environmental justice argument.
17 Pretty much already been said in my testimony, but I
18 don't think there's a whole lot of evidentiary hearing
19 time necessary for that.

20 MS. COCHRAN: Are there specific facts that
21 you're looking for?

22 MR. SARVEY: I think the facts are all out
23 there. The fact that we haven't had a hearing, a
24 workshop. We haven't had a hearing. I requested both.

25 MS. COCHRAN: So we won't need to spend
hearing time on that tomorrow?

1 MR. SARVEY: I don't think we need to spend
2 hardly any time on it at evidentiary hearing. I think I've
3 already stated my position in my testimony. I don't
4 know if they object to the testimony. I have no idea at
5 this point, so --

6 MS. COCHRAN: Fair enough.

7 MR. SARVEY: Thank you.

8 MS. COCHRAN: Thank you. And then on
9 jurisdiction, I also -- I'm sorry.

10 MS. WILLIS: Just one follow-up. Are we --
11 are you -- is the committee interested in actually
12 having staff give the information that Mr. Sarvey has
13 just -- he totally misstated what staff has done. We
14 did reach out to community members, and we have reached
15 out to the environmental justice organizations in the
16 area. So we -- we are more than happy to put that into
17 the record.

18 MS. COCHRAN: To the extent -- to the extent
19 that staff believes that that information would be of
20 assistance to the committee, staff has the opportunity
21 to place it into the evidentiary record. If it would
22 inform the basis of potentially a finding more -- or some
23 other issue that the committee must reach, then staff
24 can make that determination as to whether to include it
25 in the record.

1 MS. WILLIS: Okay. Thank you.

2 MS. COCHRAN: Mr. Oliver?

3 MR. OLIVER: Yeah, I also wanted to touch on
4 jurisdiction. Yeah, so -- so we -- staff agrees with
5 the prehearing conference statements of the applicant
6 and of the intervenor. This is essentially a legal issue
7 at this point. We were planning to offer up some
8 testimony on direct for the panel on this point, but we
9 no longer intend to do that. However, we will have our
10 witnesses that prepared, Appendix A -- the jurisdictional
11 appendix to the IS/MND available tomorrow if there are
12 questions on technical subjects related to this that
13 arise.

14 MS. COCHRAN: Okay. My understanding is that
15 it is really focused on two particular sections. It's
16 focused on title 20, section 2003 and title 20, section
17 1934. Mr. Sarvey, this is -- this was your issue, so to
18 speak. Are there any other legal issues that you see on
19 the topic of jurisdiction?

20 MR. SARVEY: I think we can handle any issues
21 at briefing. I don't think it's necessary for any
22 hearing time on it.

23 MS. COCHRAN: Okay. Mr. Harris?

24 MR. HARRIS: Yeah, I think there's a
25 distinction between an issue being disputed and whether

1 it requires live witness testimony at the evidentiary
2 hearing tomorrow. As to both environmental justice and
3 the jurisdictional questions, we weren't expecting that you'd
4 need live witness testimony, but one of the things, I guess, I'd
5 look for clarification from the committee is
6 where you'd like to have our witnesses available for
7 the panel, on which subjects in particular.

8 MS. COCHRAN: Specifically I view air quality as
9 being a testimony topic. But, again, the case belongs
10 to the applicant and to the staff. So if there are
11 specific issues, specific factual issues that you think
12 the committee needs live testimony on beyond that which
13 is already contained in your direct and rebuttal
14 testimony, beyond that which is contained in the IS/PMND
15 and then the various identified exhibits, the evidentiary
16 hearing is your -- is your chance to create that record.

17 MR. HARRIS: Thank you for clarification. And
18 we will have witnesses available to handle air quality,
19 public health, energy resources, and the utility
20 questions that you wish to deal with that.

21 MS. COCHRAN: Okay.

22 MR. HARRIS: I think the other two are --
23 sounds like legal questions at this point.

24 MS. COCHRAN: What I hear -- we're not --
25 we're not looking at having live testimony tomorrow on

1 either environmental justice or jurisdiction. At this
2 point. I mean, obviously, things are subject to change.
3 So for those topics that we've sort of eliminated from
4 having evidentiary hearing time spent on, do the parties
5 understand that, in undisputed topic areas, all
6 testimony will be submitted by declaration and that live
7 testimony of witnesses is unnecessary. I think we just
8 had that discussion. Is everyone clear on that? I'm
9 seeing lots of nods.

10 MR. HARRIS: Yes. The applicant is clear.

11 MS. COCHRAN: Thank you.

12 MR. OLIVER: Likewise for staff.

13 MS. COCHRAN: Let's talk a little bit about
14 the hearing procedure. As set forth in the
15 notice for today's event, we indicated that the informal hearing
16 procedure may be used at the evidentiary hearing. This
17 means that we will not take time to describe the
18 exhibits that are moved into evidence or to describe
19 topics covered by declaration. The current exhibit list
20 has been prepared and copies are available, as I've
21 said. Regarding direct examination, we will deem all
22 parties' opening and rebuttal testimony as their direct
23 examination. There is no need to discuss experts'
24 resumes if they have them in writing and there is no
25 objection to a witness as an expert.

1 I know, Mr. Harris, that in your prehearing
2 conference statement, you indicated that you had some
3 questions as to Mr. Sarvey's ability to provide expert
4 opinion testimony. So be ready if that continues to be
5 an issue. One thing I would again ask you is that, if
6 any of you have an objection to someone's question or
7 answer to be specific and state the objection. I would
8 like a nice clean record so that we can rule on your
9 objections. Where the informal process is used, rather
10 than taking time with usual formal question and answer
11 format, the committee will call all witnesses to testify
12 as a panel. The testimony may include discussions among
13 the panel without the lawyers asking questions.
14 Instead, the committee will ask the questions of the
15 panel.

16 If time permits, the committee may allow
17 questioning of the panel by the parties. But if the
18 parties appear to be unduly confrontational, combative,
19 or otherwise unproductive, the committee will take over
20 the questioning. The discussion will continue until the
21 committee determines that it has heard enough evidence.
22 If this process proves difficult or unproductive, the
23 committee may revert to standard formal examination at
24 its discretion. So as an example of how this works, we
25 first call the panel and swear it in. We will ask

1 staff what the factual disputes of this topic are,
2 including the listing of any subtopics, because,
3 obviously, air quality is a mile wide, or six miles
4 wide, depending -- or 1,000-feet, depending on which
5 standard you're using.

6 But there are a lot of topics within that.
7 And especially in this case, where there are demolition,
8 construction, and operation questions, for each of the
9 various types of analysis that we do. Then I'll ask
10 applicant what areas are in dispute, and then the
11 intervenor will have a chance to say what areas are in
12 dispute. We will then discuss the first of the agreed
13 upon subtopics or issues, and ask who in the panel
14 disagrees with the recitation of fact or framing of the
15 issue. We will let the panelist explain why and try and
16 see if they can get concurrence amongst themselves.
17 We'll ask for response from staff, applicant, and the
18 intervenor witnesses. We'll obtain questions from us,
19 and then we will probably have questions from the
20 lawyers or move on to the next topic. If we allow for
21 cross-examination, there will be no time for thinking on
22 the fly.

23 If you can't come up with good cross-examination
24 in the quiet of your workspace, you will not do any
25 better in the heat of the hearing. While the other parties

1 may not have objected to the -- while the parties have
2 not objected to the informal process, applicant seeks to
3 retain the right to conduct direct and cross-examination
at the conclusion of each panel. If the committee were to
5 use a hybrid approach, treating some topics under the
6 informal process but allowing formal process for others,
7 are there specific topics where this might be helpful?

8 MR. HARRIS: I assume that's directed to me.

9 MS. COCHRAN: It's directed at whomever. It --
10 you are all participants in the grand theater of the
11 evidentiary hearing.

12 MR. HARRIS: So - we'll have a panel discussion
13 about it then. Yeah, our concern is a clean
14 record. We know your preference for an informal
15 process, we won't try to talk you out of that here. But
16 look out for me in the general world, because I am
17 concerned. I've seen this process sort of lead to
18 some bad results. One of them being a dominant witness
19 and, as the term suggests, dominate the conversation. It
20 also makes it much harder to get a clean yes no
21 record that I can cite to in my brief. So understanding
22 the committee's preference for the informality, so long
23 as we have the opportunity at the end -- especially at
24 the end to bat cleanup -- and take care of any loose
25 ends, I think that -- that's the central point of our

1 comments about the informal.

2 We want to be able to have an opportunity at
3 the end to make sure the record is clear. And I will
4 try to think on my feet and have good coffee and
5 caffeine that day so I don't waste any time. But that's
6 really the essential to what we're doing. I think
7 that's critical because of Mr. Sarvey's dual role here; he
8 is both a party and a panelist. It's very difficult
9 sometimes in that transcript to figure out whether he's
10 questioning another member or whether he's providing testimony.
11 So separating out testimony from questioning from a
12 intervenor, participant, lay witness is sometimes
13 difficult. So that's another reason we need to do that.
14 Air quality is an area where we think we may want to
15 have the opportunity to do a little more of a formal
16 process.

17 We think the issues -- the facts are clear,
18 but the issues have been a little muddied, and we'd like
19 to clarify some of those things. So that's -- that's
20 probably the one topic of the four we'd see that we
21 might need a little bit of opportunity for a more
22 formal process. But we will ask our witness at the
23 beginning to address our primary concerns, and then
24 hopefully the committee will give us the opportunity at
25 the end to clean up any loose ends. So that's sort of

1 our view of the process.

2 MS. COCHRAN: I think we're in agreement,
3 Mr. Harris. Anyone else? Mr. Oliver?

4 MR. OLIVER: I think staff would agree with
5 that and the hybrid approach, generally, for the issues of air
6 quality and greenhouse gas emissions. We then stated in
7 our prehearing conference statement, in lieu of any sort
8 of opening statement by the witnesses, staff requested a
9 brief period of time to do a direct on air quality,
10 GHGs, and energy resources. I think that's sort of
11 similar to what you're saying about a hybrid approach
12 here. But otherwise, staff is fine with the informal
13 processes.

14 MS. COCHRAN: Okay. Mr. Sarvey?

15 MR. SARVEY: Well, I prefer the formal approach
16 myself, but I can go with the informal as well. I'm not
17 really comfortable with the mix of the two; let's do one
18 or the other. That's pretty much my feeling about that.

19 MS. COCHRAN: Okay. Thank you for that. Moving on to
20 a briefing schedule. Both staff and applicant seek to dispense of
21 briefing altogether. Mr. Sarvey suggested a briefing
22 schedule, but does not indicate what matters might need
23 to be briefed. And, Mr. Harris, today at the prehearing
24 conference, you've also talked about briefing. So could I
25 have some -- could I have your thoughts on that, please?

1 MR. HARRIS: Briefing for the committee's
2 benefit. I think what we would look to the committee to
3 provide is, at the end of the process, if there are
4 issues on which you require additional briefing, if you'd
5 like us to help you sort out the evidence, we're happy
6 to do that. So if there are specific questions from the
7 committee, you know, if we could get a list of those
8 questions and turn them around, we would brief those
9 issues for you. We don't necessarily see a need to do
10 briefing. I think that the record is pretty good -- we
11 think the entire proceeding can be done on papers, but,
12 obviously, they're contrary views on that; that's not
13 going to happen. So whatever additional support the
14 committee would like from the parties' briefing, we
15 would be happy to provide answers to specific questions
16 you may have.

17 MS. COCHRAN: Thank you. Mr. Sarvey, I am
18 going to turn to you next because you had suggested
19 a briefing schedule. Do you know what matters you think
20 might need to be briefed?

21 MR. SARVEY: Well, jurisdiction, environmental
22 justice, I think air quality's going to need to be briefed.
23 There's some technical legal language in there that
24 everybody seems to be ignoring, and I'm a little
25 uncomfortable -- and maybe I misunderstood what you said

1 earlier -- you're going to have these guys brief their
2 objections to my testimony after the -- after the
3 hearing; is that right?

4 MS. COCHRAN: Well, preferably before, because
5 your testimony --

6 MR. SARVEY: Well, it has to be before.
7 Because I can't defend it unless it's before.

8 MS. COCHRAN: Which would be tomorrow under the current
9 schedule. Yeah, you'll be able to reply at the hearing.

10 MR. SARVEY: That would include --

11 MS. COCHRAN: In other words --

12 MR. SARVEY: -- specific exhibits and such?

13 MS. COCHRAN: In other words, for example,
14 let's say Mr. Harris objects to line three of your
15 rebuttal testimony on page six. Okay?

16 MR. SARVEY: Okay.

17 MS. COCHRAN: He will have put that in
18 writing -- or -- well, he'll make that objection. If it
19 weren't in writing, and it were just during evidentiary
20 hearing, we would expect you to respond. We would then
21 rule on that objection. Excuse me. What we're
22 suggesting is that, because they have -- because both
23 staff and the applicant have included sort of broad
24 objections, we're trying to get them to focus their
25 objections for your benefit and for ours to determine

1 how we should rule on those objections.

2 MR. SARVEY: Well, my -- my opening testimony
3 has been out for about a month, and I haven't heard
4 anything what they're objecting to. I mean, this should
5 have been done a long time ago. This should have been
6 filed immediately when they saw it and objected to it.
7 I don't believe -- you know, we're walking in here at the
8 prehearing conference, and you're objecting to --
9 someone's objecting to my testimony and my
10 qualifications. But I don't know who, I don't know what.
11 You know, this is, like, on the extreme in my opinion.

12 MS. COCHRAN: Which is also part of the reason
13 why we have an evidentiary hearing.

14 MR. SARVEY: Thank you.

15 MS. COCHRAN: Anything else? Now is the time for public
16 comment. So first, looking here in the room in Sacramento, is there
17 anyone who would like to offer public comment? Ms. Avalos, did
18 we receive any pretty blue cards?

19 MS. AVALOS: There's no public comment here in
20 the room.

21 MS. COCHRAN: Okay. Thank you so much.
22 Looking out to those who have participated on the
23 phone, are there any public comments there? Again, I
24 will ask you to use the raise-hand feature so that we
25 can unmute you so that we can obtain your public

1 comment. Okay. We're going to unmute everyone, even
2 though it might cause some feedback. I am going to turn
3 my mic off. Any public comment for those folks online?
4 Okay. Seeing none. The committee -- the committee will
5 now adjourn to closed section.

6 MR. HARRIS: I'm sorry. It's Mr. Harris. I'm
7 sorry. The disembodied voice -- one question on exhibits. We
8 did file an additional declaration and qualifications
9 for an air quality witness on Monday. Do you want us to
10 mark that as next in line now or would you like us to
11 do --

12 MS. COCHRAN: Either way.

13 MR. HARRIS: Okay. Yeah, so as -- our next in
14 line would Exhibit 134, it's the qualifications of.

15 MS. COCHRAN: Do you have a TN?

16 MR. HARRIS: Yeah. Applicant's notice of supplemental
17 witness on air quality TN Number 230407.

18 MS. COCHRAN: Thank you.

19 MR. HARRIS: October 28, 2019. Just simply,
witness inavailability and substituting another witness.

21 MS. COCHRAN: Mr. Sarvey, before I get your
22 question, I am going to make a statement to you that, in
23 the event that folks file written comments or objections
24 to your testimony -- specific written objections -- you may
25 also respond in writing.

1 MR. SARVEY: Thank you.

2 MS. COCHRAN: Now, you had a question for me.

3 MR. SARVEY: Yeah, I had a couple questions.

4 Do we have an identity of the BAAQMD witness yet?

5 MS. COCHRAN: I don't know. Ms. Worrall may know.

6 MS. WORRALL: Xuna Cai.

7 MS. COCHRAN: Can you spell that, please?

8 MS. WORRALL: It's X-U-N-A, last name Cai,

9 C-A-I.

10 MS. COCHRAN: I would not have --

11 MR. SARVEY: So I have a suggestion there that

12 we have a witness that wrote the disputed memo about

13 testing the generators for 100 hours. I'm not sure that

14 this person here is going to be able to answer those

15 questions. And will they have any prefiled testimony?

16 MR. OLIVER: Staff has no reason to believe

17 that Xuna Cai is unable to answer questions about this

18 policy from our conversations with her to this point.

19 MS. COCHRAN: And it does not appear that

20 there will be prefiled testimony.

21 MR. SARVEY: Was -- did the air district

22 receive the initial study? Did they make any comments?

23 MS. COCHRAN: I didn't hear your question.

24 MR. SARVEY: Did the air district receive the

25 initial study and did they make any comments on it?

1 MS. WILLIS: This is
2 Kerry Willis, staff counsel. They did receive the
3 initial study, and they will be coming to -- as an
4 agency to participate. They are not -- they are not
5 prefiling any testimony.

6 MS. COCHRAN: If there is a list of agencies
7 to whom the initial study was sent outside of the
8 clearinghouse process, that might be a helpful exhibit.

9 MS. WILLIS: Ms. Cochran, I think today when we go
10 back, we will go ahead and file another. It will be
11 probably a next-in-line exhibit that will include a list
12 of all the agencies that we contacted, and also the
13 public participation list.

14 MS. COCHRAN: Thank you. Anything else that I
15 may have missed? Any other questions, comments,
16 protests?

17 With that we will adjourn to closed session
18 pursuant to 11126 of the Government Code that allows a
19 delegated committee to consider matters in closed
20 session. And with that we are in closed session.

21 (Off the record at 10:58 a.m.)

22 ---oOo---

23 (Return from closed session at 11:40 a.m.)

24

25

1 MS. COCHRAN: The Committee has returned from closed
2 session. And we wanted to discuss with the parties some issues
3 that we have noticed that we would like to have the parties
4 respond to tomorrow.

5 Mr. Hong, when Mr. Sarvey left, did he indicate that he
6 was to be contacted in the event that we...? Okay. I told him to
7 stick around.

8 The first is the following: for legal defensibility of a
9 mitigated neg dec, we have to follow certain processes and
10 procedures and meet certain substance. So one question the
11 Committee has is whether the Initial Study and Proposed
12 Mitigated Negative Declaration complied with section 15072
13 regarding notice to the public in one of three ways.

14 Specifically, we want to make sure that the mailing list used
15 was for both owners and occupants of contiguous parcels.

16 Second, we want to make sure that the document meets
17 substantively the definition of sections 15070 and 15369.5 of
18 the CEQA Guidelines regarding incorporation of the mitigation
19 measures and whether those have been agreed to by the
20 Applicant. We would like the parties to show us how those were
21 included prior to the IS/PMND being circulated for public
22 comment.

23 So we definitely would like you to be able to respond
24 tomorrow. This may also be a topic of briefing after the
25 evidentiary hearing.

1 MR. OLIVER: This is Nick Oliver, staff counsel. May I
2 ask, just to make sure we got the code section right. Was it
3 1506...1507 and 15363.5?

4 MS. COCHRAN: 15070 and 15369.5.

5 MR. OLIVER: Thank you.

6 MS. COCHRAN: Certainly.

7 MS NEUMYER: Hearing Officer Cochran? This is Samantha
8 Neumyer.

9 MS COCHRAN: Yes?

10 MS. NEUMYER: Do you want us to be prepared to provide
11 this in writing at the beginning of the Evidentiary Hearing or
12 do you want us to address this orally? And would you prefer
13 that experts address this or would you like, for example, Mr.
14 Harris make an opening statement in the beginning regarding
15 these questions?

16 MS. COCHRAN: Oral response is fine tomorrow. If you can
17 provide a writing, that would also be fine. But we also
18 understand that...what we didn't want was to force you respond
19 to it as we sit here right now. And, as I said, this may be a
20 subject for briefing after the conclusion of the Evidentiary
21 Hearing as well.

22 Any other questions?

23 MS. NEUMYER: This is Samantha Neumyer again. And I
24 apologize. I just want to make sure that I got the code
25 sections correct as well. So, regarding notice to the public,

1 that was section 15072? And then regarding the substantive
2 Guidelines, that was 15070 and 15369.5?

3 MS. COCHRAN: Correct. Specifically, 15072(b) for the
4 noticing. Everyone got that?

5 MS. NEUMYER: And in terms of communicating this to Mr.
6 Sarvey, will you be sending an email to the parties?

7 MS. COCHRAN: Yes. I will be putting something in the
8 docket today.

9 MS. NEUMYER: Thank you, Hearing Officer Cochran.

10 MS. COCHRAN: Thank you. Anything further? With that, the
11 Prehearing Conference is adjourned.

12 (Meeting adjourned at 11:49 a.m.)

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COURT REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, OLIVIA M. RENDON, do hereby certify that I am a Certified Shorthand Reporter, and that I reported verbatim in shorthand writing the following proceedings completely and correctly to the best of my ability; that I thereafter caused by shorthand writing to be reduced to typewriting, and that the forgoing pages numbered 1 through 39 constitute a complete, true, and correct record of said proceedings:

COURT: CALIFORNIA ENERGY
COMMISSION SACRAMENTO

JUDGE: THE COMMITTEE

CAUSE: APPLICATION FOR SMALL
POWER PLANT EXEMPTION FOR
LAURELWOOD DATA CENTER

DATE: October 31st, 2019

DATED: November 5, 2019

Olivia M. Rendon, C.S.R. 14306