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BEFORE THE
CALIFORNIA STATE RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION

In the matter of,)
) Docket No. 19-SPPE-01
Laurelwood Data Center SPPE)
_____)

EVIDENTIARY HEARING

WARREN-ALQUIST STATE ENERGY BUILDING
1516 NINTH STREET
1ST FLOOR, ARTHUR ROSENFELD HEARING ROOM
SACRAMENTO, CALIFORNIA 95814

FRIDAY, NOVEMBER 1, 2019

10:04 A.M.

Reported By:
Peter Petty

APPEARANCES

Siting Committee Members & Advisors

Karen Douglas, Commissioner & Presiding Member

Kourtney Vaccaro, Advisor to Commissioner Douglas

Eli Harland, Advisor to Commissioner Douglas

Rhett deMesa, Advisor to Vice Chair & Associate Member
Janea Scott

Linda Barrera, Advisor to Vice Chair & Associate Member
Janea Scott

Kristy Chew, Technical Advisor to the Committee on
Siting Matters

Hearing Officer

Susan Cochran

Staff Present

Kerry Willis, Staff Counsel

Nick Oliver, Staff Counsel

Lisa Worrall, Project Manager

Chester Hong

Staff Witnesses

Huei-An Chu, Air Resources Engineer, CEC

Wenjun Qian, Air Resources Engineer, CEC

Matthew Layton

Shahab Khoshmashrab

Contractor Witnesses

Brewster Birdsall, Aspen Environmental Group

APPEARANCES (CONT.)

Applicant

Jeffery Harris, Attorney, Ellison Schneider Harris
Donlan

Samantha Neumyer, Attorney, Ellison Schneider Harris
Donlan

Matt Muell, Edgecore for Laurelwood Data Center (LDC)

Jerry Salamy, Jacobs Engineering

John Frohning, (Via WebEx)

Intervenor

Robert Sarvey

Public Agencies

Dennis Jang, Bay Area Air Quality Management District

Xuna Cai, Bay Area Air Quality Management District (Via
WebEx)

City of Santa Clara/Silicon Valley Power (SVP)

Kevin Kolnowski

Basil Wong

Nimisha Agriwal (Via WebEx)

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1

P R O C E E D I N G S

1
2 NOVEMBER 1, 2019

10:04 A.M.

3 COMMISSIONER DOUGLAS: Good morning, everybody.

4 Welcome to the evidentiary hearing for the Laurelwood Data
5 Center SPPE.6 Before we begin, I'll make introductions and ask the
7 parties to identify themselves for the record. So, this is
8 going to be familiar for those of you who were here yesterday.9 Karen Douglas, I'm the Presiding Member of this
10 Committee.11 To my right are my Advisors, Kourtney Vaccaro and Eli
12 Harland. To my immediate left are Hearing Officer Susan
13 Cochran.14 And let's see here, so, now, we have at the far end
15 Kristy Chew, Technical Advisor to the Commission on Siting
16 Matters. Rhetta deMesa, and here's Linda Barrera, Commissioner
17 Scott's Advisors. Commissioner Scott was not able to be here
18 this morning.19 Public Adviser's Office, Noemi, our new Public Adviser
20 is here. Welcome.21 And with that, let me start with the parties and
22 beginning with the Applicant, if you could introduce yourselves
23 and your representatives, please.24 MR. HARRIS: Good morning, Jeff Harris on behalf of
25 LDC. To my right is my partner, Samantha Neumyer. To her right

1 is Matt Muell, with LDC. And to Matt's right is Jerry Salamy
2 with Jacobs Engineering. And Christian Briggs, with our office,
3 is also behind me as well.

4 COMMISSIONER DOUGLAS: Great, thank you. Staff?

5 MR. WILLIS: Good morning, Kerry --

6 MR. HARRIS: I'm sorry.

7 COMMISSIONER DOUGLAS: Oh, I'm sorry, go ahead.

8 MR. HARRIS: I'm sorry. Sorry Kerry. And John
9 Frohning.

10 MR. FROHNING: Frohning.

11 MR. HARRIS: Frohning is on the phone, as well, a
12 witness telephonically appearing.

13 COMMISSIONER DOUGLAS: Okay.

14 MR. HARRIS: Excuse me. Sorry Kerry.

15 MR. WILLIS: Good morning. Kerry Willis, Assistant
16 Chief Counsel. We also have Lisa Worrall our Project Manager is
17 with us in the back. And we have a large group of staff
18 witnesses that will be introduced during the direct testimony.

19 COMMISSIONER DOUGLAS: All right. And Intervenor,
20 starting with Robert Sarvey.

21 MR. SARVEY: Bob Sarvey, Intervenor.

22 COMMISSIONER DOUGLAS: Thank you.

23 MR. OLIVER: Oh, I'm sorry. Also, for the record this
24 is Nick Oliver, staff counsel.

25 COMMISSIONER DOUGLAS: Thank you. All right, and then

1 do we have anybody from CURE, California Unions for Reliable
2 Energy? All right, not yet, anyway.

3 All right, so let's see here, do we have any --
4 starting in the room, any elected officials or representatives
5 from public agencies, state, federal, local, tribal?

6 MR. JANG: I'm Dennis Jang with the Bay Area Air
7 Quality.

8 COMMISSIONER DOUGLAS: Thank you. Thanks for being
9 here.

10 Anyone else in the room from public agencies?

11 MR. KOLNOWSKI: Kevin Kolnowski from the City of Santa
12 Clara/Silicon Valley Power.

13 COMMISSIONER DOUGLAS: Fantastic. Thanks for being
14 here.

15 Anybody else? Public agencies in the room?

16 All right, let's go ahead to the phone lines. I'll
17 try again for California Unions for Reliable Energy, if you
18 could unmute just for --

19 HEARING OFFICER COCHRAN: Just for -- I was just going
20 to say, because of the difficulties we had yesterday, we're
21 going to be doing the same process today, is that we're going to
22 have them muted on our end and have them use the raise hand
23 function if they wish to speak. I think, though, we're going to
24 try to unmute them all right now.

25 COMMISSIONER DOUGLAS: Go ahead.

1 All right, calling for CURE. Public agencies?

2 MS. CAI: Xuna Cai from Bay Area Air Quality.

3 COMMISSIONER DOUGLAS: Thank you.

4 MR. WONG: Basil Wong, Silicon Valley Power.

5 MS. AGRAWAL: Nimisha Agrawal and John Davidson, City
6 of Santa Clara.

7 COMMISSIONER DOUGLAS: Thank you. Anyone else? All
8 right, thank you.

9 Go ahead and mute them. All right, so if you're on
10 the phone, listening, and you would like to speak, go ahead and
11 use the raised hand function to signal that.

12 All right. So, I think with that, I'll turn over the
13 conduct of this hearing to the Hearing Officer, Susan Cochran.

14 HEARING OFFICER COCHRAN: Thank you and good morning,
15 everyone.

16 The Committee noticed this Evidentiary Hearing in the
17 Notice of Prehearing Conference and Evidentiary Hearings issued
18 on October 10, 2019.

19 The Evidentiary Hearing is an administrative
20 adjudicatory proceeding to receive evidence from the parties
21 into the hearing record. Only the parties, Applicant,
22 Intervenors, and Energy Commission staff may present evidence
23 for introduction into the hearing record. Section 1212 of the
24 Commission's regulations defines the contents of the hearing
25 record in this case as: All documents, materials or testimony

1 received into evidence by the Committee or Commission at a
2 hearing, public comment including comments from other government
3 agencies offered orally at a hearing, or written comments
4 received into the record at a hearing. Any materials or facts
5 officially noticed by the Committee or Commission at a hearing,
6 and all transcripts of Evidentiary Hearings.

7 While the hearing need not be conducted according to
8 technical rules of evidence and witnesses, questions of
9 relevance and the inclusion of information into the hearing
10 record shall be decided by the presiding member after
11 considering fairness to the parties, hearing efficiency, and
12 adequacy of the record.

13 Parties may move to exclude information from the
14 hearing record on the ground that it is not relevant, is
15 duplicative of information already in the record, or on another
16 basis.

17 After the hearing record is complete, the Committee
18 will prepare and file a proposed decision on the application.
19 The Committee's decision will be based solely on the hearing
20 record. A finding may be based on any evidence in the hearing
21 record, if the evidence is the sort of information on which
22 responsible persons are accustomed to relying on in the conduct
23 of serious affairs.

24 Such evidence does not include, among other things,
25 speculation, argument, conjecture, and unsupported conclusions

1 or opinions. Hearsay evidence may be used for the purpose of
2 supplementing or explaining other evidence, but shall not be
3 sufficient in and of itself to support a finding, unless it
4 would be admissible over objections in civil actions.

5 Members of the public, who are not parties, are
6 welcome and invited to observe the proceedings either in person
7 or via WebEx. As we just stated during today's
8 -- during yesterday's prehearing conference we had issues with
9 feedback that you got to hear a small sample of this morning.
10 As a result, we are muting all call-in users on this end.
11 Therefore, if you wish to speak, be sure to use the raise your
12 hand feature so that we may unmute you.

13 There will also be an opportunity for the public to
14 provide comment. The Public Advisor is in the room. If you
15 would like to make a comment, please fill out a blue card that
16 she has. Also, if you do not wish to make it orally, there's a
17 place on that blue card for you to write your comment so that it
18 can be included in the record.

19 The public comment period is intended to provide an
20 opportunity for persons who attend the hearing, either in person
21 or online, to address the Committee about the project. It is
22 not an opportunity to present supplemental written, recorded, or
23 documentary materials. However, such materials may be docketed
24 and submitted to the Energy Commission for inclusion in the
25 administrative record, which is different than the hearing

1 record.

2 Members of the public may submit written comments, if
3 they would prefer that to speaking directly to the Committee.

4 So, I have created an exhibit list. The exhibit list
5 is made available to the public through the website. There are
6 some copies in the room. They're on the dais, the speaker's
7 podium there, in the middle. We'll use this list to organize
8 the receipt of evidence into the record.

9 Turning now, to the taking of testimony. The
10 Committee will call all witnesses to testify. We had some
11 discussion yesterday about whether we were going to use an
12 informal or formal process for today's proceedings. After
13 consideration of the comments yesterday, looking at the number
14 of topics that we're going to be having today, and realizing
15 that we would like a nice clean record, we are going to use the
16 formal proceedings today. In which, while we may call you up as
17 a panel and swear you in as a panel, we will be looking for
18 direct and cross-examination questions today.

19 We would like you to be focused in your direct and
20 cross-examination. On direct, please don't lead your witnesses,
21 but try to allow them to provide the information that the
22 Committee will need to make an informed decision.

23 Also, when you are making an objection to anyone's
24 testimony, please make sure to make it brief and succinct. I
25 would not like to have talking objections today. You should be

1 able to tell me the basis. And the Committee will respond to
2 those objections.

3 Is there any question about the process that we will
4 be using today?

5 The Committee may establish limits, as needed, on the
6 number of questions a party may ask and the amount of time the
7 line of questioning may consume. The party with the burden of
8 proof may elicit final rebuttal testimony, but only if the
9 Committee deems it necessary.

10 The Committee, in the interest of efficiently
11 completing the Evidentiary Hearing, may curtail testimony or
12 examination of a witness if it becomes cumulative,
13 argumentative, or in any other way unproductive.

14 The parties and witnesses are admonished to allow the
15 witnesses to finish their answer and to not talk while another
16 is speaking. This is especially important both for Mr. Petty's
17 ultimate transcript that he will be making of these proceedings,
18 as well as for us to maintain control of where the topics are.

19 Remember that the court reporter cannot record two
20 people speaking at the same time. There are microphones
21 available. You need to make sure the green light is on when you
22 are speaking, so that your words can be transmitted to the court
23 reporter, and so that they may be heard both on WebEx and here,
24 in the room.

25 Are there any questions about any of the things I've

1 just outlined?

2 Seeing none, let's move to exhibits. As I said,
3 there's an exhibit list in the room. And we will be entering
4 into evidence the exhibits that have previously been marked.
5 This includes the updates that were discussed yesterday. In
6 specific, this includes Mr. Harris' Exhibit 134. And in
7 addition, staff filed last evening Exhibits 206, 207, and marked
8 for identification Exhibits 208 to 211. Those have all been
9 identified.

10 Are there any other exhibits that need to be marked
11 for identification? Ms. Neumyer?

12 MS. NEUMYER: Thank you, Hearing Officer Cochran. The
13 exhibit list does not include Exhibit 18, which was previously
14 docketed at TN Number 227912. And that is a confidential
15 cultural resources report.

16 HEARING OFFICER COCHRAN: Thank you. I will make
17 sure. So, I will have that marked for identification.

18 (Applicant Exhibit No. 18 marked for
19 identification.)

20 MS. NEUMYER: And then, for Exhibit 134 we have a
21 clarification on page 5 that we would just like to read into the
22 record. Exhibit 134 contains the resume for Mr. Frohning. And
23 on page 5 it states: Power plant applications. And that should
24 state: California Energy Commission power plant applications.

25 And under clients, instead of California Energy

1 Commission it should state: Diamond Generating, Chevron, GWF,
2 Solar Reserve, and City of Vernon.

3 HEARING OFFICER COCHRAN: Okay, thank you.

4 Are there any other additions at this time to the
5 evidentiary -- to the exhibit list?

6 Applicant, do you have a motion regarding your
7 exhibits?

8 MS. NEUMYER: Sorry. At this time, we'd like to move
9 Applicant's Exhibits 1 through 134 into the record.

10 HEARING OFFICER COCHRAN: Thank you. Are there any
11 objections or comments on that?

12 MR. SARVEY: No objection.

13 MR. OLIVER: No objection.

14 HEARING OFFICER COCHRAN: With that, the Applicant's
15 Exhibits 1 through 134, as modified by Ms. Neumyer's prior
16 comments, are admitted into evidence.

17 (Applicant Exhibit Nos. 1-134 admitted into
18 evidence.)

19 HEARING OFFICER COCHRAN: Staff, do you have a motion
20 regarding your exhibits?

21 MR. OLIVER: At this time, staff would move Exhibits
22 200 through 211 into the evidentiary record.

23 HEARING OFFICER COCHRAN: Are there any objections to
24 that?

25 MR. SARVEY: No objection.

1 MS. NEUMYER: No objection.

2 HEARING OFFICER COCHRAN: Thank you. With that, Staff
3 Exhibits Nos. 200 to 211 are admitted into evidence.

4 (Staff Exhibit Nos. 200-211 admitted into
5 evidence.)

6 HEARING OFFICER COCHRAN: Mr. Sarvey, do you have a
7 motion regarding your exhibits?

8 MR. SARVEY: Yes, I'd like to move Exhibits 300 to 305
9 into the record, please.

10 HEARING OFFICER COCHRAN: Are there any objections.

11 MR. HARRIS: Yes.

12 HEARING OFFICER COCHRAN: Please, Mr. Harris.

13 MR. HARRIS: Okay, I'll proceed. There are -- I want
14 to separate out Mr. Sarvey's filings into sort of two
15 categories. There's his pre-filed testimony, his opening
16 testimony, and his rebuttal testimony. So, those are Exhibits
17 300 and I think 303 for the rebuttal.

18 There are a number of concerns we have about those
19 documents. They go to the weight, though, of the documents.
20 They don't go to admissibility. They go to how this Commission
21 should weigh those. They involve things like legal argument and
22 speculation, and some statements, basically, that aren't founded
23 in the record. They're not supported by the facts.

24 So, but we know and trust the Committee's ability to
25 weigh that evidence properly, to understand the difference

1 between things that are legal argument versus things that are
2 factual in nature. So, we have put together a list of some of
3 our concerns and examples of where we see legal argument and
4 where we see speculation, and the like. We'll submit that to
5 you, now, or we can docket it later, if you'd like.

6 But, again, that goes to the weight and not to
7 admissibility. So, we don't have a motion to strike on those.
8 It's just strictly admissibility and we will look to you to
9 weigh those things properly. So, that's the first set of
10 concerns about the Sarvey documents.

11 HEARING OFFICER COCHRAN: Okay. Okay, let's get your
12 concerns out of the way and then, we'll give Mr. Sarvey a chance
13 to respond. So, please continue to the next set.

14 MR. HARRIS: Okay. Then, we can talk about the
15 exhibits. Again, I put these in a little different category.
16 Our concerns about the exhibits relate more to the nature of the
17 exhibits. They are, in some cases, comments from other agencies
18 in other proceedings. They are comments made by agency staff
19 and not by the actual agency, themselves. And in some cases,
20 they're completely unverified. They're Google searches.

21 Those things give us pause. We can go through each
22 one of those sort of individually, so let me just do that, then.

23 So, starting with Exhibit 301, again, the Bay Area
24 District's comments on the McLaren proceeding. A different
25 proceeding, not related to this case. There are no witnesses

1 offered to support that testimony. It is hearsay. We do not
2 object to it being admitted to the administrative record, so it
3 can be given an exhibit number and put in the administrative
4 record. We would object to having it moved into evidence. So,
5 it would essentially have the same weight as public comment in
6 that regard. So, you know, identify it, add it to the
7 administrative record, but do not admit it to the evidentiary
8 record. So, that's for 301.

9 The same comments apply on 302. Again, another agency
10 staff comment in another proceeding. It's hearsay. We don't
11 object to it being labeled, we just object to it being admitted
12 to the evidentiary record.

13 304 is another Bay Area District document. It's a
14 staff document. That document, though, is not even cited in Mr.
15 Sarvey's opening testimony or his rebuttal testimony. So,
16 there's absolutely no reference to 304 in the pre-filed
17 testimony. I don't know for what purpose it's offered and I
18 don't know how it would be used in briefing. And in that case,
19 we would actually, again, not object to it being identified, but
20 would object to it being made part of the evidentiary record.

21 305 is a 1995 EPA internal memo. Again, another
22 agency document that doesn't have a sponsoring witness, doesn't
23 have any corroboration, and it is also, as far as we can tell,
24 not cited anywhere in Mr. Sarvey's pre-filed testimony, either
25 his opening testimony or his rebuttal testimony.

1 So, those last two documents, 304 and 305, are things
2 that, you know, I think you rightfully could just completely
3 strike. We're not going to ask you to do that. We're not going
4 to make that motion. We'd prefer that they be added to the
5 administrative record, but not admitted to evidence.

6 And sorry for the monologue, but I think that covers
7 it.

8 HEARING OFFICER COCHRAN: No, that's fine.

9 MR. HARRIS: I'm available for questions.

10 HEARING OFFICER COCHRAN: That's fine, thank you such
11 much.

12 Staff did you have --

13 MR. OLIVER: We would agree with that. I also would
14 like to just point out with respect to the Exhibit 304,
15 identified as 304, that was added, actually, into the prehearing
16 conference statement as an amendment to that, and staff hasn't
17 had the time to review or look at that. But we would echo the
18 fact that the relevance hasn't been established because it is
19 not cited anywhere in the pre-filed testimony.

20 HEARING OFFICER COCHRAN: Okay. Mr. Sarvey.

21 MR. SARVEY: Well, let's start with -- which exhibits
22 do you want to start with here? Let's address the mitigated
23 negative declaration comments for the McLaren Data Center
24 project. First of all --

25 HEARING OFFICER COCHRAN: That would be Exhibit 301.

1 MR. SARVEY: Uh-hum.

2 HEARING OFFICER COCHRAN: If you could refer to them
3 by exhibit number, that would be helpful.

4 MR. SARVEY: Okay.

5 HEARING OFFICER COCHRAN: Thank you.

6 MR. SARVEY: All right, Exhibit 301. The Committee's
7 already said that they'll take official notice of Bay Area Air
8 Quality Management documents. And in this case, this document
9 is relevant to my testimony because if you see on the second
10 page, it talks about power usage effectiveness of 1.2 or less.
11 And it's BAAQMD's opinion that all the data centers should be
12 achieving this type of PUE, and that's what this particular
13 exhibit is for.

14 And it also, BAAQMD also says that they should be
15 meeting efficiencies like other Google data centers, like very
16 low efficiencies of 1.2 or less. So, that sort of corresponds
17 with the testimony. It supplements the testimony I had about
18 Google and Intel, with their lower data center PUEs that I think
19 this data center should be accomplishing. So, that's the
20 relevance of that one. That was 301.

21 302 is a letter from the Bay Area Air Quality
22 Management District and it talks about the Santa Clara Climate
23 Action Plan and BAAQMD's recommendations. BAAQMD's
24 recommendations, once again, are for all data centers, including
25 existing ones, to complete a feasibility study to achieve a par

1 usage effectiveness of 1.2 or lower. And that supports my
2 testimony that 1.2 or lower is not only achievable, but that's
3 what the Air District is recommending.

4 Air District staff also recommends that: You
5 encourage and incentivize data centers to utilize alternatives
6 to diesel-powered backup generators to reduce GHG emissions and
7 other air pollutants from the testing and use of diesel
8 generators. And that supports my testimony where I say that
9 BAAQMD has, in fact, recommended that diesel engines not be used
10 at these data centers. So, that's the relevance of that
11 document.

12 Either document, you could take official notice of.
13 They're BAAQMD documents.

14 I'll go back to the next one. Okay, BAAQMD healthy,
15 Planning Healthy Places document. I would request official
16 notice of that document. What that concerns is the Planning
17 Healthy Places actually is from the website, from BAAQMD
18 website. And in conjunction with the Healthy Places, they
19 actually issue maps which characterize the areas and provide
20 background information on what the particulate matter
21 concentrations are, what the cancer risks are. And what I
22 proposed to do in my direct testimony is provide the map and
23 explain how the Planning Healthy Places applies to that map.
24 And that's the purpose of that exhibit.

25 The last exhibit is John Seitz' 1995 menu -- or,

1 excuse me, memo. And the significance of that is that memo
2 outlines that the EPA believes that each emergency generator
3 should be tested for 500 hours, and that should be their
4 potential to emit. BAAQMD has chosen 100 hours, which is
5 reasonable. But the EPA, itself, recommends 500 hours of
6 emergency operation for each generator to be included into the
7 potential to emit. And that's what that document's in there
8 for.

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

10 Turning, now, to Mr. Harris and/or Ms. -- or Ms.
11 Neumyer, or staff counsel. Mr. Sarvey appears to have asked
12 this Committee to take official notice of Exhibits 301, 302,
13 304, 305. Do you have a position on whether the Committee
14 should take official notice?

15 MR. HARRIS: I am not a hundred percent sure they
16 qualify for official notice. They are unlike the IEPR, for
17 example, of this Commission, which is a document that goes
18 through a public process. It was ultimately voted out by this
19 Commission.

20 These documents, especially the first two Bay Area
21 documents, in the first line they say they're Bay Area staff
22 documents and they're comments in a CEQA proceeding. So, I
23 think they're unlike the IEPR. I keep using that example
24 because I know how much you guys love it, in that respect. So,
25 I am not convinced that they qualify for official notice and

1 would look to Mr. Sarvey to make a case for why they may.

2 MR. SARVEY: The first two documents, I'm requesting
3 they be included in the exhibit list. The Planning Healthy
4 Places, I'm requesting official notice of.

5 HEARING OFFICER COCHRAN: Okay. I apologize, I
6 thought I heard you say that they were officially noticeable, so
7 --

8 MR. SARVEY: Well, I believe they are officially
9 noticeable, if you don't accept them into the exhibit list. But
10 I believe that they explain my testimony and that's their
11 purpose.

12 HEARING OFFICER COCHRAN: Anything further from
13 anyone?

14 MR. SARVEY: And they're both quoted in my testimony,
15 as well, both those documents.

16 MR. OLIVER: Staff would also just like to point out
17 that we have witnesses in the room from the Air District, as
18 well as from Silicon Valley Power, so they can sort of speak to
19 these issues, rather than relying on documents that happened in
20 -- the relevance of which hasn't been established.

21 HEARING OFFICER COCHRAN: Okay. We're not going to
22 rule directly on these at this time. We will continue to have
23 them be identified, so that they can be referred to during the
24 conduct of this hearing. The Committee will make a ruling,
25 obviously, on these as we prepare the decision and we will

1 provide that information at that time.

2 Is that understandable? Does everyone understand what
3 I just said?

4 MR. HARRIS: For clarification, I'm sorry, so these
5 documents have been identified by number, but not admitted into
6 the evidentiary record?

7 HEARING OFFICER COCHRAN: Correct.

8 MR. HARRIS: Okay, thank you.

9 HEARING OFFICER COCHRAN: We have taken note of your
10 objections and we'll rule on them accordingly.

11 MR. HARRIS: I like a nice, clean transcript. Thank
12 you.

13 HEARING OFFICER COCHRAN: So, turning now to
14 California Unions for Reliable Energy. They did not identify
15 any exhibits. I'm not aware that anyone from CURE is on the
16 phone. Do we have any changes to whether they're admitting any
17 -- I'm not seeing a hand raising.

18 Okay. As a party, they would have right to object to
19 the exhibits of the other parties, but as I'm not seeing they're
20 participating, from now on I will not be calling on CURE
21 specifically. I will hope that if someone from CURE is
22 participating, either in WebEx or here in the room that they'll
23 let us know, so that we can then address whatever concerns they
24 might have. Okay.

25 Turning, now, yesterday, at the conclusion of the

1 closed session, I outlined some questions the Committee had
2 about the IS/PMND. Those questions are summarized in a memo
3 that I filed, that was made available to all parties yesterday
4 afternoon.

5 Staff filed a document at TN 230471, that has been
6 marked and admitted into evidence as Exhibit 207. So, thank
7 you, staff, for your submittal.

8 I will turn first to staff, because you did submit
9 something, and ask that you provide us with a brief summary of
10 the responses you made. Because I noted that the document,
11 while filed yesterday afternoon, did not seem to be distributed
12 until today. It has a docket stamp for today's date. So, to
13 the extent that Mr. Sarvey may not have seen what was submitted
14 -- Mr. Sarvey, I believe I have an extra copy of that, if you
15 need it.

16 MR. SARVEY: No, I haven't seen anything that was
17 filed since yesterday.

18 HEARING OFFICER COCHRAN: Mr. Sarvey, I'm going to
19 give you a copy of Exhibit 207.

20 Mr. Oliver?

21 MR. OLIVER: Yeah, so, Mr. Sarvey, while you're
22 reviewing that I can just, you know, walk everyone through a
23 brief summary of what was submitted. That does have, yes, a
24 publication date of today.

25 The first inclusion in that, in response to the

1 Committee's request yesterday, staff has docketed and marked as
2 Exhibit 206 the Bay Area Air Quality Management District's
3 California Environmental Quality Act.

4 HEARING OFFICER COCHRAN: Mr. Oliver, I'm going to
5 pause you.

6 MR. OLIVER: Okay.

7 HEARING OFFICER COCHRAN: Sorry. Sorry for the
8 interruption. Why don't we just take five minutes to allow Mr.
9 Sarvey a chance to read through it. Because it's sometimes hard
10 to read and listen at the same time, so I'd like to give him a
11 chance to review what staff has proposed.

12 Mr. Sarvey, did you have a chance to read the memo
13 that was sent out yesterday?

14 MR. SARVEY: That, I haven't seen, yet.

15 HEARING OFFICER COCHRAN: Okay. That, I don't have a
16 copy of with me. I will get one.

17 MR. SARVEY: I'll get it up when I have the internet
18 open here.

19 HEARING OFFICER COCHRAN: Okay.

20 MR. SARVEY: I don't really have an objection to what
21 they're submitting here.

22 HEARING OFFICER COCHRAN: Okay.

23 MR. SARVEY: I reviewed it. I'm fine with it.

24 HEARING OFFICER COCHRAN: Oh, okay.

25 MR. SARVEY: I like as much information in the record

1 as possible for you guys to make your decision.

2 HEARING OFFICER COCHRAN: Okay. Then, I don't
3 -- I think we can dispense with that. I didn't know if the
4 Applicant wished to speak to it and, Mr. Sarvey, I didn't know
5 if you had any questions about it as well.

6 MR. SARVEY: Well, I may have a couple questions after
7 I give it a little more thorough examination but
8 --

9 HEARING OFFICER COCHRAN: Okay. So, we're going to
10 take the five-minute break, give it a read, and then we'll come
11 back so that we can get through this.

12 MR. SARVEY: Okay, thank you.

13 HEARING OFFICER COCHRAN: Thank you.

14 (Off the record at 10:34 a.m.)

15 (On the record at 10:39 a.m.)

16 HEARING OFFICER COCHRAN: So, we are back on the
17 record. Mr. Sarvey, you've had a chance to review Exhibit 207,
18 is that correct?

19 MR. SARVEY: Uh-hum, yes, I have.

20 HEARING OFFICER COCHRAN: Are you in a position to
21 respond to it, now? And what I'm looking for is your --

22 MR. SARVEY: I would like that.

23 HEARING OFFICER COCHRAN: So that I can be clear, what
24 I'm looking for is your response to that. I'm not necessarily
25 looking for your response to the memo that I put out yesterday.

1 We may need to talk some more about that later, in these
2 proceedings today. But at the outset, your comments on the
3 document that you've just had a chance to review.

4 MR. SARVEY: Well, I have a couple, a couple of
5 questions, initially, and then a couple of comments which may be
6 something I'll bring up in our briefing.

7 But the first question I have is what is -- you sent
8 the NOR and NOI. What are those documents?

9 MR. OLIVER: So, the NOR stands for Notice of Receipt.

10 MR. SARVEY: Oh.

11 MR. OLIVER: When the application for an SPPE was
12 filed, staff subsequently filed a Notice of Receipt.

13 And the NOI is the Notice of Intent to Adopt an
14 Initial Study and a Proposed Mitigated Negative Declaration for
15 the Project.

16 MR. SARVEY: Okay. You have a separate document here
17 that says agencies that you sent the Notice of Completion and
18 the Environmental Document, and Notice of Intent. How is that
19 different than this other list?

20 MR. OLIVER: We'd like to bring Lisa Worrall, the
21 Project Manager, up here to help with these questions.

22 MS. WORRALL: You were asking about the State Clearing
23 House list, is that correct?

24 MR. SARVEY: You have a state agency list that you
25 circulated and how is that different than this other list you

1 have, NOR and NOI?

2 HEARING OFFICER COCHRAN: Okay, just for a moment
3 because we're now getting to a non-attorney speaking, I'm going
4 to swear you in, Ms. Worrall.

5 (Ms. Worrall was sworn.)

6 HEARING OFFICER COCHRAN: Thank you. The witness is
7 sworn.

8 Now, Mr. Sarvey, please go ahead.

9 MR. SARVEY: I had a question, you have an agencies
10 list and then you have another list, NOR and NOI. I just
11 wondered how they were different.

12 MS. WORRALL: Okay. The agencies list that says
13 NOR/NOI, and it starts the first name, Xuna Cai. That is a list
14 that we developed. It's the local and kind of regional
15 agencies.

16 MR. SARVEY: Uh-huh.

17 MS. WORRALL: The other list you're referring to,
18 agencies the State Clearinghouse mailed, the Notice of
19 Completion and Environmental Document, and Notice of Intent,
20 that is a list on the Notice of Completion that we check. We
21 check the agencies that we send to. The Clearinghouse checks
22 the agencies they choose to send the document with Notice of
23 Intent to. This list are the agencies the State Clearinghouse
24 mailed the Notice of Intent and Environmental Document to.

25 MR. SARVEY: So, in this --

1 MS. WORRALL: And I was going to say, and they're
2 purely state agencies.

3 MR. SARVEY: So, this second list, the agencies that
4 the State Clearinghouse mailed to, I noticed BAAQMD isn't on
5 that list. Is there a reason why?

6 MS. WORRALL: That, well, you would need to talk to
7 the State Clearinghouse. That's actually not one of the
8 agencies that they could select. The Air Resources Board was on
9 there, as you can see.

10 MR. SARVEY: So, BAAQMD has not received the --

11 MS. WORRALL: It's on our list. We sent to BAAQMD.

12 MR. SARVEY: Ah, but the State Clearinghouse did not.

13 MS. WORRALL: But the State Clearinghouse,
14 specifically they didn't, that's not marked on the list of
15 options.

16 MR. SARVEY: All right. Now, on your environmental
17 justice organizations list, I don't see a single environmental
18 justice organization in Santa Clara. Am I missing something?
19 Is there one there that I missed?

20 MS. WORRALL: Let me just look at the list. Okay, I
21 can see -- well, we have, oh, the Audubon Society is in
22 Cupertino. I can see that while the offices are not located
23 physically -- their offices aren't physically located within the
24 area, but they do have interest in the area.

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

1 MS. WORRALL: Uh-hum.

2 MR. SARVEY: Thank you.

3 HEARING OFFICER COCHRAN: Mr. Sarvey, my associate,
4 Mr. Lee, just provided you with the memorandum that was filed
5 yesterday.

6 MR. SARVEY: Yes.

7 HEARING OFFICER COCHRAN: So, I'm just going to have
8 you -- we're just going to take a pause on this issue, now.

9 Staff, this conversation reminded me, what I meant to
10 ask you to do was to excise the mailing list from the
11 transmittal memo. In other words, the transmittal memo is not
12 the evidence for Exhibit 207. The evidence is the mailing list.
13 And so, Exhibit 207 should be the mailing list, only, not your
14 transmittal advice that goes along with it. Does that -- does
15 it make sense?

16 Your transmittal reads to me more in the nature of
17 like an amended prehearing conference statement, where you're
18 now identifying additional exhibits. And so, what I want is for
19 the evidence to be the evidence and the transmittal memo to be
20 something else.

21 MR. OLIVER: Staff wouldn't object to 207 being
22 treated as the -- only the attachment being treated as the
23 exhibit and the transmittal memo being stricken from evidentiary
24 record.

25 HEARING OFFICER COCHRAN: Okay.

1 MR. WILLIS: Excuse me, Kerry Willis, staff counsel.
2 We also included other information in the transmittal memo that
3 is important because it came up with Mr. Sarvey's comments,
4 yesterday, on posting publication to the various news outlets in
5 Chinese and English. That that was something that he brought up
6 that we did not do, and we have proof that we did it.

7 So, just to refer, then, we might need to then add the
8 other -- I guess, each document added as an exhibit, now.

9 HEARING OFFICER COCHRAN: Those were all added.

10 MR. WILLIS: Okay.

11 HEARING OFFICER COCHRAN: The exhibits that show proof
12 of publication in the San Jose Mercury News and The World
13 Journal, for Chinese language, were separately admitted as
14 exhibits, as 208, 209, and 210.

15 MR. WILLIS: Okay. And we just don't have separate
16 testimony to this effect, so that we just wanted to make sure
17 that this was covered.

18 HEARING OFFICER COCHRAN: Okay. To make it clear,
19 what I would like to see -- so, we're going to not have TN
20 230471 be Exhibit 207. Instead, what I'm looking for is for you
21 to docket, separately, the attachment, not the transmittal memo,
22 and that attachment, which is merely the mailing list, whatever
23 TN that gets assigned will now be Exhibit 207. And we will
24 leave the record open for that purpose.

25 Also, I want to turn back to the treatment of Mr.

1 Sarvey's exhibits. And we spent a lot of time on Exhibits 301,
2 304, 305 and the extensive objections that Mr. Harris raised.
3 And I know that Mr. Harris likes a nice, clean record. So, to
4 be abundantly clear -- and I like one, too. To be abundantly
5 clear, 301, 304, 305 are for identification purposes only.

6 However, I think we are admitting 300 and 303 because
7 I didn't hear -- my understanding was that there was a question
8 about the weight of the document, the weight of the information,
9 not the admissibility, and that there's no motion to strike.

10 MS. NEUMYER: And I think we were going to add pending
11 the ruling by the Committee on the specific exhibits, since
12 those exhibits in some cases are referenced within the
13 testimony, that whatever ruling is afforded to the exhibits that
14 it carries over to the portion, the corresponding portions of
15 Exhibit 300 and 303.

16 MR. HARRIS: I think, I may have misheard you in terms
17 of numbers there. Were you intending to identify the opening
18 testimony and the rebuttal testimony?

19 HEARING OFFICER COCHRAN: Yes.

20 MR. HARRIS: Okay.

21 HEARING OFFICER COCHRAN: You had separated it into
22 two categories.

23 MR. HARRIS: Yeah, correct.

24 HEARING OFFICER COCHRAN: The pre-filed testimony,
25 then from the other exhibits. And the pre-filed testimony are

1 Exhibits 300 and 303.

2 MR. HARRIS: Okay, I did mishear you, then. I heard
3 300 and 302, so I apologize.

4 HEARING OFFICER COCHRAN: So, we're going to admit 300
5 and 303, understanding that it goes to the weight, and if there
6 are -- that then, if there are specific objections that you have
7 to specific comments, language, I'm not going to -- however you
8 want to characterize what 300 and 303 includes, that if you have
9 specific objections to that, then you need to let us know what
10 that is. But the Committee is going to admit them.

11 (Intervenor Exhibit Nos. 300 and 303 admitted
12 into evidence.)

13 And I thought that you had indicated that you had
14 prepared a document, Mr. Harris, that spoke to some of those
15 issues. Is that correct?

16 MR. HARRIS: We do have a document we've prepared.

17 HEARING OFFICER COCHRAN: Okay.

18 MR. HARRIS: I don't expect Mr. Sarvey or anybody to
19 speak to that document today. I don't think it is relevant to
20 the hearing --

21 HEARING OFFICER COCHRAN: Okay.

22 MR. HARRIS: -- so, I don't want him to feel like he
23 needs to take another five minutes to read another document
24 because this one's longer. But we will distribute that. And I
25 guess we'll need to make it next in line, which is 3 -- do you

1 want this to be an exhibit, as well?

2 HEARING OFFICER COCHRAN: Actually, I don't think it's
3 evidence. I think it is your legal argument about the
4 admissibility of evidence. And so, what I would expect is that
5 you would file that afterwards. And again, this might be
6 something that we talk about in post-hearing briefing.

7 MR. HARRIS: Okay. We will docket it after this
8 hearing, then.

9 HEARING OFFICER COCHRAN: Thank you.

10 Okay. So, Mr. Sarvey, have you had your questions
11 answered about Exhibit 207?

12 MR. SARVEY: Yes, I have.

13 HEARING OFFICER COCHRAN: Okay. I'm not going to ask
14 if you're ready to respond to the memorandum that I sent out
15 yesterday. Again, that might be something we talk about in
16 post-hearing briefing. We might talk about it at the conclusion
17 of today's hearings. Okay.

18 Also, so, now, I'm going to talk about -- I think
19 we've already covered objections to Mr. Sarvey's testimony, as
20 we had outlined yesterday, I don't need to go through that
21 yesterday.

22 So, yesterday's prehearing conference, we had
23 discussed the areas for which live testimony would be offered.
24 My list shows Air Quality and Greenhouse Gas Emissions, Public
25 Health, Energy Resources, Utilities and Service Systems.

1 Did I miss anything that you wanted to have testimony
2 on? We had excluded Environmental Justice and Jurisdiction from
3 those topics for which testimony was required.

4 MR. SARVEY: I agree.

5 HEARING OFFICER COCHRAN: Okay. At this point, do the
6 parties have a preference on where we start? Where would you
7 like to start?

8 MR. OLIVER: Staff's preference would be to begin with
9 Air Quality.

10 HEARING OFFICER COCHRAN: Okay. What I would like to
11 do is I would like to have all of the witnesses on Air Quality
12 come up and be seated where counsel is. Counsel's going to move
13 back a little bit.

14 MR. WILLIS: Ms. Cochran, staff would like to clarify
15 that we're offering a panel of Air Quality, GHG, and Public
16 Health.

17 HEARING OFFICER COCHRAN: Okay. Well, they can stay
18 up here, then. But for right now we're doing -- and to be
19 clear, Air Quality and GHG is the topic at this point.

20 Turning now to the witnesses, starting to my right,
21 would you please state and spell your name for the record?

22 MS. CHU: My name is Huei-An Chu. I'm the Air
23 Resource Engineer in Energy Commission.

24 MS. QIAN: My name is Wenjun Qian, W-E-N-J-U-N Q-I-A-
25 N. I'm also Air Resource Engineer at Energy Commission.

1 HEARING OFFICER COCHRAN: Thank you.

2 MR. LAYTON:

3 MR. BIRDSALL: My name is Brewster Birdsall. That's
4 B-R-E-W-S-T-E-R, the last name Birdsall, B-I-R-D-S-A-L-L. And I
5 am a Senior Associate with Aspen Environmental Group, on
6 contract to assist Air Quality and GHG.

7 HEARING OFFICER COCHRAN: Mr. Salamy.

8 MR. SALAMY: My name is Jerry Salamy, with Jacobs
9 Engineer. I am a Project/Program Manager. That's Jerry, J-E-R-
10 R-Y, Salamy, S-A-L-A-M-Y.

11 MR. JANG: My name is Dennis Jang, Supervising Air
12 Quality Engineer, with the Bay Area Air Quality Management
13 District. D-E-N-N-I-S J-A-N-G.

14 HEARING OFFICER COCHRAN: Thank you. Could all of the
15 witnesses who are going to testify -- yes, Mr. Sarvey?

16 MR. SARVEY: I haven't introduced myself, yet.

17 HEARING OFFICER COCHRAN: Please do so.

18 MR. SARVEY: I'm Robert Sarvey, Intervenor. That's R-
19 O-B-E-R-T S-A-R-V-E-Y. Thank you.

20 HEARING OFFICER COCHRAN: Okay. All those persons who
21 wish to testify, please raise your right hand.

22 (Witnesses were collectively sworn.)

23 HEARING OFFICER COCHRAN: Thank you. As I discussed,
24 we're going to be using a formal process today. So, I'm going
25 to have the attorneys or the party representative begin by

1 offering the testimony of their witnesses, through a brief
2 direct. And then, we'll probably have a colloquy among the
3 panel.

4 Mr. Sarvey, what I would hope is that we will be able
5 to easily tell when you are acting as an advocate and when you
6 are offering your own testimony.

7 MR. SARVEY: Well --

8 HEARING OFFICER COCHRAN: So, if I have questions, I
9 may interrupt you to say are you advocating or are you
10 testifying?

11 MR. SARVEY: I'd only say that I've seen lawyers at
12 this Commission do more testifying than the witnesses, so I
13 think it's a common problem, not just related to me. Thank you.

14 HEARING OFFICER COCHRAN: I understand. But I was not
15 trying to call you out, I was just saying that I want to make
16 sure that we have a clean record. And so, as we move forward,
17 let's do that.

18 And so, I will first turn to staff.

19 MR. HONG: Ms. Cochran?

20 HEARING OFFICER COCHRAN: Yes?

21 MR. HONG: I have somebody online who wishes to speak.
22 Mr. Frohning.

23 HEARING OFFICER COCHRAN: Okay. Please unmute him.
24 Mr. Frohning?

25 MR. FROHNING: Hello, this is John Frohning. I am

1 also scheduled to testify, I believe.

2 HEARING OFFICER COCHRAN: Oh, okay. I believe that's
3 your witness, Mr. Harris.

4 MR. HARRIS: It is. And I don't know whether he raised
5 his hand on the phone, so you might need to swear him as well,
6 so --

7 HEARING OFFICER COCHRAN: Mr. Frohning, did you accept
8 the oath when I swore the other witnesses in?

9 MR. FROHNING: I did.

10 HEARING OFFICER COCHRAN: Thank you.

11 MR. FROHNING: I do.

12 HEARING OFFICER COCHRAN: I have, I will.

13 MR. HARRIS: Now pronounce you a witness. Thank you.

14 HEARING OFFICER COCHRAN: Thank you. Mr. Oliver.

15 MR. OLIVER: Good morning. Let's begin with some
16 questions about Air Quality. I'll turn to you, Ms. Chu, first.
17 Were you involved in the preparation of the Air Quality and
18 Greenhouse Gas -- excuse me, just the Air Quality testimony and
19 staff's Initial Study and Mitigated Negative Declaration, which
20 is marked as Exhibit 200?

21 MS. CHU: Yes.

22 MR. OLIVER: And are you also familiar with or
23 involved in the preparation of subsequent testimony marked as
24 Exhibits 202 and 203?

25 MS. CHU: Yes.

1 MR. OLIVER: Okay. And does -- are your qualifications
2 included among staff's opening testimony, marked as Exhibit 202?

3 MS. CHU: Yes.

4 MR. OLIVER: Do you have any proposed changes to your
5 testimony?

6 MS. CHU: No.

7 MR. OLIVER: And does your testimony in the IS/MND
8 represent your best professional judgment?

9 MS. CHU: Yes.

10 MR. OLIVER: Now, the next question, we'll turn to Dr.
11 Qian. Were you involved in the preparation of the Air Quality
12 and Greenhouse Gas Emissions testimony in staff's Initial Study
13 and Mitigated Negative Declaration, Exhibit 200?

14 MS. QIAN: Yes.

15 MR. OLIVER: And were you involved in subsequent
16 testimony marked as Exhibits 202 and 203?

17 MS. QIAN: Yes.

18 MR. OLIVER: And are your qualifications included
19 among staff's opening testimony, marked as Exhibit 202?

20 MS. QIAN: Yes.

21 MR. OLIVER: Do you have any proposed changes to your
22 testimony?

23 MS. QIAN: No.

24 MR. OLIVER: And does your testimony in the IS/MND
25 represent your best professional judgment?

1 MS. QIAN: Yes.

2 MR. OLIVER: Now, Mr. Birdsall, were you involved in
3 the preparation of the Air Quality and Greenhouse Gas Emissions
4 sections of staff's Initial Study and Mitigated Negative
5 Declaration, marked as Exhibit 200?

6 MR. BIRDSALL: Yes.

7 MR. OLIVER: Were you involved in the preparation of
8 subsequent testimony marked as Exhibits 202 and 203?

9 MR. BIRDSALL: Yes, I was.

10 MR. OLIVER: And do you have any proposed changes to
11 your testimony?

12 MR. BIRDSALL: No.

13 MR. OLIVER: And are your qualifications included among
14 staff's opening testimony, marked as Exhibit 202?

15 MR. BIRDSALL: Yes.

16 MR. OLIVER: And does your testimony represent your
17 best professional judgment?

18 MR. BIRDSALL: Yes, it does. Thank you.

19 MR. OLIVER: So, in general, what is the existing air
20 quality in the vicinity of the Laurelwood Data Center?

21 MR. BIRDSALL: Okay. Your question is about the
22 existing air quality. We can describe the Laurelwood Data
23 Center as being in an urban metropolitan area. It's got mostly
24 industrial uses surrounding it. And the air quality in this
25 area, of the Southern Bay Area, is influenced by regional

1 factors and it includes local sources, mobile and stationary
2 sources. The San Jose International Airport is nearby.
3 Highways are nearby.

4 We know and are aware of other data centers in the
5 area, and they exist, and they are planned. Many of them are
6 listed or they are inventoried, rather, in Appendix B of the
7 Initial Study.

8 And another important thing to point out is that this
9 San Francisco Bay Area Air Basin has a history of nonattainment
10 conditions for the following criteria air pollutants: Ozone, PM
11 10, and PM 2.5.

12 MR. OLIVER: And did you analyze both construction and
13 operational emissions for the project?

14 MR. BIRDSALL: Yes. The emissions increases from the
15 project are quantified separately for construction and
16 operation. They occur at two different times.

17 The emissions increases, then, are compared against
18 thresholds from the Bay Area Air Quality Management District's
19 CEQA Air Quality Guidelines, a document from 2017 that is now
20 Exhibit 206.

21 And that document gives us, as a lead agency,
22 recommendations for the thresholds of significance, which
23 include the mass of emissions that would be generated by the
24 project, but also thresholds for ambient air quality
25 concentrations that drive health risks.

1 And the justification for those thresholds is also
2 part of the Air District's guidelines.

3 And then, thirdly, it guides the methodology of our
4 analysis.

5 MR. OLIVER: So, would the project's day-to-day
6 operations cause air pollutant emissions?

7 MR. BIRDSALL: Yes, it would. Day-to-day operations
8 and the emissions are quantified on Table 5.3-6, of the Initial
9 Study. And in that table, we have the comparison against the
10 Air District threshold of significance, and we show that those
11 emissions are below the thresholds of significance.

12 MR. OLIVER: How did you quantify operational
13 emissions in preparing this analysis?

14 MR. BIRDSALL: Well, operational emissions from the
15 Data Center are taken into consideration based on the nature of
16 the facility, and the nature of the sources. So, in this case,
17 really, I think the source of concern would be the aggregate of
18 the backup diesel engine generators. These engines, first of
19 all, we consider the fact that they are proposed to be Tier 2
20 certified. That means that they meet the exhaust standards from
21 the -- called Tier 2, specified by USEPA and Air Resources
22 Board.

23 And then, the engines also include diesel particulate
24 filters that are always on. So, first off, our emissions
25 quantifications includes those considerations.

1 We also include the consideration that the emergency
2 generators, and their intended use, means that they are
3 inherently limited as backup only. And also, that they would be
4 used for on-site loads, only, and not for export for the grid.

5 We also take into consideration the Applicant's
6 proposal that only a single-generator engine would operate at a
7 given time for testing and maintenance. And all taken together,
8 we considered those limitations on the estimation of operational
9 emissions.

10 MR. OLIVER: So, in the Air Quality context, what is a
11 potential to emit, or a PTE, and how is this term typically
12 used?

13 MR. BIRDSALL: Yeah. There have been a lot of
14 questions about the potential to emit and how that compares.
15 And the potential to emit is a term that is defined in USEPA
16 regulations and also in local Air District regulations, and it's
17 a long-standing piece of jargon that has been in place for many
18 years. And it's regarding permitting of this facility, which is
19 a step that occurs at the Air District, after the CEQA process
20 here, at the Energy Commission.

21 And potential to emit, the definition includes the
22 physical limitations of the emitting source, and its setting or
23 function, and it also includes enforceable limitations that are
24 put in place by permit conditions that are enforceable.

25 MR. OLIVER: Did staff's Air Quality analysis consider

1 emergency operations, in addition to testing and maintenance?

2 MR. BIRDSALL: We do. The routine emissions are from
3 testing and maintenance, as I've said before. We analyzed that
4 emission increase based on routine operations, and that's
5 readiness testing. And we count those emissions for determining
6 the CEQA significance as being reasonably foreseeable emissions.
7 In the Initial Study, this appears under Checklist Item B of the
8 Air Quality Section.

9 Even though the reasonably foreseeable emissions fall
10 below the mass base thresholds, we've also stepped forward a
11 little bit into considering emergency operations. The emergency
12 operations would be the emissions that are caused during grid
13 outages. And from our point of view, they're not predictable
14 enough to be reasonably foreseeable under CEQA.

15 And while we can never predict the exact circumstances
16 of future outages, we've developed some scenarios that fall
17 under Checklist Item C, in the Air Quality Section of the
18 Initial Study to provide a good faith effort at the disclosure
19 of the potential future impacts that occur during emergency
20 operations.

21 So, under Checklist Item C, we've got a discussion of
22 ambient air quality impacts, and that includes construction
23 phase, and normal operation phase, but also some scenarios of
24 emergency operations.

25 MR. OLIVER: Have you reviewed the Bay Area Air

1 Quality Management District's document, marked as Exhibit 204,
2 which is titled: Calculating Potential to Emit for Emergency
3 Backup Power Generators?

4 MR. BIRDSALL: Yes. This policy document, Exhibit
5 204, is something that the Air District published and released
6 in June of this year. And so, it came in plenty of time for us
7 to consider prior to the release of the Initial Study.

8 As this case was proceeding it also -- when the
9 District released the policy, the Applicant had time to respond,
10 as well. And the Applicant reacted and analyzed how it foresees
11 complying with the policy. And that came into the docket at the
12 end of July.

13 We reviewed the Applicant's interpretation of the
14 policy and we agree that the readiness testing emissions would
15 be fully offset and, also, that the facility would be unlikely
16 to trigger PSD or Title 5 permitting requirements when it
17 arrives at the District.

18 One thing to add is that if the District does
19 eventually determine that PSD applies, then the project becomes
20 subject to the more comprehensive pre-construction permit review
21 that would be associated with PSD permitting. And PSD stands
22 for the prevention of significant deterioration of air quality,
23 and it's a federally-mandated program that the Air District
24 implements.

25 MR. OLIVER: How does the Air District's policy

1 address emergency backup -- or, emergency operation of backup
2 generators, excuse me?

3 MR. BIRDSALL: Right. So, the Air District's policy
4 is really pointed towards how emergency operations would be
5 considered by the District. And reading the policy, it is
6 cautious about how it describes emergency operations. The
7 policy is in as an exhibit, so the words are there. But I'll
8 paraphrase and abridge a little bit.

9 And it says, when determining PTE, potential to emit,
10 the District shall include emissions resulting from emergency
11 operations of 100 hours per year.

12 And I'll stop. It goes on to say that those
13 emissions' quantities will not be used to determine the amount
14 of emissions offsets required. And it also says that the
15 emissions quantities do not apply for the purposes of toxics new
16 source review.

17 So, one of the reasons why I think the Air District is
18 being cautious here is because, and now I'll use some more words
19 from the policy: An emergency operation is unplanned and
20 infrequent and it's not possible to predict exactly how such
21 operations will occur or for what duration.

22 MR. OLIVER: So, how did staff's approach compare to
23 the District's policy in preparation of the IS/MND?

24 MR. OLIVER: Well, the policy refers to itself as
25 using worst case assumptions that emergency generators could be

1 used for emergency operations for 100 hours in a year.

2 However, it doesn't provide data or information to
3 suggest that 100 hours in a year is really likely to occur for
4 Laurelwood or for any other backup generator. It is a number
5 that's presented without much context.

6 And then, our role as lead agency in CEQA is a little
7 bit different. CEQA doesn't require lead agencies to apply a
8 worst case scenario analysis to consider emergency operations.
9 What CEQA requires us to do is to look at the impacts that are
10 reasonably foreseeable. And CEQA also discourages speculation.

11 And in this way, we avoid speculating on emergency
12 operations other than to note that occasional emergency
13 operations are going to be foreseeable. And we say that on page
14 5.3-25 of the Initial Study.

15 And we go a little bit further to say, and to provide
16 an impact analysis for ambient air quality during emergency
17 operations. And we explored concentrations of nitrogen dioxide,
18 NO₂, PM 10, and PM 2.5 impacts.

19 And we've taken these steps to provide information to
20 the Committee on what the ambient air quality impacts could look
21 like during emergency operations, but we don't hang our hat on
22 any specific scenario of how the emergency operations could
23 occur.

24 MR. OLIVER: So, does the IS/MND contain staff's
25 discussion of why you've concluded that additional assessment of

1 future impacts from emergency operations would be speculative?

2 MR. BIRDSALL: Yes. So, we have some reasons that are
3 explained in the Initial Study, and we can see them at page 5.3-
4 25. There are -- we've got our statements that says: Staff
5 believes that assessing the impacts of emergency operation of
6 the standby generators could be speculative. And there are four
7 reasons there, in bullets.

8 And just to paraphrase, we recognize that emergency
9 operations only occur when the facility has a power outage. And
10 outages are infrequent, and irregular, and unplanned. The
11 outage durations would be variable. Sometimes they would be
12 short enough to avoid triggering emergency operations.

13 How the generators respond to the outage is also
14 unpredictable, meaning we don't know how many engines would fire
15 up at the time of an outage. And the emissions of those
16 generators would be variable because the load internal to the
17 data center would be somewhere below 99 megawatts. We don't
18 know where.

19 And with all those considerations, we stop short of
20 conducting any additional analysis.

21 MR. OLIVER: So, how does the new Air District policy
22 impact NOx emissions offsets that the District will require the
23 project to obtain?

24 MR. BIRDSALL: Right. So, in permitting the facility,
25 when the Air District is reviewing and considering the permit,

1 the Air District will require offsets. And the Applicant is
2 proposing a quantity of offsets that cover the routine readiness
3 testing, and testing and maintenance of the engines.

4 The Air District policy explicitly excludes the
5 emergency use emissions from that requirement to purchase
6 offsets because, in the terms of the policy, the District
7 policy, those emergency operations emissions are not considered
8 regular or predictable enough.

9 And we did, staff verified that the Air District's
10 emission reduction credits banking system has sufficient credits
11 for the Applicant to go and purchase, and retire those offsets.

12 MR. OLIVER: Did you consider or did staff's analysis
13 consider the cumulative significance of air quality emissions
14 from the LDC?

15 MR. BIRDSALL: Yes, our analysis captures cumulative
16 impacts. This is largely in the Air Quality section, under
17 Checklist Item B. And there's also a better page of discussion
18 in the Initial Study, under Section 520, which separately
19 handles cumulative.

20 But the Air District's CEQA thresholds of significance
21 in terms of emissions increases are set up in a way so that if
22 the project exceeds those significance thresholds, its emissions
23 would be cumulatively considerable. This is something that we
24 say in the Initial Study. And we demonstrate that LDC would
25 fall below those thresholds.

1 However, to go further, we do consider the ambient air
2 quality impacts of operating the project. And we consider
3 whether the project could contribute to or create a substantial
4 pollutant concentration for the nonattainment pollutants. And
5 our analysis and the results are -- that's in Table 5.3-7, where
6 we quantify the ambient air pollutant concentrations that would
7 occur. We quantify those numbers and compare them against the
8 Air District guidelines for ambient concentrations and show that
9 the contribution from the project to the cumulative impact would
10 not be substantial, and would not be singularly or cumulatively
11 considerable.

12 MR. OLIVER: Did the Initial Study include a health
13 risk assessment for the Laurelwood Data Center?

14 MR. BIRDSALL: Yes. The health risk assessment is
15 largely under Checklist Item C. Or, really, exclusively under
16 Checklist Item C. It spans and considers the construction phase
17 of the project, but also normal operations.

18 And then, for some of the scenarios of emergency
19 operations this is a discussion of that around page 32 and 33.
20 And as a stationary source facility, that requires permitting by
21 the Air District, the Initial Study finds that the cancer risk
22 and health hazard numbers to be below the Air District
23 thresholds for a significant impact.

24 MR. OLIVER: So, did staff's assessment find that the
25 project would exceed any significance thresholds for health

1 risks from air quality pollutants established by the Air
2 District?

3 MR. BIRDSALL: No.

4 MR. OLIVER: And did staff evaluate air quality
5 impacts to sensitive receptors in the area of the project?

6 MR. BIRDSALL: Yes. And this is -- although the
7 emissions increases, under Item B of the checklist, would fall
8 below the thresholds, we did provide the in-depth and ambient
9 air quality impacts analysis, and that considers sensitive
10 receptors, explicitly.

11 MR. OLIVER: And would any sensitive receptors be
12 exposed to substantial or unsafe pollutant concentrations from
13 the project?

14 MR. BIRDSALL: No.

15 MR. OLIVER: So, overall, would you say that the
16 project's forecasted emissions cause a significant impact on the
17 environment?

18 MR. BIRDSALL: No.

19 MR. OLIVER: All right. So, moving on to questions
20 relating to Greenhouse Gas Emissions testimony, would the
21 project directly generate greenhouse gas emissions during
22 operations and, if so, how?

23 MR. BIRDSALL: Yes. So, the project, along with its
24 air pollutants, it generates greenhouse gas emissions or it
25 would generate greenhouse gas emissions. Again, because the

1 engines would require routine testing as part of their normal
2 operations. And again, as with Air Quality, we've considered
3 the inherent limitations of the facility and that it is designed
4 -- the engines, rather, are designed for backup use, only, and
5 for serving the onsite load, only.

6 MR. OLIVER: So, how did you evaluate these stationary
7 source emissions under CEQA?

8 MR. BIRDSALL: So, the backup generators are powered
9 by diesel fuel. The routine testing and maintenance, and the
10 numbers of hours anticipated in a year for testing and
11 maintenance are considered. Our quantification appears in Table
12 5.8-2. And as the diesel fuel is used, it creates greenhouse
13 gas emissions in the byproducts of combustion. That's carbon
14 dioxide, also methane, and nitrous oxide, which is N2O. These
15 are greenhouse gas pollutants that are regulated by the Air
16 Resources Board.

17 And we show the quantities to be about 25, 26 hundred
18 metric tons, 2,583 metric tons per year.

19 MR. OLIVER: And did your method of evaluating
20 stationary source emissions consider the potential for emergency
21 generator usage during a power outage?

22 MR. BIRDSALL: And here, for Greenhouse Gas Emissions,
23 we don't -- and as well as Air Quality, the Initial Study
24 doesn't speculate on the potential levels of GHG emissions or
25 other air pollutant emissions during emergency operations for

1 some of the reasons that I've already touched upon.

2 However, around Table 5.8-2, in the Greenhouse Gas
3 section, the initial study describes that the Applicant, when it
4 came in with a revised project description in June, this is the
5 citation of Jacobs 2019-D, so it's in the administrative record,
6 that the Applicant -- and the discussion is also in the
7 Greenhouse Gas section. But, rather, the Applicant expects 12.3
8 hours per year, per engine, for testing and maintenance. Our
9 numbers assumed 21. So, our numbers are higher than what the
10 Applicant says may be necessary for testing and maintenance.

11 So, in a way, we recognize that some limited amount of
12 emergency operations could occur and those emissions would still
13 be below the number that we present for testing and maintenance.
14 And all taken together, that number of 2,500 or 2,600, more like
15 it, is less than the Air District's threshold of significance,
16 which is 10,000 metric tons.

17 MR. OLIVER: So, would the project's foreseeable
18 greenhouse gas emissions from these backup generators be emitted
19 in a large enough quantity to have a significant impact on the
20 environment?

21 MR. BIRDSALL: No. The Air District guideline has a
22 justification for a 10,000 metric ton threshold for stationary
23 source emissions, and whether those greenhouse gas emissions
24 would cause an impact on the environment. And we find that the
25 impact would be less than significant.

1 MR. OLIVER: Are there indirect greenhouse gas
2 emissions that are attributable to the project?

3 MR. BIRDSALL: Yes. So, aside from the stationary
4 source emissions that we've quantified in that first table, 5.8-
5 2, the indirect GHG emissions are quantified in Table 5.8-4.
6 And indirect emissions means the GHG that are triggered by the
7 electricity consumed by the site, and also the natural gas used
8 for space heating, and the GHG that are associated with worker
9 vehicles commuting to and from the site. And those are all
10 quantified in Table 5.8-4.

11 MR. OLIVER: How did you evaluate these indirect
12 emissions under CEQA?

13 MR. BIRDSALL: So, indirect emissions are quantified,
14 first, and this is as required by CEQA guidelines that lead
15 agencies are to make a good faith effort at quantifying all GHG
16 emissions. So, we used the current best estimates that we've
17 found to be available. And that is for all those different
18 types of indirect emissions.

19 And the conclusion, under Checklist Item A, in the
20 Greenhouse Gas section is really dealing with the quantity of
21 emissions. And that conclusion, under Checklist Item A, notes
22 that the indirect emissions would be subject to reductions
23 through the energy efficiency measures that we expect LDC to
24 undertake. And, also, the implementation of state and local
25 measures that reduce greenhouse gas emissions.

1 Some examples are coming from SB 350, which includes
2 the Renewables Portfolio Standard, and its increasing
3 stringency. And SB 100 for reducing carbon in the electricity
4 supply. Those are the considerations for the indirect
5 emissions.

6 And then, there's a separate conclusion under
7 Checklist Item B, in the Greenhouse Gas section, about how the
8 project will be consistent with plans and policies and
9 regulations.

10 And I just want to point out that this treatment of
11 indirect emissions is pursuant to the Air District's
12 recommendations, again pointing back to Exhibit 206 on how to
13 treat stationary sources for their GHG emissions.

14 MR. OLIVER: So, which greenhouse reductions or
15 greenhouse gas reduction plans, and policies, and regulations,
16 and laws did staff consider in its Greenhouse Gas analysis?

17 MR. BIRDSALL: This discussion appears under Checklist
18 Item B, of the Greenhouse Gas section, in the Initial Study.
19 And it's really separate from the quantities of emissions that
20 appear under Item A. And our review of plans and policies
21 included the City of Santa Clara Climate Action Plan, and also
22 its general plan, which includes sustainability policies. And
23 we have a table, Table 5.8-5 compares the policies with how the
24 project would fit in with those policies.

25 We also reviewed the Bay Area Air Quality Management

1 District's 2017 Clean Air Plan, which has efficiency -- or,
2 rather, energy efficiency policies. And we looked at the MTC,
3 which is the Metropolitan Transportation Commission, I believe,
4 and the Association of Bay Area Governments Plan Bay Area 2040
5 document, which is really more pertinent to the vehicle trips
6 associated with the project.

7 But I would say the bulk of the programmatic control
8 is from the California Statewide RPS and also the ongoing
9 implementation of AB 32 and SB 32 programs, which we also
10 consider. And so, that includes the Air Resources Board's 2017
11 Update to the Scoping Plan to meet the GHG targets for 2030.
12 And, also, the Cap and Trade regulations that are all adopted
13 pursuant to those legislation.

14 MR. OLIVER: Would the Laurelwood Data Center, as
15 proposed, conflict with any of these plans, policies,
16 regulations, or laws?

17 MR. BIRDSALL: No. We find that the project would
18 pose no potential conflict with the California's GHG reduction
19 plans, policies, or regulations.

20 MR. OLIVER: Did staff's greenhouse gas analysis rely
21 on a tiered or a streamlined analysis of Laurelwood's greenhouse
22 gas emissions?

23 MR. BIRDSALL: We did not. This is about a part or a
24 provision in the state CEQA guidelines that allows lead agencies
25 to streamline the treatment of GHG emissions in CEQA by pointing

1 to a qualified GHG reduction plan. And as lead agency, we did
2 not use that methodology for assessing the GHG impacts, because
3 our assessment includes the quantifications of -- or, a
4 quantification, rather, of all the GHG emissions, and we're
5 pointing to a quantitative threshold. And that's under Item A.

6 And then, we're also assessing all of the current
7 plans and policies and regulations under Checklist Item B.

8 MR. OLIVER: So, how did staff prepare the counting of
9 indirect project emissions?

10 MR. BIRDSALL: Yeah, there have been questions about
11 the indirect emissions related to the electricity supply. And,
12 again, this quantification is in Table 5.8-4. And we
13 conservatively assumed, first of all, that LDC would be using 99
14 megawatts of electricity every hour of the year, which we know
15 to be unrealistic, but that would represent its capacity to use
16 electricity.

17 And we applied the city-specific emissions factor,
18 then, in terms of the GHG content of the electricity supply that
19 comes from the city's Climate Action Plan 2018 Annual Report.
20 And that's a number of 430 pounds of CO2 per megawatt hour.

21 We recognize that emissions factor is a factor that
22 will change from year to year and, historically, it always has
23 changed. For example, if hydro resources are available then,
24 generally, the carbon content of California's electricity will
25 come down.

1 But going forward, it's a number that is specifically
2 subject to improvements as RPS requirements continue to become
3 more stringent, and as the Cap and Trade program ratchets down
4 the emissions from the generators, themselves.

5 MR. OLIVER: So, considering both direct and indirect
6 emissions here, would the project's forecasted greenhouse gas
7 emissions cause a significant impact on the environment?

8 MR. BIRDSALL: We find that they would not.

9 MR. OLIVER: And does that conclude your testimony on
10 Air Quality and Greenhouse Gas Emissions?

11 MR. BIRDSALL: Yes.

12 MR. OLIVER: Thank you.

13 COMMISSIONER DOUGLAS: So, I just have one question.
14 As you looked at reasonably foreseeable emergency operation, and
15 we're obviously coming off of a period where we had a very
16 unusual, based on our history, series of outages over the last
17 two weeks, and the Bay Area was pretty heavily hit with a lot of
18 those outages, although they were pretty widespread, too. And
19 there has been quite a lot of consideration of whether that
20 represents a new normal for us at this time of year.

21 So, to what extent have you considered that factor in
22 your analysis?

23 MR. BIRDSALL: Yeah, thank you, Commissioner Douglas.
24 It's a good question. Obviously, it's on everybody's mind.

25 The way that we approached our analysis of emergency

1 operations was to really explore the setting for this project.
2 And staff undertook and gathered a lot of information from SVP,
3 the local utility, and a lot of this information is in the
4 appendix to the Initial Study.

5 But without diving too much into the reliability of
6 SVP as a supplier, for the quantification of emissions and for
7 the air quality impacts of the facility, we wanted to verify for
8 ourselves that outages are indeed infrequent. And so, drawing
9 from the information from SVP, we provide a discussion and an
10 analysis, really, of the historic outages. Now, I understand
11 that's not your question. But the historic outages did show
12 that large data centers that are connected directly to the
13 utility here, in Santa Clara, have experienced, really, very few
14 outages and very few outages of any -- of long duration. And
15 the frequency of potential outages and loss of electric service
16 was low enough for us to carry forward the presumption of this,
17 of emergency operations really being infrequent.

18 Now, going forward, we asked SVP, and because they're
19 in the room I won't say too much, about how PSPS programs could
20 affect the utility. And so far, at least in October this year,
21 when the Bay Area regionwide did experience many outages, SVP
22 did not.

23 COMMISSIONER DOUGLAS: All right, that's helpful. And
24 as you say, SVP is here and so, they do have the -- it would be
25 helpful for them to speak to that.

1 HEARING OFFICER COCHRAN: I have some questions as
2 well. I want to make sure that I understand the quantification
3 for the emergency operations analysis that you did for
4 operations. Is there an hour limit that you used? In other
5 words, so the 2019 PTE policy, which is Exhibit 204, talks about
6 100 hours. While I realize that the district uses that for
7 purposes of permitting, was there any applicability for purposes
8 of determining the potential of this facility to have an
9 environmental effect?

10 MR. BIRDSALL: Yeah, we had our eye on the policy and,
11 essentially, quantified for the net emissions increase of this
12 project, the emissions to be strictly due to the known routine
13 operation of the facility.

14 So, our quantification of net emissions increase or,
15 rather, the emissions increase that triggers a significant
16 impact in CEQA, is based on routine readiness testing. So, we
17 don't quantify and we don't assume any numbers of hours per year
18 of emergency operations in our quantification of operational
19 emissions.

20 Now, that quantification of operational emissions is
21 based on, I believe, the 21 hours per year of testing, per
22 engine, that we anticipated would occur. And the Applicant's
23 come back and saying they don't expect to run the engines quite
24 so much, even for testing.

25 So, we believe that our number for routine operations

1 is conservative, but it doesn't include any assumption on
2 emergency use.

3 HEARING OFFICER COCHRAN: Okay, thank you.

4 Are there any other questions? Mr. Sarvey.

5 MR. SARVEY: Is it appropriate, now, to ask all the
6 questions from -- ok?

7 In the Initial Study, that's Exhibit 200, on page 76,
8 at 291, and I'm referring to Table 5.3-12, in that table you
9 identify maximum impacts at selected sensitive receptors. What
10 was the maximum impact overall from that assessment? Not just
11 at sensitive receptors, but overall?

12 MR. BIRDSALL: We have, in the Initial Study, a table
13 of NO2 impacts for sensitive receptors.

14 MR. SARVEY: Right.

15 MR. BIRDSALL: And this is during emergency
16 operations. And NO2 is a pollutant that is captured within the
17 emissions of nitrogen oxides. So, the emergency generators or,
18 really, any diesel engine will emit a certain amount of nitrogen
19 oxides, and NO2 is a portion of that.

20 To back up, to put some context on your question, this
21 is an analysis that staff provides under Checklist Item C, of
22 the Initial Study Air Quality section, which is specifically
23 focused on whether substantial concentrations would be
24 experienced by sensitive receptors.

25 We have -- in order to undertake this analysis, we set

1 up the model to include the sources that are at the facility,
2 all of the generators. We had to assume that certain generators
3 will be running during an emergency. And Table 5.3-12 picks 33
4 and 41 generators as based on the Applicant's information on how
5 they expect the generators to be used in a loss of power.

6 And then, what we do is we set up the model with the
7 receptors that we want to examine. And in this case, we're
8 looking at sensitive receptors. And one of the reasons why is
9 because the other facet to consider in the model is you have to
10 figure out when the sources would be operating. And this is the
11 part that I think is the speculative part.

12 When you run a model, a dispersion model, for one-hour
13 impacts, which is the kind of impact shown in Table 5.3-12, the
14 way we do it is we take meteorological data from local weather
15 tracking stations at San Jose Airport, and also Oakland Airport
16 for the upper atmosphere. And we take that weather history for
17 five years, and every hour, and so, that's over 43,000 hours of
18 weather data. And then, we have to ask ourselves when will the
19 source be operating? And we don't know because this is an
20 emergency that we're trying to model.

21 The other consideration is that during all of those
22 different hours of the year, the nitrogen oxides emissions are
23 interacting with ozone concentrations and, also, adding to the
24 background concentrations of NO₂. And those concentrations vary
25 within the hours.

1 So, what we have here is a presentation of the
2 significant -- of whether the NO2 impacts will be significant at
3 sensitive receptors during all of those 43,000 plus hours,
4 assuming that emergency use of the engines could occur during
5 any one of those hours.

6 And the table presents results and shows that the
7 California Ambient Air Quality Standard, which is the most
8 limiting standard, would not be exceeded at those sensitive
9 receptors.

10 And to answer your question more specifically, we
11 didn't model other receptors.

12 MR. SARVEY: Yeah, that was my question. And you
13 didn't -- you did all this modeling, but you didn't come up with
14 a number for the maximum NO2 impact from this emergency
15 operation?

16 MR. BIRDSALL: We're not looking for a maximum impact.
17 What we're looking for is a reasonably foreseeable consequence
18 of operating the project. And because the backup generators
19 would not operate, except for routine readiness and testing,
20 which we've modeled separately in the Routine Operations Table,
21 we don't model the backup generators in emergency use mode, 33
22 of them or 41 of them altogether for every hour of 43,000 hours.

23 MR. SARVEY: But when you modeled this, you came up
24 with values for specific sensitive receptors, but you didn't
25 come up with a value for the overall impact of any part of this

1 emergency operation?

2 MR. BIRDSALL: Right. What we're modeling for are the
3 impacts to the sensitive receptors, so we chose those receptors
4 in the modeling domain.

5 MR. SARVEY: So, you would assume that a violation of
6 the NO2 standard would affect normal people, like the workers,
7 or anybody near the project? You're just assuming it could only
8 affect the sensitive receptors, is that your assumption in
9 your modeling?

10 MR. BIRDSALL: It sounds like you're saying that
11 there's a violation of the NO2 standard.

12 MR. SARVEY: That's what I'm asking, yes.

13 MR. BIRDSALL: And we are not analyzing compliance of
14 this project against the Ambient Air Quality standard during its
15 emergency operations, which we believe are and have evidence to
16 show emergency operations are infrequent and unlikely to occur.
17 And so, I don't think providing an analysis of emergency
18 operations occurring continuously for 43,000 hours over five
19 years of meteorological data would provide meaningful
20 information because it assumes that the background conditions
21 are the worst case of all of those hours. That the
22 meteorological conditions in terms of wind speed and wind
23 direction are the worst case of all those hours. And that,
24 also, the engines are operating in an emergency mode for all of
25 those hours.

1 And all of those conservative assumptions taken
2 together, I don't think would provide a meaningful result.

3 MR. SARVEY: And would staff consider a violation of
4 the NO2 standard a significant impact?

5 MR. BIRDSALL: I think if we found that routine
6 operation, day-to-day, predictable operation of any facility
7 that came before us, if that caused an exceedance of an
8 applicable standard, we found find that to be a potentially
9 significant impact warranting mitigation. And that would be for
10 routine operation.

11 I think if you look back at prior cases, when -- and
12 if you consider the fact that these emergency generators are
13 unlikely, truly unlikely to operate many hours during the year
14 and, in fact, would only operate during grid outages, you'll
15 find that the treatment of this case is really consistent with
16 that.

17 MR. SARVEY: So, the bottom line is there's no
18 analysis of the maximum NO2 impact from emergency operation.
19 That's what I'm asking. Basically, you don't have a figure for
20 that. And I guess you've answered that already, so I'll move
21 on.

22 Similarly, you have another table, Table 5.3-12, and
23 that's the same sorts of questions you were modeling the -- oh,
24 no, excuse me, strike that.

25 It's table, Exhibit 200, page 77 to 291, Table 5.3-13.

1 And my questions are pretty similar to the ones I just had. And
2 I'm asking if during this emergency operation that you modeled,
3 did you model a PM 2 point impact maximum for the entire project
4 area, or just the sensitive receptors were just considered? Is
5 that what happened?

6 MR. BIRDSALL: For this discussion, and you're
7 pointing to Table 5.3-13.

8 MR. SARVEY: Yes.

9 MR. BIRDSALL: Also, we just talked about 5.3-12.

10 MR. SARVEY: Uh-hum.

11 MR. BIRDSALL: And then, the next table that comes is
12 5.3-14. Those three tables are respectively about NO2
13 concentrations, and then PM 10, and PM 2.5. And then, the third
14 table is cancer, cancer health risk.

15 MR. SARVEY: Uh-hum.

16 MR. BIRDSALL: These tables are within staff's
17 analysis of emergency operations and, yes, we used the same
18 receptors for each of these three tables. And that means that
19 we identified a low-rise apartment building that's right next to
20 Highway 101, that's pretty close to the facility, and that was
21 generally our point of maximum impact on this receptor grid.

22 MR. SARVEY: So, once again, we don't have a figure
23 for emergency operations of what the maximum PM 2.5 impact would
24 be anywhere in the project area. Would that be a correct
25 statement?

1 MR. BIRDSALL: We did not model a full receptor grid
2 for emergency operations because of these scenarios being
3 difficult to predict.

4 MR. SARVEY: Uh-hum.

5 MR. BIRDSALL: And, also, very infrequent. And
6 because of the conservative nature of the modeling, accounting
7 for all of the worst case wind speeds, wind directions, and
8 background concentrations adding up to probably, an overly-
9 conservative, or maybe even misleading result.

10 MR. SARVEY: So, in Exhibit 203, page 16 to 17, that's
11 your response to my testimony. You provide a figure for the
12 maximum GHG emissions that would be expected from the emergency
13 generators at 100 hours of operation. When you do that, you're
14 only assuming that 33 generators or 44 generators are running at
15 one time, is that the assumption that you're making?

16 MR. BIRDSALL: May I ask a clarification, Mr. Sarvey?
17 This is in Exhibit 203, so staff's reply to --

18 MR. SARVEY: Yes.

19 MR. BIRDSALL: -- to your comments and testimony.

20 MR. SARVEY: Maybe I can restate the question for you
21 and make it simpler.

22 MR. BIRDSALL: Right.

23 MR. SARVEY: You estimated that with 100 hours of
24 emergency operation that the GHG emissions would be 9,935 metric
25 tons a year, or 9,833 metric tons per year?

1 MR. HARRIS: Mr. Sarvey, can you give us a page
2 reference for --

3 MR. SARVEY: Page reference, yeah. It's page 16 to
4 17, Exhibit 203.

5 MR. HARRIS: Yeah, thank you.

6 MR. BIRDSALL: I think that's a -- sorry to interrupt.
7 I think that's a PDF page reference. When I look at a printed
8 copy, it would be page 11.

9 MR. SARVEY: Yeah, I used a PDF reference, I'm sorry.

10 MR. BIRDSALL: And so, these are staff's replies and
11 reply testimony to your initial testimony. And that's right,
12 Mr. Sarvey, you're looking at staff's GHG quantification under
13 the scenario or under the hypothetical of emergency operations
14 occurring for 100 hours per year.

15 And we don't know exactly how the facility would
16 respond in an emergency. It could trigger operation of many
17 engines. But based on the Applicant's information and our
18 questions about this, either 100 hours of emergency hours
19 operations with 33 engines running at 100 percent load, or 100
20 hours of operation with 41 engines, at 80 percent load. And
21 we've provided some quantification there.

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

24 HEARING OFFICER COCHRAN: Applicant, did you have any
25 questions of staff's witnesses?

1 MR. HARRIS: Yeah, just a quick one.

2 There was some discussion, earlier, about Tables 5.12,
3 I think 12, 13, and 14, and Mr. Sarvey suggested a different
4 modeling protocol. He asked you to look at maximum impacts
5 instead of just sensitive receptors. Do you recall those
6 questions?

7 MR. BIRDSALL: Yes, I do.

8 MR. HARRIS: Are you aware of any laws, ordinances,
9 regulations, or standards that would require that type of
10 modeling to occur?

11 MR. BIRDSALL: No, I'm not.

12 MR. HARRIS: Thank you. That's all I have.

13 HEARING OFFICER COCHRAN: Thank you.

14 Okay, Applicant, it's now your turn to present the
15 testimony that you wish to present on direct for Air Quality and
16 Greenhouse Gases.

17 MR. HARRIS: Okay. My witnesses were already sworn so
18 --

19 HEARING OFFICER COCHRAN: Yes, all of the witnesses on
20 this particular topic have been sworn.

21 MR. HARRIS: Okay.

22 HEARING OFFICER COCHRAN: Including Mr. Frohning, on
23 the phone.

24 MR. HARRIS: Yes, thank you. I did have a couple
25 introductory questions, of course, so for both witnesses. So,

1 if he can be unmuted without the Jimi Hendrix effect, that would
2 be cool.

3 HEARING OFFICER COCHRAN: He has been unmuted this
4 whole time.

5 MR. HARRIS: Oh, has he? Good. Thank you.

6 So, I'll ask the questions and ask each witness to
7 respond to just kind of the foundational question.

8 So, Mr. Salamy, can you state your name for the record
9 and spell it, please?

10 MR. SALAMY: Jerry Salamy, J-E-R-R-Y S-A-L-A-M-Y.

11 MR. HARRIS: And, John, please state your name and
12 spell for the court reporter?

13 MR. FROHNING: John Frohning, J-O-H-N F-R-O-H-N-I-N-G.

14 MR. HARRIS: Thank you. You both have filed testimony
15 in this proceeding, is that correct?

16 MR. SALAMY: Yes.

17 MR. FROHNING: Correct.

18 MR. HARRIS: I think John was nodding. Okay.

19 MR. FROHNING: Oh, correct, sorry.

20 MR. HARRIS: And your exhibits have been identified in
21 your pre-filed testimony, is that correct?

22 MR. SALAMY: Yes, they have.

23 MR. FROHNING: Yes.

24 MR. HARRIS: And your qualifications were included,
25 along with your declaration with your testimony, is that

1 correct?

2 MR. SALAMY: Yes.

3 MR. FROHNING: Correct.

4 MR. HARRIS: And does your testimony represent your
5 best professional judgment?

6 MR. SALAMY: It does.

7 MR. FROHNING: Yes.

8 MR. HARRIS: Do you have any changes to your
9 testimony, Mr. Salamy?

10 MR. SALAMY: I do not.

11 MR. HARRIS: And Mr. Frohning, we corrected your
12 resume on the record. Other than that correction to your
13 resume, do you have any changes to your testimony?

14 MR. FROHNING: No additional changes.

15 MR. HARRIS: And do you adopt this as your testimony
16 in the proceeding?

17 MR. SALAMY: Yes, I do.

18 MR. FROHNING: Yes.

19 MR. HARRIS: Okay. We covered a lot of ground with
20 Brewster, so I think we can keep this a little shorter.

21 Mr. Salamy, I want to talk a little bit about your
22 overall conclusions. The staff has concluded that the project
23 as proposed is in compliance with all applicable LORS. Do you
24 agree with that conclusion?

25 MR. SALAMY: I do agree.

1 MR. HARRIS: And, John, do you also agree?

2 MR. FROHNING: Yes.

3 MR. HARRIS: Mr. Frohning, sorry.

4 And do you also agree that the project is -- will not
5 result in any significant environmental impacts?

6 MR. SALAMY: I do agree.

7 MR. FROHNING: I agree.

8 MR. HARRIS: Thank you.

9 Mr. Salamy, I want to talk to you a little bit about
10 the Bay Area District policy that was mentioned. It was covered
11 pretty well. But the policy for calculating potential to emit
12 for generators. Can you summarize your review of that document
13 for the Committee, please?

14 MR. SALAMY: The District generated that policy to
15 limit access for larger facilities installing a number of
16 emergency generators from accessing the Small Facility Bank.

17 One of the means that they intended to do that was to
18 incorporate some emergency hours into the definition of
19 potential to emit for the assessment of project applicability to
20 their regulations.

21 And what means is you develop a potential to emit for
22 a project and use that potential to emit to measure the project
23 against the District's numeric values for applicability of a
24 rule. For instance, their Title 5 rule has a 100-ton-per-year
25 threshold for a project to be subject to Title 5 regulations and

1 permitting.

2 Likewise, this project would have a 250-ton-per-year
3 threshold for the Prevention of Significant Deterioration
4 Program through the District regulations.

5 So, they require sources to -- with emergency
6 generators, more than one, to incorporate 100 hours' worth of
7 emergency operation in addition to the normal, routine, expected
8 readiness testing that all emergency generators likely
9 experience.

10 So, in the regulations they were very clear as to what
11 was included in the PTE for -- potential to emit for mitigating
12 emissions, for instance purchasing of offsets, than they were
13 for other aspects of the project. For instance, they exempted
14 the 100-hour potential to emit from the toxic regulations that
15 they have, rule 2 -- or, Reg. 2, Rule 5.

16 So, they are very specific in that regard.

17 MR. HARRIS: So, in looking at the policy, it makes
18 some reference to whether this is used for determining the
19 amount of offsets or not. Can you find that policy and describe
20 what the policy is on the issue of emission offsets?

21 MR. SALAMY: Bear with me while I get the document up,
22 please.

23 HEARING OFFICER COCHRAN: Pardon me. For the record,
24 when you're referring to the policy, are you referring to
25 Exhibit 204?

1 MR. HARRIS: Yes. I got the number wrong to start
2 with and I'm starting to have dyslexia, I think, but it is 204.
3 So, thank you. Here's the hardcopy.

4 MR. SALAMY: Okay.

5 MR. HARRIS: I'm going to provide him with my
6 hardcopy, since the computer's fighting him.

7 MR. SALAMY: Okay. And the question was regarding the
8 --

9 MR. HARRIS: The issue of emission offsets.
10 Specifically, whether the 100 hours is to be used in determining
11 the amount of offsets obligations in the policy?

12 MR. SALAMY: So, on page 205, of Exhibit --

13 MR. HARRIS: 204.

14 MR. SALAMY: -- 204, it states: With 100 hours of
15 emergency operation included, some of these facilities may have
16 a potential to emit, or PTE above 35 tons per year, rendering
17 them ineligible for the Small Facility Banking Credit. In such
18 cases, the next time the facility applies for a permit, it will
19 not be eligible for the Small Facility Bank.

20 MR. HARRIS: So, translating that into English,
21 essentially, what that means, then, is with the 100-hour
22 assumption the applicants are no longer eligible to use that
23 Small Facility Bank, is that correct?

24 MR. SALAMY: That is correct.

25 MR. HARRIS: So, instead, the applicable ERCs will be

1 obtained in the open market, is that correct?

2 MR. SALAMY: That is correct.

3 MR. HARRIS: Okay, great. Thank you.

4 MR. SALAMY: Well, no, let me correct that statement.
5 Either through the open market or if the facility owns existing
6 credits, they would surrender those.

7 MR. HARRIS: Thank you for the precision there.
8 So, I appreciate that.

9 Let's see, I want to talk about cumulative impacts
10 just a little bit because it was raised in Mr. Sarvey's
11 testimony. Can you describe, briefly, the cumulative impacts
12 analysis that was performed and the conclusions you reached in
13 that, as well?

14 MR. SALAMY: The process the District has developed
15 for analyzing a project for CEQA is to develop thresholds of
16 significance for CEQA. And the presumption is that if a project
17 has emissions that are below those thresholds, the project is
18 presumed to not have a significant impact that is cumulatively
19 considerable.

20 So, in this case, we analyzed what the project
21 emissions were by calculating what the emissions would be for
22 our routine expected emissions, and those were 21 hours' worth
23 of emissions for 99 megawatts worth of generation.

24 And when we did that calculation, we determined that
25 the project's stationary source emissions were below the

1 District's CEQA thresholds for all pollutants.

2 MR. HARRIS: So, your overall conclusion was that it
3 would not be considered -- cumulatively considered, it wouldn't
4 be considered a cumulative impact, is that correct?

5 MR. SALAMY: That is correct.

6 MR. HARRIS: Okay. Briefly, too, I just wanted to
7 turn your attention to a couple of Mr. Sarvey's exhibits. And
8 I'm going to look at 304, which is the Planning Healthy Places
9 exhibit. Do you have that in front of you or can you get a copy
10 of that on the --

11 MR. SALAMY: I have it up.

12 MR. HARRIS: Okay, thank you.

13 Can you go to the cover page, or the second page,
14 actually, there's a -- at the bottom of the page there's a
15 disclaimer on this Planning Healthy Places Report. Could you
16 read that disclaimer, please?

17 HEARING OFFICER COCHRAN: I think the document speaks
18 for itself. If you have a question about it, let's move to
19 that.

20 MR. HARRIS: Do you understand this document to be for
21 policy guidance, only, and not to be an applicable laws,
22 ordinances, regulations, or standards?

23 MR. SALAMY: My understanding is it was guidance for
24 city/state decision makers to develop processes and programs to
25 create health environments for the public.

1 MR. HARRIS: And does that document commit local
2 governments to any particular course of action?

3 MR. SALAMY: I believe these are recommendations or
4 guidance, not a specific requirement to do one particular thing
5 or another.

6 MR. HARRIS: Thank you. Let's turn to 305, which is
7 the 1995 EPA guidance. Again, in terms of the scope of that
8 document, on the second page, can you talk about how that
9 document is supposed to be used by parties? Whether it creates
10 any rights for any individuals?

11 MR. SALAMY: The document is quite clear that it's
12 solely a guidance document. It's not intended to represent a
13 final agency action and cannot be relied on to create a right,
14 any rights enforceable by any party.

15 MR. HARRIS: Okay, thank you.

16 I have no further questions, I think, and I'll make
17 the witness available for cross-examination.

18 HEARING OFFICER COCHRAN: Thank you. And I'm --

19 MR. HARRIS: Witnesses.

20 HEARING OFFICER COCHRAN: And I'm assuming that Mr.
21 Frohning didn't have anything that he wished to -- you didn't
22 have any questions for him?

23 MR. HARRIS: I had no questions for him, specifically,
24 but he's available.

25 HEARING OFFICER COCHRAN: Okay, thank you.

1 Mr. Sarvey.

2 MR. SARVEY: So, when you determined that the
3 project's emissions did not exceed any significance levels, you
4 didn't consider the emergency emissions as being significant,
5 you didn't include that in that determination?

6 MR. SALAMY: The District's policy document was fairly
7 specific regarding only wanting to include emissions that were
8 routine and normally expected. So, no, we did not include any
9 of the 100 hours of emergency operation in the determination of
10 either air quality impacts or a comparison to the CEQA
11 standards.

12 MR. SARVEY: So, on the emergency generator policy, on
13 page 2 it says: Such facilities should presume that each of
14 their generators will experience 100 hours per year of emergency
15 operations, do you think that your analysis reflects that?

16 MR. SALAMY: I think our analysis does address that in
17 the form of each generator that is capable of operating was
18 assumed to be operating.

19 MR. SARVEY: Okay. Has the Applicant submitted an
20 application for this project to the Air District, yet?

21 MR. SALAMY: No, we have not.

22 MR. SARVEY: Okay. Exhibit 5, page 12 of 198, it
23 states: The Applicant's submittal of an Air Permit application
24 to the BAAQMD --

25 MR. SALAMY: Is this the Initial Study?

1 MR. SARVEY: No, no, this is Exhibit 5.

2 MR. HARRIS: Exhibit 5?

3 MR. SARVEY: Exhibit 5, page 12 of 198. I'll give you

4 --

5 MR. HARRIS: I'm not following. Is it 405 or 105 or -

6 -

7 MR. SARVEY: Exhibit 5.

8 HEARING OFFICER COCHRAN: You started at 5. Mr.

9 Sarvey, 5 would be LDC's responses to formal and informal data
10 requests, are you referring to the numbers there?

11 MR. SARVEY: Yes, I am.

12 HEARING OFFICER COCHRAN: Okay. It was the responses
13 to data requests.

14 MR. HARRIS: Give us a moment. Can you give us the TN
15 number on that, Bob?

16 HEARING OFFICER COCHRAN: 227626.

17 MR. HARRIS: And, Mr. Salamy, do you now have a copy?

18 MR. SALAMY: I do have a copy, thank you.

19 What was the question, Mr. Sarvey?

20 MR. SARVEY: It says on page 12 there, it says: That
21 the Applicant's submittal of the Air Permit application to
22 BAAQMD provides the necessary evidence at this phase of the
23 permitting process to ensure that the Laurelwood Data Center,
24 including the standby generators, will comply with applicable
25 BAAQMD regulations.

1 And my question is, if you haven't submitted that --
2 you haven't submitted that application, what evidence do we have
3 that you're going to be complying with these proposed operating
4 restrictions that you've outlined?

5 MR. SALAMY: The fact that we haven't submitted an
6 application at this point doesn't eliminate the compliance
7 aspect of the application. The project is not able to commence
8 construction until they have a building permit. And that
9 building permit also requires an application to have been
10 submitted and a permit to be received by the Air District.

11 MR. SARVEY: I don't want to argue with you, but your
12 statement says at this phase of the permitting process. So,
13 I'll just let that go. Thank you.

14 MR. HARRIS: Sorry, let's clarify. What language are
15 you referring to, again?

16 MR. SARVEY: It's Exhibit 5, page 12 of 198.

17 I have some questions for your other witness.

18 MR. OLIVER: It is marked as page 7.

19 MR. SARVEY: But they're not here.

20 MR. HARRIS: Page 7. Give us a moment, Mr. Sarvey,
21 please.

22 HEARING OFFICER COCHRAN: I'm sorry, could you repeat
23 the question, please?

24 MR. SARVEY: There was no question.

25 HEARING OFFICER COCHRAN: Oh.

1 MR. SARVEY: I was just commenting to him that his
2 statement is not exactly compliant with his original testimony.
3 But that's okay, let's move on.

4 MR. SALAMY: And to answer the question a little bit
5 more fully, the response is the applicant will be submitting an
6 Air Permit application. We assumed that we would be further
7 along at this point in the process, so we indicated mid-April
8 2019. And we assumed that the process would be a little further
9 along by this point so --

10 MR. SARVEY: Well, I believe the statement speaks for
11 itself, so I don't think we need to go any further with it.

12 Now, your other witness, I'd like to ask them a couple
13 questions, if I could. But how do we do that?

14 HEARING OFFICER COCHRAN: Well, Mr. Frohning, you're
15 available on the phone, correct?

16 MR. FROHNING: Correct, I'm available.

17 MR. SARVEY: So, Mr. Frohning, have you done any work
18 on this permit?

19 MR. FROHNING: I have reviewed the modeling analysis
20 that was conducted to support the application.

21 MR. SARVEY: Okay. And according to your resume, you
22 also did some permitting for the Intel campus next door, is that
23 correct?

24 MR. FROHNING: Correct.

25 MR. SARVEY: Okay. And can you describe, give us a

1 description of what you did in that permitting process?

2 MR. HARRIS: Yeah, I'm going to object to the question
3 as outside the scope of his direct testimony.

4 HEARING OFFICER COCHRAN: Sustained.

5 MR. HARRIS: He's provided no testimony.

6 MR. SARVEY: He doesn't have any direct testimony.
7 That's the problem.

8 HEARING OFFICER COCHRAN: Then, I sustained the
9 objection. So, if you have a question that you'd like to ask
10 him --

11 MR. SARVEY: Yeah, I have a question. In your
12 permitting of the Intel campus, did you have anything to do with
13 permitting the permit application 4797?

14 HEARING OFFICER COCHRAN: Can you tell me what the
15 relevance of that is, Mr. Sarvey?

16 MR. SARVEY: Well, yeah. I've been -- the Intel
17 campus is located next door to -- and I might be testifying
18 here, so I want to give him a --

19 HEARING OFFICER COCHRAN: Just, briefly, why is it
20 relevant?

21 MR. SARVEY: -- give him his due there. The Intel
22 campus --

23 HEARING OFFICER COCHRAN: Why is what happened at
24 Intel relevant to what may happen at Laurelwood?

25 MR. SARVEY: The Intel campus is located next door.

1 It has 7,000 employees. It has a cancer risk, computed by
2 BAAQMD, of 205 in a million. And I presented that in my
3 testimony. Staff was a little confused about it, so I have a
4 slide.

5 HEARING OFFICER COCHRAN: I believe that's Public
6 Health and we're in Air Quality right now.

7 MR. SARVEY: Oh, the Intel campus has like 37
8 unpermitted generators. That's where I was going with this. I
9 have a list here but --

10 HEARING OFFICER COCHRAN: Okay. Again, I'm hard-
11 pressed to see the relevance of that.

12 MR. SARVEY: You don't --

13 MR. HARRIS: And I'm going to object as beyond the
14 scope of our testimony. That if there is a discovery issue
15 here, that has long since passed.

16 HEARING OFFICER COCHRAN: Yeah.

17 MR. HARRIS: So, this is a bit of fishing expedition.

18 MR. SARVEY: Okay, we'll back off that, thank you.

19 HEARING OFFICER COCHRAN: Let's move on, please.

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

21 HEARING OFFICER COCHRAN: Okay. So, now, Mr. Sarvey,
22 it is your turn to provide direct evidence that you wish to be
23 considered. This does not mean you need to reread your direct
24 or rebuttal testimony.

25 MR. SARVEY: Yeah.

1 HEARING OFFICER COCHRAN: It's whatever other factual
2 matters that you would like to speak to.

3 MR. SARVEY: Could I have like a five-minute break?

4 HEARING OFFICER COCHRAN: Sure.

5 MR. SARVEY: Thank you.

6 (Off the record at 12:00 p.m.)

7 (On the record at 12:15 p.m.)

8 HEARING OFFICER COCHRAN: Mr. Sarvey was preparing to
9 provide his direct testimony. And I see that there is a
10 document on the screen, entitled: Direct Testimony of Robert
11 Sarvey.

12 But this is not Exhibit 300, is that correct?

13 MR. SARVEY: No, this is additional testimony that I
14 was providing, just explanation type testimony.

15 HEARING OFFICER COCHRAN: Has this information been
16 placed in the docket?

17 MR. SARVEY: Most of it is the document Planning
18 Healthy Places. And what this is, they have a mapping section
19 in Planning Healthy Places, which is not too friendly to docket.
20 But this Planning Healthy Places basically gives us an overview
21 of what BAAQMD has analyzed the project area, and the
22 conditions, the ambient air conditions and such in the project
23 area, and that's what this is about.

24 HEARING OFFICER COCHRAN: So, is this information
25 contained within Exhibit 304?

1 MR. SARVEY: This is separate. This is not in that.
2 These are interactive maps. They're on the Planning Healthy
3 Places website from BAAQMD.

4 HEARING OFFICER COCHRAN: Okay.

5 MR. HARRIS: Should I object now?

6 MR. SARVEY: Go ahead.

7 MR. HARRIS: Okay. As you might expect, I mean, we've
8 already objected to 304 in its entirety, given that it's not
9 referenced anywhere in his pre-file testimony. So, now, we're
10 talking about a website screenshot from a document that isn't
11 referenced anywhere in pre-file testimony. So, on that basis we
12 would object to what I've been handed. And I don't want to ask
13 to see slide number two, either. So, I'd object. Unless it's a
14 portion of another document that's already been pre-filed, I
15 object on that basis as well.

16 MR. OLIVER: Staff objects for the same reasons.

17 HEARING OFFICER COCHRAN: I think we're going to
18 sustain the objection. I'm not sure -- you said it was an
19 interactive map and so, I don't know what inputs you put in to
20 create this. Is there a way for you to talk about this --

21 MR. SARVEY: Sure.

22 HEARING OFFICER COCHRAN: -- without reference to this
23 document?

24 MR. SARVEY: I can use it in public comment later, if
25 you'd like.

1 HEARING OFFICER COCHRAN: That's fine.

2 MR. SARVEY: If that's more --

3 HEARING OFFICER COCHRAN: But for purposes of the --

4 MR. SARVEY: -- acceptable to you. But I think the
5 Committee needs to understand that this purple area, according
6 to BAAQMD -- what the purple area represents
7 --

8 MR. HARRIS: Can he do this during public comment,
9 then?

10 HEARING OFFICER COCHRAN: Yes.

11 MR. SARVEY: You can take it as public comment.

12 HEARING OFFICER COCHRAN: For purposes of our hearing
13 record, I'm trying to draw a nice distinction. We talked about
14 this yesterday, that we are both subject to the regulations and
15 subject to CEQA. For the regulations purposes, for the
16 evidentiary purposes, for your rights as a party purposes.

17 MR. SARVEY: You can certainly take this as public
18 comment. I have no objection to it.

19 HEARING OFFICER COCHRAN: Okay. So, at the time that
20 it comes for public comment, we will traverse this ground.

21 MR. SARVEY: Okay.

22 HEARING OFFICER COCHRAN: Thank you.

23 MR. SARVEY: Well, I think one of the major areas of
24 disagreement that we have is about BAAQMD's generator policy.

25 MR. HARRIS: Ms. Cochran, if I could? I wanted to ask

1 Mr. Sarvey to possibly engage in a stipulation before he starts
2 his testimony. And if not, I'll deal with it on cross. And it
3 has to do with whether he's providing expert testimony or lay
4 testimony.

5 Our position is that it's lay testimony. Mr. Sarvey's
6 provided a resume that describes his experience. But again, if
7 he will stipulate that he's providing lay testimony as a
8 witness. I'm going to give him three hats, by the way, one for
9 witness, and one for cross, and one for public comment later.

10 But my request is that Mr. Sarvey stipulate that his
11 lay testimony is lay testimony.

12 MR. SARVEY: No, this is expert testimony. If you'd
13 like to go through my qualifications in my resume, I'm ready to
14 do that at this time.

15 MR. HARRIS: I can do it on my cross, then. But thank
16 you, I thought I'd offer.

17 MR. SARVEY: No, I'm ready to make a presentation on
18 my qualifications, if you'd like to have that, Mr. Harris.

19 I'm a little offended that this keeps coming up over
20 and over with your firm.

21 MR. HARRIS: We'll let the facts speak for themselves.

22 HEARING OFFICER COCHRAN: Let's go ahead and do
23 whatever voir dire you think is necessary to determine Mr.
24 Sarvey's qualifications.

25 MR. HARRIS: Okay. I just have a couple of questions

1 for Mr. Sarvey.

2 So, Mr. Sarvey, you've provided a resume with your
3 testimony, is that correct?

4 MR. SARVEY: That's correct.

5 MR. HARRIS: And is that resume a complete and
6 accurate summary of your professional experience?

7 MR. SARVEY: It's not complete. It's a --

8 MR. HARRIS: Well, let me rephrase the question.

9 MR. SARVEY: It deals with all the Public Utilities
10 Commission's proceedings I've been in and all the Energy
11 Commission proceedings I've been in. It does not include ten
12 years of experience that I had working on DOE projects which I'm
13 happy to share with you right now, if you'd like.

14 MR. HARRIS: I'm sorry, I don't mean to offend you.
15 Let me rephrase the question. Does that resume include relevant
16 experience for the testimony you're about to provide?

17 MR. SARVEY: Yes, it does.

18 MR. HARRIS: Thank you. Can you describe for us any
19 education that you have relative to your testimony?

20 MR. SARVEY: Well, I would compare my education to
21 your witnesses. I notice your Air Quality witness has a degree
22 in chemistry, I believe it is. And your other Air Quality, and
23 a bachelor's degree that I might add, and your other witness has
24 a bachelor's degree in mathematics.

25 I have a bachelor's degree in accounting, with a minor

1 in mathematics. I have a master's degree in taxation. I passed
2 the CPA exam, all five parts, including the law part, and the
3 auditing part, and all those things. And, yes, I'm very capable
4 of dealing with any type of regulation and that's what most of
5 my testimony deals with is regulations, and how they're applied,
6 and now they're not being applied correctly.

7 MR. HARRIS: Okay, thank you for that response.

8 Do you have any advanced training as it relates to the
9 subject matter of your testimony?

10 MR. SARVEY: Yes, I do. I worked with the Pollution
11 Control District. I was on the Citizen's Advisory Committee.
12 Our job was to interpret regulations and present them to the
13 governing board. Work with the staff to make sure that the
14 regulations -- I was an industry representative, instead of the
15 environmental representative, which you probably would assume
16 that I was. But, no, I was the industry representative.

17 I have -- I've been getting paid over at the Public
18 Utilities Commission for the last 12 years, doing this exact
19 same type of testimony.

20 MR. HARRIS: Is that in your --

21 MR. SARVEY: They don't have questions about my
22 qualifications. I get mentioned in the decisions and they pay
23 me for that. I assume anybody that gets paid for their
24 testimony is probably an expert. Wouldn't you agree?

25 MR. HARRIS: I would not. So, you've been -- you've

1 received Intervenor compensation at the PUC, is that --

2 MR. SARVEY: Yes, I have. And I can document that for
3 you. I have all that right here.

4 MR. HARRIS: That's fine, thank you.

5 And then, the Advisory Commission, were you appointed
6 to that Commission?

7 MR. SARVEY: Yes, I was.

8 MR. HARRIS: And who were you appointed by?

9 MR. SARVEY: Lynn Bedford.

10 MR. HARRIS: And who is Lynn Bedford?

11 MR. SARVEY: Lynn Bedford's the County Supervisor, 5th
12 District.

13 MR. HARRIS: Okay, thank you. I have no further
14 questions. I'll leave it to the Committee to decide how they
15 want to weigh the testimony based on the responses I've
16 elicited. So, that's all I have. Thank you.

17 HEARING OFFICER COCHRAN: Thank you, Mr. Harris. Mr.
18 Sarvey, please continue.

19 MR. SARVEY: Well, if the Committee has any questions
20 about my qualifications, I'd like to settle that right now, if
21 possible.

22 HEARING OFFICER COCHRAN: I don't have any questions.
23 We don't have any questions.

24 MR. SARVEY: Okay, thank you.

25 So, as I was saying, the major disagreement between

1 the parties here is the application of the BAAQMD generator
2 policy. And my position and my testimony is that the BAAQMD's
3 generator policy states that: Such facilities should presume
4 that each of their generators will experience 100 hours per year
5 of emergency operation when calculating the potential to emit.

6 Staff and Applicant's position is that they don't have
7 to include the emissions from each of their generators. They
8 only have to include the ones that they identify; 33 generators
9 if they're operating at 100 percent, and I believe it's 40
10 generators if they're operating -- 44 generators if they're
11 operating at 80 percent. So, that's the major disagreement
12 here. And I think that the policy itself speaks for itself, but
13 I have some backup on that. But I'm going to wait for a second
14 on that.

15 So, in the case of even a small power plant, say 100
16 megawatts, this Commission generally has a hundred conditions of
17 certification, at least. In this case, this Initial Study
18 offers no conditions. And the Initial Study's conclusions rely
19 on the Applicant committing to operate emergency generators for
20 testing and maintenance of 21 hours per year. It relies on the
21 Applicant limiting the number of generators they operate at one
22 time. It relies on stack height, and many other variables. And
23 there's no conditions of certification that require these
24 things.

25 Now, in other proceedings, we would -- I would take

1 McLaren as an example. We walked in here and we had MND from
2 the city and we had pretty much a complete air permit. Here, we
3 have nothing. So, we don't -- these commitments that are being
4 made here are meaningless.

5 Under CEQA, there's no way to enforce them. There's
6 no mitigation and monitoring, there's nothing. You're just
7 saying -- taking their word that they're only going to operate
8 one at a time, that their testing and maintenance is only going
9 to be 21 hours a year. And, quite frankly, that without an Air
10 Permit submitted, we have no idea that's what's going to happen.

11 And I'm going to tell you about the McLaren Data
12 Center. You guys issued them a permit for 47 generators. Their
13 Air Permit is for 32 generators. They still haven't -- they
14 still haven't submitted a permit for 47 generators at the Air
15 District. And they're constructing this project.

16 And that's why I'm saying we can't just take an
17 Applicant's word on what they're going to limit something.
18 There has to be some conditions of certification that make them
19 do what they say they're going to do, and something to monitor
20 it. And that's not present here.

21 So, I don't think that this application, you can rely
22 on what you're being told without some sort of condition to make
23 that happen.

24 MR. HARRIS: I'm going to object to this as legal
25 argument. I haven't heard a fact, yet. I've heard positions,

1 but -- and this is beyond the scope of any pre-filed testimony
2 I've seen, as well.

3 HEARING OFFICER COCHRAN: We'll take your objection
4 under submission, Mr. Harris. Thank you.

5 Mr. Sarvey, please continue.

6 MR. SARVEY: And the other issue that we've been
7 arguing quite a bit about is whether a cumulative analysis is
8 required. And that's where I was going to go with this
9 particular item, so I'll wait until public comment to get to
10 that.

11 And the rest of my testimony is pretty self-
12 explanatory. And I have one more item that I want to -- you
13 know, I asked the Committee to provide the gentleman who drafted
14 this BAAQMD policy, his name's Greg Stone. And we have Mr.
15 Jang, who I definitely respect, but I was hoping that we would
16 have the person that wrote the policy, because the policy's
17 never been implemented.

18 So, I took the liberty, yesterday, of emailing Mr.
19 Stone about this policy. And he's the one that wrote this
20 policy, so I would think he's the expert. Although, I'm not
21 trying to demean Mr. Jang in any way, shape, or form.

22 HEARING OFFICER COCHRAN: Would you please show that
23 to staff and Applicant, first. Thank you.

24 (Whereupon, Mr. Sarvey distributes a document
25 among the parties.)

1 MR. SARVEY: So, I contacted Mr. Stone yesterday and
2 I've --

3 MR. HARRIS: Before he begins --

4 MR. SARVEY: -- been in communication with Mr. Stone.

5 MR. HARRIS: Before he begins.

6 HEARING OFFICER COCHRAN: Put a flag on the play.

7 MR. HARRIS: Can we first have a minute to look at the
8 document?

9 HEARING OFFICER COCHRAN: Yes, please.

10 (Pause)

11 MR. OLIVER: Mr. Sarvey, may I ask, is this a four-
12 page document that you handed out or is it --

13 MR. SARVEY: Yes, it is. Yeah.

14 MR. HARRIS: Okay, we don't have pages 3 and 4. There
15 is no page 3 and 4?

16 MR. SARVEY: Only two pages that are relevant. The
17 other two pages are concerning McLaren Data Center and they're
18 not relevant to this proceeding.

19 MR. HARRIS: Oh, I'll start with the objection. First
20 off, we don't have the entire document here, as noted by staff.
21 This is pages 1 and 2 of 3 and 4, and we don't know what 3 and 4
22 are. I'll accept the characterization that the McLaren
23 proceeding is not relevant to this proceeding and note that the
24 subject line of this email is McLaren Data Center.

25 I will also note that what I do have starts back in

1 June -- or, excuse me, January 22nd of 2019, then July. So, to
2 the extent these issues were relevant, there was an opportunity
3 for discovery to be had, which was not had. And there's been no
4 showing as to why this information could not have been produced
5 without the due diligence of the party proffering the
6 information.

7 So, on that basis, it is the quintessence of unfair
8 surprise. And I'm not even sure it's relevant. So, I'd object
9 to any further discussion of it at this point and object to its
10 admission or identification.

11 MR. OLIVER: Staff also objects and agrees with that
12 characterization. And we'd also note that we actually have
13 somebody here from the Air District who is able to talk about
14 these issues, so there's a suitable alternative to something
15 like this which is, I mean, I believe to be inadmissible as
16 evidence.

17 MR. SARVEY: And as far as the objection to
18 timeliness, as you can see the dates, Thursday, October 31st,
19 after our prehearing conference yesterday. So, as far as
20 timeliness, I think it's fairly timely.

21 I'm authenticating it. I've had this discussion with
22 Mr. Stone over the emails and I believe it should be submitted
23 as an exhibit. I think there's no reason why it shouldn't be.
24 The other two pages are irrelevant. I can supply them right
25 now. I can forward them to you guys' emails, if you want. But

1 all they talk about is the McLaren Data Center and that's not
2 what we're discussing right now.

3 HEARING OFFICER COCHRAN: Mr. Sarvey, would you be
4 willing to limit the admissibility to those entries dated
5 October 31st?

6 MR. SARVEY: Yes.

7 HEARING OFFICER COCHRAN: With that, we're going to
8 overrule the objections. We're going to mark this as Exhibit
9 305 and admit it into evidence.

10 MR. HARRIS: I'd like to ask for an offer of proof as
11 to why this could not have been produced, beyond the fact that
12 it occurred to him to send an email yesterday?

13 MR. SARVEY: Because it occurred yesterday.

14 HEARING OFFICER COCHRAN: I think that that's
15 sufficient for authentication. Please --

16 MR. HARRIS: The question is about a document that was
17 pre-filed and discussed among the parties in July, extensively.
18 So, he's got a new theory of his case, that's fine.

19 But I can assure you, if I bring you an email today
20 from somebody, that you're going to not like that. And absent a
21 showing that this could not have been produced but for the due
22 diligence of the party, it should not be admitted.

23 HEARING OFFICER COCHRAN: The ruling stands.

24 (Intervenor Exhibit No. 305 marked for
25 identification and admitted into evidence.)

1 HEARING OFFICER COCHRAN: Please proceed, Mr. Sarvey.

2 MR. SARVEY: Pardon me?

3 HEARING OFFICER COCHRAN: Please proceed.

4 MR. SARVEY: Oh, thank you. Well, I'm actually done
5 and I'm available for questioning, thank you.

6 HEARING OFFICER COCHRAN: Okay, Mr. Harris.

7 MR. HARRIS: Give us a minute. I think maybe we can
8 shorten our road kill here.

9 We'll save any questions on this subject matter for
10 the Bay Area District Air Quality Management.

11 HEARING OFFICER COCHRAN: Thank you. I speak. Mr.
12 Oliver?

13 MR. OLIVER: No questions.

14 HEARING OFFICER COCHRAN: Thank you. With that, I
15 would like to welcome you, Mr. Jang, to our proceedings today.
16 And before I let the parties question you, I have a few
17 questions to ask you. And thank you for coming all this way to
18 be with us today.

19 You've heard the discussion that has occurred among
20 the panel. Do you have any comments or information that you
21 would like to give to the Committee about what you've heard thus
22 far today, before I ask my specific questions?

23 MR. HARRIS: Hearing Officer, I'm not sure Mr. Jang
24 was sworn.

25 HEARING OFFICER COCHRAN: Yes, he was.

1 MR. HARRIS: Was he? Were you sworn? Okay.

2 HEARING OFFICER COCHRAN: Yes, I swore them all.

3 MR. HARRIS: Swore them all. Okay, even the guys on
4 the phone. I apologize, I wanted to --

5 HEARING OFFICER COCHRAN: That's okay, I appreciate
6 that. I'm just going to call you Mr. Clean Record from now on.

7 MR. HARRIS: It matches the haircut.

8 MR. JANG: Okay, the policy, the 100 hours is really
9 to give guidance on the number of hours to use for the estimate.
10 The other part of potential to emit is if there's physical or
11 operational limitations on the equipment.

12 So, when we actually get the application, if the
13 applicant presents scenarios where not all the engines can
14 operate under an emergency, a certain number, if they have for
15 instance backup backup generators that only come online if
16 another one fails, so that the net number of engines is some
17 number that goes into the potential to emit calculation.

18 So, it's not just 100 hours for everything. I think
19 that gets to maybe one of the issues.

20 HEARING OFFICER COCHRAN: Okay. That was part of my
21 questions. In reviewing the policy which, again, I am referring
22 to Exhibit 204, it talks about the 100 hours. And in some
23 places, it is very specific that it refers to each generator and
24 in other places it refers to the facility. Can you -- are you
25 able to speak to how the policy actually works when an applicant

1 comes in?

2 MR. JANG: Okay. Well, when we receive their -- I
3 guess, let me back up. There's two sides to the policy.
4 There's the Small Facility Bank aspect of it.

5 HEARING OFFICER COCHRAN: Right.

6 MR. JANG: And then, there is the Title 5
7 applicability aspect. So, when they say -- I think when you're
8 looking at 100 hours for each generator, we don't want -- we're
9 looking at offsetting generator emissions. So, we don't want to
10 leave any of those generators out in that part of it.

11 But when you're looking at potential to emit, you have
12 to consider the actual operating scenarios of the facility.

13 HEARING OFFICER COCHRAN: Okay.

14 MR. JANG: So --

15 HEARING OFFICER COCHRAN: Let me ask this question.
16 So, when we look specifically at the generator sets that are
17 proposed here, there are 56 generator sets. One of them is for
18 emergency, life, fire emergency, life safety. So, the other
19 five are in a five to make four configuration. You just talked,
20 briefly, about the net number of engines.

21 So, applying this policy to the Laurelwood campus, if
22 you will, how would the 100 hours work?

23 MR. JANG: Well, I think, I presume that we would look
24 at -- in terms of Small Facility Bank, we want to see if they
25 exceed 35 tons PTE, we would apply 100 hours to all the engines.

1 HEARING OFFICER COCHRAN: Okay.

2 MR. JANG: Because that's where we're permitting all
3 those engines.

4 When it came time to do the PTE for Title 5, we'd
5 consider scenarios where less engines can operate
6 -- there's a limit on the number that can operate at any one
7 time. If they agree to enforceable permit conditions that we
8 can verify, you know, that back up those numbers --

9 HEARING OFFICER COCHRAN: Okay.

10 MR. JANG: -- then that can be accepted as a
11 limitation on PTE.

12 HEARING OFFICER COCHRAN: Okay, thank you.

13 So, I'm going to throw -- did you have anything else
14 you wanted to say before I interrupted you? I'm so sorry.

15 MR. JANG: No.

16 HEARING OFFICER COCHRAN: Did any of the other parties
17 have any questions that they wanted to ask Mr. Jang?

18 MR. SARVEY: I had one.

19 HEARING OFFICER COCHRAN: Mr. Sarvey, please go ahead.

20 MR. SARVEY: I was just a little unclear on your
21 explanation. You said when you determine the amount of
22 emissions, you include all the generators, is that correct?

23 MR. JANG: When we're looking at whether they exceed
24 the 35-ton limit for receiving offsets from the bank.

25 MR. SARVEY: Uh-huh, and that's the only --

1 MR. JANG: Yeah. So, we don't want to undercount
2 those emissions in terms of whether they exceed 35. We want to
3 make sure that we're not providing offsets to facilities that
4 should be providing their own.

5 MR. SARVEY: And has this policy ever been
6 implemented, yet? Have you used it on any application yet?

7 MR. JANG: I don't think so. I don't think it's fully -- I
8 mean, it was signed in June, I believe. And we've had a number
9 of data center applications come in, but they all were prior to
10 this. We've been anticipating, we've heard that numerous ones
11 were coming, so I think that's what -- partly why this policy
12 came out. But I don't know for sure. I don't recall having
13 looked at this specific thing.

14 MR. SARVEY: Are you familiar with the Planning
15 Healthy Places document?

16 MR. JANG: I haven't actually read the whole thing,
17 no. I know about it.

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

19 HEARING OFFICER COCHRAN: I now have a question that I
20 would like to throw out to all of the witnesses who've
21 testified. And that is what is the relationship between Exhibit
22 204 and the policy that it contains, and the CEQA thresholds of
23 significance that we apply in determining whether a project has
24 the potential to create a significant adverse effect?

25 MR. SALAMY: I don't know that it applies at all.

1 CEQA doesn't require you to speculate on what may happen in the
2 future. So, the reason our CEQA analysis does not incorporate
3 the 100 hours per year of emergency operation is because those
4 hours are speculative. There's evidence in the record that
5 shows the historic outages that Silicon Valley Power has
6 experienced since 2009. And I believe it's 7.9 hours in total
7 for the loop in which the project's going to be connected to.

8 So, that would say that it's an unreasonable
9 expectation to assume that the project would experience 100
10 hours of outage, emergency outage per year, for the life of the
11 project.

12 The other thing to keep in mind is the whole
13 discussion regarding potential to emit is focused on whether the
14 project exceeds the 100-ton-per-year Title 5 threshold. The
15 project impacts change not one bit, whether we're a Title 5
16 source or a non-Title 5 source. It just defines the level of
17 permitting and the paperwork that's submitted to the Air
18 District. Our impacts don't change one way or another from a
19 physical stand point or a CEQA stand point.

20 More importantly, we could have done the math to show
21 what all 100 generators, what the emissions would be if we
22 assumed, they all ran 100 hours. The difference would be is we
23 would have to reduce the load at which all 56 generators
24 operated to balance out the 99 megawatts worth of power, because
25 that is a physical limitation that can't be exceeded because a

1 policy paper says do a hundred.

2 MR. BIRDSALL: Okay, from staff's point of view, if
3 you're ready for that.

4 HEARING OFFICER COCHRAN: Please.

5 MR. BIRDSALL: The Air District policy that came in
6 June of 2019 is written, really, for the internal use of the Air
7 District as a policy for implementing their rules regarding new
8 source review and the Title 5 Operating Permit Program. And
9 those are programs that are, you know, fully established in Air
10 District regulations and guide facilities through the permitting
11 processes. So, the rules are implemented by the Air District
12 and they have their own -- their own elaborate process.

13 The definition of the term "potential to emit", as I
14 mentioned earlier, is set forth in those rules. And it does
15 take into account the inherent physical limitations of the
16 source. And in this case, the physical limitation that is
17 partly at issue is that the source would only be able to
18 consume, at most, 99 megawatts of generator output. So, that
19 does limit how the generators would be used.

20 The fact that we're talking a lot about it, about the
21 policy, and about the permitting requirements, also is worth
22 bearing in mind that this is a reminder that even once this
23 project clears through the Energy Commission, if it does, it has
24 to apply for those permits from the Air District. And so, they
25 all come later. And the Air District will be looking at this

1 CEQA record for information regarding, well, would one generator
2 be tested at a time, or information on how many hours per year
3 the Applicant expects the generators to run for testing and
4 maintenance.

5 But, really, it's a reminder that there's another stop
6 on the road for the emissions and before they can be allowed.

7 But to put it into a different context, staff's work
8 is guided by CEQA. And much of our analysis is guided by the
9 Bay Area Air District's CEQA Air Quality Guidelines, which is a
10 document that has been out for -- well, the current version is
11 from 2017. And there are prior iterations that have laid the
12 groundwork for the justification for the CEQA significance
13 thresholds that staff uses in the initial study.

14 If you word search the document, the CEQA Air Quality
15 guidelines, from the Air District, there really isn't any
16 mention of intermittent sources or sources that are used for
17 backup purposes, or sources that are used for emergency
18 purposes, and how they should be treated for CEQA significance
19 considerations.

20 So, we, at the lead agency, are left a little bit to
21 devise what we feel, and to provide substantial evidence for
22 what the reasonably foreseeable impacts might be. And I say
23 those words because they come from the CEQA guidelines. And so,
24 in that regard, we take note of the policy, but it does not
25 really influence our CEQA analysis because our CEQA analysis is

1 more influenced by the CEQA guidelines from the Air District
2 2017.

3 HEARING OFFICER COCHRAN: And when you're referring to
4 the guidelines from 2017, you're referring to Exhibit 206?

5 MR. BIRDSALL: Yes. Thank you for that clarification.

6 HEARING OFFICER COCHRAN: Mr. Clean Record.
7 Anything else before I ask my next question? Mr. Sarvey?

8 MR. SARVEY: I just wanted to comment and follow up on
9 what everybody was saying there. I consider PG&E -- considering
10 PG&E shutoffs, I don't think it's unreasonable to assume that we
11 could experience 100 hours of emergency operation and perhaps
12 more. And I think that all the analyses that are being
13 presented by the Applicant and staff are choosing to ignore
14 that. And I think that's the baseline we're operating under.

15 And when you read, literally read the generator
16 policy, and this is the way it's going to happen in court, it's
17 going to go: Such facilities should presume that each of their
18 generators will experience 100 hours per year. I mean, that's
19 pretty clear. And since the policy's never been implemented,
20 we're still pretty unsure and we've got two different
21 explanations of how it should work. So, I don't really -- I
22 don't really understand how you can take any other approach to
23 this at all, but just read it literally. I mean, that's what
24 the word, that's what it says.

25 HEARING OFFICER COCHRAN: Okay, thank you. Anything

1 else?

2 So, my next question. There was mention of the 21
3 hours per year of testing, which I believe was used for modeling
4 purposes. Am I understanding that correctly?

5 MR. BIRDSALL: We've used that for our emissions
6 quantifications and that's an annual total.

7 HEARING OFFICER COCHRAN: Okay.

8 MR. BIRDSALL: A lot of the modeling is to look at
9 narrower windows of time, one hour or 24 hours. So, it doesn't
10 necessarily play into what happens on those shorter time frames.

11 HEARING OFFICER COCHRAN: Okay.

12 MR. BIRDSALL: But, yes, for the annual emissions
13 total.

14 HEARING OFFICER COCHRAN: So, then, for the annual
15 emissions total at 21 hours per year, is there a mitigation or
16 project feature that defines that 21 hours? And if there is,
17 how is that to be monitored and who will do the monitoring? And
18 what is the enforceable condition that we have that ensures that
19 the impacts that we're looking at are what the project is
20 actually going to do?

21 MR. BIRDSALL: Staff takes that to be a project design
22 feature. And it is the definition of the project that the
23 Applicant has come forward with, after modifications and many
24 months of Energy Commission review.

25 There is no condition of certification. I think, my

1 understanding is that this is -- well, I'll just stop there.

2 But staff doesn't have a condition of certification.

3 HEARING OFFICER COCHRAN: And there is no mitigation
4 measure? This is a part of the project. This is a project
5 feature?

6 MR. BIRDSALL: Yes, right.

7 HEARING OFFICER COCHRAN: And so, can you tell me what
8 exhibits it might be contained in? Is it -- I'll help you out.
9 Is it in Exhibit 6, which is the document, I believe, from June,
10 that's the updated project description? Or, is it contained
11 elsewhere?

12 MR. BIRDSALL: I can give you a TN number. I'm going
13 to just take a moment here to be sure that it's attached to an
14 exhibit.

15 HEARING OFFICER COCHRAN: Okay. And if Applicant
16 knows, I mean, anyone -- I accept help from anyone.

17 MR. HARRIS: I accept help from my partner, Ms.
18 Neumyer. Exhibit 12.

19 HEARING OFFICER COCHRAN: Exhibit 12, the compliance
20 letter.

21 MR. BIRDSALL: Clarification, Mr. Harris, that's the
22 July 29, 2019 compliance with the Air District policy.

23 And staff has this as a reference in the Initial
24 Study as Jacobs 2019-J, as in Jacobs.

25 HEARING OFFICER COCHRAN: Anyone else wish to speak to

1 me about 21 hours?

2 MR. JANG: The District permit will have enforceable
3 limits on planned operation for every engine.

4 HEARING OFFICER COCHRAN: Okay. Thank you, Mr. Jang.

5 MR. SARVEY: I guess I'm not clear on the answer. Is
6 there a mitigation measure or a monitoring?

7 HEARING OFFICER COCHRAN: I believe it's a project
8 feature, so it's not an imposed mitigation measure.

9 MR. SALAMY: Actually --

10 MR. SARVEY: So, it's not a mitigation measure, okay.

11 HEARING OFFICER COCHRAN: I'm sorry, Mr. Salamy.

12 MR. SALAMY: I believe that the Initial Study
13 Mitigated Neg Dec that staff prepared, indicated that at 21
14 hours of operation, the project would exceed the 35-ton-per-year
15 District offset threshold, which would require the District to
16 collect -- I forget the number of offsets, but collect offsets
17 sufficient to mitigate the 21 hours of a year emission, plus an
18 additional 15 percent beyond that value.

19 HEARING OFFICER COCHRAN: So, the 1 to 15 --

20 MR. SALAMY: The 1 to 1.5, yes.

21 HEARING OFFICER COCHRAN: Yeah.

22 Okay. I believe that's all I have on Air
23 Quality/Greenhouse Gases. Last call to the parties.

24 Seeing none, Mr. Jang, thank you once again for your
25 participation today. It was very helpful.

1 With that, I think we're done with Air Quality. Let
2 me hold that thought for just one second.

3 What I was trying to figure out is when to have public
4 comment, whether to have it after each section. But I think
5 what we'll do is we'll have all the public comment at the end,
6 unless there's someone here who needs to leave and can't stick
7 around for public comment at the end.

8 Okay, I'm not seeing anybody clamor to leave. So,
9 looking at the time, it's now five to 1:00. We think it's time
10 for some lunch. So, we will recess for one hour. Please be
11 back by 2:00, and we will begin, then, with Public Health.

12 (Off the record at 12:55 p.m.)

13 (On the record at 2:04 p.m.)

14 HEARING OFFICER COCHRAN: I hope everyone had a chance
15 to warm up, get something to eat and be ready to continue.
16 As a brief housekeeping item before we go into Public Health,
17 there are two things I wanted to talk about. Number one, staff,
18 thank you for filing the mailing list, however when I tried to
19 make it Exhibit 207 the system would not allow me to because
20 that had previously been assigned. So, it is now Exhibit 212,
21 as opposed to 207. And I have noted in the exhibit list that
22 207 is withdrawn, because that was the original TN 230471. So,
23 Exhibit 212 is Exhibit TN 230479. I'm sure that's clear as mud,
24 but it is what it is.

25 (Staff Exhibit No. 207 withdrawn, marked as

1 Exhibit No. 212.)

2 HEARING OFFICER COCHRAN: And then during the recess I
3 gave some more thought to the document that Mr. Sarvey had
4 proposed as Exhibit 305 as well as the comments that he wanted
5 to make. And rather than have you stand at the dais and do it
6 that way, Mr. Sarvey, we're going to have you make your comments
7 from where you are.

8 And in addition, I think we're reconsidering or
9 potentially reconsidering the admissibility of 305 under
10 Regulation Code Section 1212(c)(4) that says that the committee
11 may rely on public comment to support a finding if we provide
12 you notice of our intent to rely upon such comment at the time
13 the comment is presented. And the committee isn't sure at this
14 point, but we're giving you notice now, so that if you have
15 objections or questions as set forth in that provision of our
16 regulations that we would like to hear from you about that as
17 well.

18 So, but first why don't we have Mr. Sarvey give us his
19 comments, perhaps give us some background on Exhibit 305 and --

20 MS. VACCARO: Excuse me?

21 HEARING OFFICER COCHRAN: Sure.

22 MS. VACCARO: This is Kourtney Vaccaro, for the
23 record. I just wanted to make sure I'm understanding, I thought
24 that the committee did accept into evidence --

25 HEARING OFFICER COCHRAN: We did. I'm so sorry,

1 you're right.

2 MS. VACCARO: -- Exhibit Number 305. And so that's
3 already there and we've heard from the various parties their
4 objections to that. I think one of the points of clarification
5 was that it was only going to be limited to the excerpts that
6 are dated 10-31 and anything on the July -- all the other
7 excerpts are not applicable.

8 HEARING OFFICER COCHRAN: Correct. And actually, when
9 I was thinking about Exhibit 305, I was actually thinking about
10 the map, which we didn't even identify, or number or anything.
11 So, thank you for that, because I sometimes get ahead of myself.

12 MR. OLIVER: Can you please specify for the parties
13 which Exhibit 305 is, because (indiscernible) I'm seeing it as
14 the EPA guidance.

15 HEARING OFFICER COCHRAN: 305 is the email from this
16 morning that Mr. Sarvey passed out. I'm sorry, 306, I'm sorry.

17 MR. HARRIS: Yes.

18 HEARING OFFICER COCHRAN: Well, that's because I wrote
19 305 on mine.

20 MR. HARRIS: So, this discussion was about 306, the
21 email, correct?

22 HEARING OFFICER COCHRAN: Right. Okay. Let's --
23 okay, take two.

24 MR. HARRIS: Thank you.

25 HEARING OFFICER COCHRAN: On Exhibit 306, the only

1 things that the committee entered were those parts that are
2 dated October 31, 2019. As it relates to the document that Mr.
3 Sarvey had tried to introduce that was the map from -- that was
4 described as being part of Exhibit 304, which is the Planning
5 Healthy Places policy. You may recall this morning that he had
6 a map and so what the committee I think wants to hear about is a
7 little bit more about that, about the map. And that the
8 committee may be taking notice of it pursuant to 1212(c)(4).
9 So, Mr. Sarvey, if you'd like to make what we had talked about
10 as your comments, now would be the time.

11 MR. SARVEY: Okay. Well, according to the initial
12 study and BAAQMD's 2017 CEQA document, a project would have a
13 considerable cumulative impact if the aggregate total of all
14 past, present, and foreseeable future sources from a 1,000 foot
15 distance from the fence line of the source plus the contribution
16 from the project exceeds the following: An excess lifetime
17 cancer risk of more than 100 in one million, a non-cancer
18 chronic HI greater than 10 or an annual average PM 2.5
19 concentration of greater than 0.8 micrograms per cubic meter.
20 So that map that's displayed up here, and that I've handed out,
21 is downloaded from the website, the Healthy Places website. And
22 what that map depicts is -- the purple area in the map depicts
23 -- are based on a screening level cumulative analysis of all
24 mobile and stationery sources of air pollution in the region.

25 To rate the purple areas the Air District identified

1 areas that exceed 100 in a million for cancer risk and/or exceed
2 fine PM concentrations of 0.8 micrograms per cubic meter and/or
3 are within 500 feet of a freeway and 175 feet of a major
4 roadway. So basically, that entire purple area, which
5 Laurelwood is located in right near the intersection -- you can
6 see it on the map that I handed out with the little blue dot on
7 it -- that's where Laurelwood is at.

8 And essentially through the Air District's analysis, they
9 determined that that entire area has a --

10 UNIDENTIFIED SPEAKER: I'm sorry, please direct your
11 mic a little bit.

12 MR. SARVEY: Oh. I'm sorry.

13 The entire area has an excess lifetime cancer risk of more than
14 100 in a million, a non-cancer HI greater than 10 or an annual
15 average PM .25 [sic] concentration of 0.8 micrograms per cubic
16 meter.

17 So basically, the entire area is impacted and is recommending
18 best practices for this area, because it already meets the
19 definition of a cumulative impacted area according to the Bay
20 Area Air Quality Management Healthy Places and their CARE
21 program. So that's what I was trying to relay.

22 HEARING OFFICER COCHRAN: Mr. Sarvey, let me ask you a
23 question. How were you able to -- what was the process by which
24 this map was prepared?

25 MR. SARVEY: The process was I went to the Healthy

1 Places website and they have a link there for the maps. And
2 they also have a link for the document that I submitted. And
3 you just click the link. And then once you click the link you
4 enter the --

5 HEARING OFFICER COCHRAN: You need to stay mic'd so
6 that we can get this for the record, please.

7 MR. SARVEY: You enter the address in the corner up
8 there and it takes you to that area and then it displays what
9 the Air District has analyzed and what they believe is the
10 cumulative risk in that area. And my conclusion is, is that the
11 area already is cumulatively impacted and we're adding more.
12 So, under CEQA we need to do a cumulative risk assessment and a
13 cumulative impact assessment.

14 HEARING OFFICER COCHRAN: Okay. Thank you.
15 Anything from either staff or Applicant?

16 MR. HARRIS: I'm not certain about the
17 characterization there. There's some description in Exhibit 304
18 about how to create a purple map. It talks about areas that
19 exceed 100 and a million or PM of greater than 3 micrograms.
20 And it says "and/or" are within a 500-foot area of a freeway,
21 which this clearly is within a 500-foot area of the freeway, 175
22 feet of a major roadway which this is, or 100 feet from a ferry
23 terminal.

24 So, I'm not certain based on that description as to
25 whether the purple is a result of some issue related to air

1 quality or if it's the proximity to the freeway that gives rise
2 to the purple. I'm reading from Exhibit 304 on page 42, which I
3 just word searched. So, I'm an expert on this section, so.

4 MR. OLIVER: Hi. I think from staff's perspective,
5 our experts haven't had a chance really to look into this or to
6 verify or to use this software in any way. So, they don't
7 really have "no comment" on this as far as I can tell as well as
8 I just wanted to clarify in this discussion just as to whether
9 this should be admitted as Exhibit 306 or is there some other --
10 is that the purpose of this? I'm not sure.

11 HEARING OFFICER COCHRAN: Actually, this would be
12 Exhibit 307, because 306 is the email exchange. I finally have
13 that straight.

14 MR. OLIVER: Right, thank you.

15 MR. SARVEY: Thank you.

16 HEARING OFFICER COCHRAN: It's more in the nature of
17 whether we're going to accept the comment and documents.
18 I think at a minimum, Mr. Sarvey, that this should be docketed,
19 so that it may be part of the administrative record. And there
20 will be a determination as to whether it's part of the hearing
21 record through the course of the committee's decision-making
22 process.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER COCHRAN: But in order to discharge
25 our obligations under 1212 we're letting you know now, so that

1 we can hear what the parties have to say about the admissibility
2 of this document.

3 Okay. That taken care of, that portion of the housekeeping, did
4 you have any other comments that you wanted to make, Mr. Sarvey?

5 MR. SARVEY: Not on that item. No, thank you.

6 HEARING OFFICER COCHRAN: Okay. So, I believe we had
7 finished with Air Quality. We are now moving on to Public
8 Health. So, who are the lucky panelists for Public Health?

9 MR. OLIVER: For staff, the panel is the same,
10 actually. We include Public Health as part of our Air Quality
11 section under CEQA and so really their Direct covered this topic
12 already. However, they're available for questions within the
13 scope of this topic.

14 HEARING OFFICER COCHRAN: Okay. Applicant?

15 MR. OLIVER: The same two witnesses and we have no
16 Direct that we'd want to do, so we want to move forward on the
17 papers at this point.

18 HEARING OFFICER COCHRAN: Okay. So, the panelists
19 were previously sworn as part of their testimony for Air
20 Quality. So, and both, if I understood correctly both staff and
21 Applicant have waived providing any direct testimony at this
22 point. So, then I believe it's Mr. Sarvey's turn to ask
23 questions of the panelists. Or strike that, I'm sorry, I'm
24 ahead of myself again. Mr. Sarvey, it's now your opportunity to
25 make your testimony, your direct testimony, regarding Public

1 Health.

2 MR. HARRIS: Ms. Cochran, just before you go. I
3 wouldn't agree with the characterization as what we just did is
4 waiving. I would say that the testimony previously given also
5 covers the subject area of Public Health.

6 HEARING OFFICER COCHRAN: Okay. Thank you for the
7 clarification. I didn't mean to make it sound as though you had
8 no testimony.

9 MR. SARVEY: The only thing I have to add is merely a
10 clarification. Staff was unsure of where I had retrieved a map
11 which indicated that the facility next door had a cancer risk of
12 205 in a million. It's displayed up there and I have copies
13 here. That once again came off the BAAQMD website, Planning
14 Healthy Places. And I included the chart, but I never put the
15 map into evidence, so it's just more of an explanatory thing and
16 that's all I really have to add.

17 HEARING OFFICER COCHRAN: Okay.

18 MR. SARVEY: And I have copies of that if anybody
19 wants them.

20 HEARING OFFICER COCHRAN: So, are you proposing this
21 as an exhibit?

22 MR. SARVEY: Yeah. I would propose it as an exhibit.
23 It just elaborates and explains to staff where I retrieved that
24 information. That's all it is.

25 HEARING OFFICER COCHRAN: So that would be --

1 MR. SARVEY: 308?

2 HEARING OFFICER COCHRAN: Yeah. Then, again we would
3 ask, Mr. Sarvey, that you docket that separately, not
4 necessarily for purposes of being identified or admitted as an
5 exhibit into the hearing record, but simply for purposes of a
6 document in support of your comments.

7 MR. SARVEY: Thank you.

8 HEARING OFFICER COCHRAN: Now that the Direct portion
9 is done, Mr. Sarvey or any of the other parties, do you have any
10 questions that you have of the other panelists on the topic of
11 Public Health?

12 MR. HARRIS: No.

13 MR. SARVEY: I only have one question, staff. In your
14 analysis of the construction impacts that you came up with a
15 figure of 74.37 and then you divided that by 17 over 360 to
16 arrive at an estimate for the constructions impact. And are you
17 familiar with that?

18 HEARING OFFICER COCHRAN: Mr. Sarvey, can you provide
19 a citation to the document you're speaking of so that we can
20 follow along?

21 MR. SARVEY: It's the Initial Study 200 -- let me find
22 the page for you. And I lost it. Let's just strike it and move
23 on. Thank you.

24 HEARING OFFICER COCHRAN: Okay. Does that complete
25 everything for Public Health?

1 MR. SARVEY: Yes.

2 HEARING OFFICER COCHRAN: Anything further?

3 MR. OLIVER: Nothing further from staff.

4 HEARING OFFICER COCHRAN: Okay. I would thank the
5 panel again for your cooperation on Public Health. I have too
6 many papers and not enough brains.

7 Let's turn then now to Energy Resources. And one question I
8 would have is whether Utility and Service Systems is part and
9 parcel of Energy Resources.

10 MR. OLIVER: Staff's position is that is the case Mr.
11 Sarvey's prehearing conference statement basically characterizes
12 that. And we have direct prepared on Energy Resources. We
13 weren't planning to discuss Utilities and Service Systems for
14 sort of the reasons -- well first of all, we didn't mention it
15 yesterday. But also, the reasons set forth in staff's
16 prehearing conference statement. However, Mr. Kolnowski from
17 Silicon Valley Power is here and so I think that one of the
18 upcoming panels should provide him the opportunity to discuss
19 any infrastructural or energy-related issues in their territory.

20 HEARING OFFICER COCHRAN: Okay. Well, let's bring him
21 up, please. So, are the panelists assembled for all parties?
22 Okay. Mr. Sarvey's already been sworn. I'm going to start with
23 Mr. Layton. Mr. Layton, of you could say your name and spell it
24 for the record and then we'll continue on down the line.

25 MR. LAYTON: Good afternoon. My name is Matthew

1 Layton, M-A-T-T-H-E-W L-A-Y-T-O-N.

2 MR. KHOSHMAHRAB: Good afternoon. Shahab

3 Khoshmashrab, S-H-A-H-A-B. Last name K-H-O-S-H-M-A-S-H-R-A-B.

4 Is that too fast or you got it? Okay.

5 MR. KOLNOWSKI: Kevin Kolnowski, K-O-L-N-O-W-S-K-I.

6 MR. MUELL: And Matt Muell, M-A-T-T M-U-E-L-L

7 HEARING OFFICER COCHRAN: Thank you. For those of you
8 who have not previously been sworn, I'll swear you in now.

9 (Energy Resources panel witnesses are sworn.)

10 HEARING OFFICER COCHRAN: Thank you. The panel has --
11 the witnesses have been sworn.

12 Mr. Oliver, we'll start with you.

13 MR. OLIVER: Yes. So, staff's Direct Examination on
14 Energy and Energy Resources, Mr. Khoshmashrab, could you please
15 state your name and title for the record?

16 MR. KHOSHMAHRAB: Shahab Khoshmashrab, Senior
17 Mechanical Engineer.

18 MR. OLIVER: And were you involved in the preparation
19 of the Energy and Energy Resources testimony and staff's Initial
20 Study and Mitigated Negative Declaration, which is marked as
21 Exhibit 200 as well as the Energy Resources related testimony in
22 Exhibit 203?

23 MR. KHOSHMAHRAB: Yes.

24 MR. OLIVER: And are your qualifications included
25 among staff's opening testimony marked as Exhibit 202?

1 MR. KHOSHMAHRAB: Yes.

2 MR. OLIVER: And do you have any proposed changes to
3 your testimony?

4 MR. KHOSHMAHRAB: No.

5 MR. OLIVER: And does the testimony in the IS/MND
6 represent your best professional judgment?

7 MR. KHOSHMAHRAB: Yes, it does.

8 MR. OLIVER: And Mr. Layton, were you involved in the
9 preparation of the Energy and Energy Resources testimony in
10 staff's Initial Study and Mitigated Negative Declaration, which
11 is marked as Exhibit 200 as well as the Energy Resources
12 testimony in Exhibit 203?

13 MR. LAYTON: Yes, I was.

14 MR. OLIVER: And are your qualifications included
15 among staff's opening testimony marked as Exhibit 202?

16 MR. LAYTON: Yes.

17 MR. OLIVER: Do you have any proposed changes to your
18 testimony?

19 MR. LAYTON: I do not.

20 MR. OLIVER: And does your testimony in IS/MND
21 represent your best professional judgment?

22 MR. LAYTON: Yes, it does.

23 MR. OLIVER: So, the first question here is, what is
24 Power Usage Effectiveness, PUE, and what is its purpose?

25 MR. KHOSHMAHRAB: It is the ratio of total facility

1 load over the information technology, or IT load, of the
2 facility. Its purpose essentially is to compare data centers of
3 similar size and climate.

4 MR. OLIVER: And what is the project's proposed or
5 expected PUE?

6 MR. KHOSHMAHRAB: The design PUE, meaning the worst-
7 case PUE, is 1.25 or lower according to the application.

8 MR. OLIVER: And would the project be consistent with
9 the Santa Clara Climate Action Plan?

10 MR. KHOSHMAHRAB: Let me back up, I'm sorry.

11 MR. OLIVER: Oh, sorry.

12 MR. KHOSHMAHRAB: So basically, just to elaborate on
13 that, the worst case means under a 50-year high-side
14 temperature, which is a very conservative number. And then an
15 annual average operating PUE is expected to be lower just
16 because of that one factor.

17 MR. OLIVER: Would the project be consistent with the
18 Santa Clara Climate Action Plan?

19 MR. KHOSHMAHRAB: Yes. Measure 2.3 of climate action
20 planning encourages implementation of cost-effective energy
21 efficient practices to achieve a PUE of 1.2 or lower for only
22 those data centers with an average Rack Power Rating or RPR of
23 15 kilowatts. LDC would have an RPR of 8 to 10 kilowatts.

24 A rack is a type of a cabinet that houses servers and
25 their cables. RPR is the indicator of the rack's power density

1 basically, so that the lower the Rack Power Rating is the more
2 information it can process per unit of electricity consumed
3 resulting in more efficient use of energy versus having a higher
4 RPR.

5 And then the average RPR is actually the Rack Power
6 Rating average over a given period of time.

7 MR. OLIVER: So, would the project's projected 1.25
8 PUE lead to any wasteful or inefficient use of energy in light
9 of efficiencies achieved at other data centers?

10 MR. KHOSHMAHRAB: No. Again, the LDC's operating PUE
11 will be expected to be less than 1.25. The PUE's purpose is
12 essentially to compare data centers of similar size and climate.

13 So, a reference to an Intel data center of 5 megawatt
14 building that has been made, is not comparable to a project like
15 LDC that has a capacity of up to 99 megawatts. LDC's PUE is
16 comparable to data centers of similar size.

17 The PUE depends on customer demand, which is different
18 for a multi-tenant data center like LDC as compared to a single
19 user data center like Google, or Intel. For example, the size
20 of the racks may be different depending on how they can best
21 serve their customers. So, it's not an apple-to-apple
22 comparison. This is another reason to conclude that the Intel
23 and Google data centers are not comparable to LDC.

24 MR. OLIVER: Would the use of diesel fuel for
25 readiness testing and maintenance in the emergency generators be

1 considered a wasteful or inefficient use of energy resources?

2 MR. KHOSHMAHRAB: No. And I'll explain that. The
3 most important data center criterion is really reliability.
4 Equipment relevancy and redundancy are crucial in the viability
5 of a data center, reliability and security requirements of the
6 data center such as 911 services, offices of emergency
7 management, utilities, infrastructure, are most important. And
8 these services are increasingly being incorporated in data
9 centers and using data centers for their operation.
10 Therefore, they cannot be compromised and should not be
11 compromised by reducing fuel usage for readiness testing or
12 maintenance.

13 The number of hours of testing is one of the main
14 factors considered in calculating a data center's overall
15 availability factor, as the commitment to provide
16 uninterruptable service is most crucial, and as more and more
17 critical services are being incorporated into data centers.

18 MR. OLIVER: So overall, in light of the project's
19 forecasted fuel consumption and it's PUE as well as other
20 factors that you included in your testimony, is the LDC likely
21 to result in any significant impact to the environment due to
22 use of energy resources?

23 MR. KHOSHMAHRAB: No, and two points to add to that.
24 Basically, to summarize, the LDC would be a modern data center
25 that is following the industry's trend of utilizing efficient,

1 but practical and proven technologies as best meeting customer
2 needs.

3 And also, in the design of the data center or the data
4 center, the LDC must consider -- just as with other potentially
5 similar data centers LDC must consider its intended obligation
6 to provide uninterruptable service to meet its reliability and
7 security requirements.

8 MR. OLIVER: Does that conclude your testimony?

9 MR. KHOSHMAHRAB: Yes, it does.

10 HEARING OFFICER COCHRAN: Thank you.

11 Do either of the other parties wish to ask questions?

12 MR. HARRIS: We have no questions for this witness.

13 Thank you.

14 HEARING OFFICER COCHRAN: Thank you.

15 MR. SARVEY: I have no questions. I do with some of
16 the Applicant, but none from staff. Thank you.

17 HEARING OFFICER COCHRAN: Okay. Thank you.

18 Then Applicant, you are up, Mr. Muell and Mr. Salamy.

19 MR. HARRIS: Mr. Salamy's previously provided his
20 qualifications, so Mr. Muell, can you state your name for the
21 record?

22 MR. MUELL: Matt Muell.

23 MR. HARRIS: And were your qualifications provided
24 along with the declaration as part of your testimony?

25 MR. MUELL: Yes.

1 MR. HARRIS: And was that testimony prepared by you or
2 at your direction?

3 MR. MUELL: Yes.

4 MR. HARRIS: And do you have any changes to that
5 testimony?

6 MR. MUELL: No.

7 MR. HARRIS: And does it represent your best
8 professional judgment?

9 MR. MUELL: Yes.

10 MR. HARRIS: And do you adopt it as your testimony for
11 this proceeding?

12 MR. MUELL: Yes.

13 MR. HARRIS: Okay. I won't go through the same thing
14 with Mr. Salamy.

15 MS. NEUMYER: Yeah, we don't have many other direct
16 questions, because we believe most of the relevant questions
17 were asked by CEC's -- or provided by CEC staff already.
18 But Mr. Muell, in your professional judgment, do you agree with
19 staff's testimony that the PUE of the LDC is comparable to other
20 data centers of similar size and features?

21 MR. MUELL: Yes, I do.

22 MS. NEUMYER: That concludes our direct. Our
23 witnesses are available for questions.

24 HEARING OFFICER COCHRAN: Thank you so much.
25 Mr. Sarvey?

1 MR. SARVEY: Yeah, a couple of quick questions. How
2 much IT do you expect to have loaded into this project?

3 MR. MUELL: A maximum of 80 megawatts.

4 MR. SARVEY: 80 megawatts. And previously staff's
5 witness said that your maximum PUE was 125; is that correct?
6 1.25, I'm sorry. Is that your maximum?

7 MR. MUELL: Correct.

8 MR. SARVEY: That's correct, nothing higher?

9 MR. MUELL: Correct.

10 MR. SARVEY: Do you have an average?

11 MR. MUELL: We don't have the average calculated.

12 MR. SARVEY: Okay. Thank you. That's all.

13 HEARING OFFICER COCHRAN: Okay. Is there -- are we
14 also covering Utility Systems at this time? Are these the
15 people for Utility Systems as well?

16 MR. OLIVER: These witnesses are available to answer
17 questions about that section of the IS/MND as well.

18 HEARING OFFICER COCHRAN: Were you intending to offer
19 any direct testimony on that, or are you submitting it on the
20 documents already -- the testimony and documents already
21 provided?

22 MR. OLIVER: We are submitting on the testimony
23 already provided in the IS/MND and any errata or replies related
24 to this topic.

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

1 Oliver.

2 Turning to Applicant, same questions.

3 MR. HARRIS: I'm not waiving. And we --

4 HEARING OFFICER COCHRAN: (Overlapping) No, I did not
5 use the waiving (indecipherable).

6 MR. HARRIS: Lisa's very sharp over there. No, we
7 have no questions from (indiscernible) our papers. Thank you.

8 HEARING OFFICER COCHRAN: Thank you.

9 Mr. Sarvey, do you have questions?

10 MR. SARVEY: No, I don't have any questions except are
11 we tying these two issues together?

12 HEARING OFFICER COCHRAN: Yes. We're on to Utility
13 Systems now.

14 MR. SARVEY: Because I did have some testimony on
15 that.

16 HEARING OFFICER COCHRAN: Oh, I'm so sorry. I get
17 ahead of myself all the time.

18 MR. SARVEY: That's okay.

19 HEARING OFFICER COCHRAN: Mr. Sarvey, could we hear
20 your testimony on Utility Systems, please?

21 MR. SARVEY: Yes. First of all, I feel that the
22 project is a wasteful use of energy, because of the sizing of
23 the backup generation capacity. And I can't see how the project
24 needs 168 megawatts to back up 99 megawatts of power when other
25 data centers that we've been analyzing are using like 121.5

1 megawatts for Sequoia and 129.25 megawatts for McLaren.
2 And because we have so many generators, we have to test each one
3 of them. And each one of those generators is going to use a
4 certain amount of fuel. It's also going to emit a certain
5 amount of GHG emissions. And the more generators we have to
6 back up this 99 megawatts, the more GHG emissions we're going to
7 have, the more diesel fuel we're going to use. In my opinion
8 it's a wasteful use of energy. It's not necessary.

9 They haven't said that they were going to operate it
10 for 50 hours, but I just went on 50 hours and there's over
11 100,000 gallons of diesel fuel that would be wasted by using 56
12 generators at 3 megawatts over the other generators. So, my
13 opinion is it's a wasteful use of energy.

14 I also believe that the PUE could be a lot lower. And
15 I've provided information on that in my testimony. And that's
16 all I have.

17 HEARING OFFICER COCHRAN: Okay, thank you.

18 And again, I want to confirm that you don't have any
19 questions of the other witnesses.

20 MR. SARVEY: No questions.

21 HEARING OFFICER COCHRAN: Okay. And do any of the
22 parties have any questions of Mr. Sarvey based on what he just
23 said or on the basis of his direct or rebuttal that was
24 previously admitted?

25 MR. OLIVER: Staff doesn't have any questions.

1 MR. HARRIS: No, none. No questions.

2 HEARING OFFICER COCHRAN: Okay. Thank you.

3 Just one moment please.

4 (Pause.)

5 HEARING OFFICER COCHRAN: We want to thank -- I'm
6 sorry, I forgot Kozniofski. (phonetic) Did I get it right, was
7 I close?

8 MR. KOLNOWSKI: Kolnowski.

9 HEARING OFFICER COCHRAN: Kolnowski. Thank you. The
10 committee has a couple of questions and again we thank you for
11 coming from Santa Clara today to be able to speak to us.
12 There was testimony earlier today. I know you were in the room
13 where we were talking about the public safety power shut downs.
14 And the question we have for you is whether -- first of all that
15 has changed the baseline operation for SVP. Does that change
16 your projections for the future moving forward in light of the
17 recent power shutdowns that PG&E did?

18 And also, whether you have any other information you
19 could provide to us about the reliability that may be different
20 or may be increased in light of what has happened with these
21 PSPS events?

22 MR. KOLNOWSKI: So far Santa Clara has -- the city of
23 Santa Clara has not been affected by a PSPS event. And we are
24 not in a Tier 1, or 2 or Tier 3 fire zone, so we are an urban
25 environment. And we have a wildfire mitigation plan, but the

1 city of Santa Clara is not included in that wildfire mitigation
2 plan, because we're not in the wildfire area. Our plan is for
3 our remote assets that are outside of the area.

4 HEARING OFFICER COCHRAN: Okay.

5 MR. KOLNOWSKI: And could we be affected by an event?
6 We could be. That event would be dictated by the California
7 Independent System Operator, but to date we have not been.

8 HEARING OFFICER COCHRAN: Okay.

9 MR. KOLNOWSKI: PG&E would not -- they don't control
10 our distribution system. We do.

11 HEARING OFFICER COCHRAN: Okay. Thank you very much.
12 I know that that was a long time for a brief amount of prime
13 time here with the committee, but we appreciate your
14 participation.

15 Before we leave the topic of Utilities and Utility
16 Systems and Energy Resources is there anything further that the
17 parties wish the committee to know, understand, etcetera?

18 Okay, with that, we will thank and excuse the witnesses. I have
19 other questions? Oh, oh, oh wait, I'm sorry. I do have one
20 question. Sorry.

21 (Off mic colloquy.)

22 HEARING OFFICER COCHRAN: No. We're good. Thanks.

23 (Laughter.)

24 HEARING OFFICER COCHRAN: So, there are now some more
25 general topics of discussion to have that the committee has

1 questions on following the receipt of documents. And the first
2 document I want to talk about is the newly created Exhibit 212.
3 And we might need Ms. Worrall back up.

4 You were previously sworn, so for purposes of the
5 record. So, in reviewing the page of Exhibit 212, that is
6 entitled "All contiguous owners and occupants as well as all
7 owners within 1,000 feet of the project site, 500 feet of
8 project linears (sent NOR and NOI)," do you have that page in
9 front of you? It's the first page of the document?

10 MS. WORRALL: Yes, I do.

11 HEARING OFFICER COCHRAN: What I'm struggling with is
12 I can't tell in looking at this list the addresses of the
13 properties. I can't tell which of these folks are an owner,
14 which are an owner-occupant and which is merely an occupant. Is
15 there a document or documents that will show that for each of
16 the properties that we're saying are, I believe the language in
17 CEQA is -- instead of relying on my Swiss cheese memory I will
18 get the actual language of the statute. And that is that it's
19 to be provided to owners and occupants of property contiguous to
20 the project; contiguous to the project.

21 MS. WORRALL: Yes, actually -- oh, I'm sorry.

22 HEARING OFFICER COCHRAN: So how in looking at Exhibit
23 212, can we determine which property contiguous to the project,
24 these different addresses apply to?

25 MS. WORRALL: Unless you would type in the address you

1 could see -- once you type in an address you could see its
2 proximity, but based on reading it right now without accessing
3 the address -- oh, wait. We did verify they were contiguous.
4 That we included contiguous properties. That was Synapse Design
5 Automation at 2200 Laurelwood Drive and Intel Corporation at
6 2200 Mission College Boulevard. They were the two properties,
7 owners and occupants, for contiguous to the project site.

8 HEARING OFFICER COCHRAN: Is that a document that is
9 in the record that you're referring to?

10 MS. WORRALL: The figure, no it isn't. But I'm sure
11 we could move it into the record, if it pleases you.

12 HEARING OFFICER COCHRAN: Well, again we're looking.
13 As the committee put forth the questions yesterday it was to
14 establish that this requirement had been met, that it was sent
15 to owners and occupants. And I have not seen -- this document
16 doesn't show me for each property contiguous who the owner is,
17 who the occupant is and how noticing was done for that.
18 Mr. Oliver, it looks like you'd like to respond?

19 MR. OLIVER: I believe staff's testimony was that they
20 verified which ones, and she provided Synapse and Intel as the
21 two contiguous property owners here. We don't have a separate
22 document that states this. At this time if staff's testimony is
23 insufficient for this, we can prepare a document that highlights
24 those. But I think that that's the answer that was given.

25 HEARING OFFICER COCHRAN: So --

1 MR. OLIVER: And also, I'm sorry, if I may also state
2 that the list was initially generated by the Applicant. And so,
3 staff's work here was to look at records, parcel assessors, and
4 other records, to verify the owners or occupants of the
5 contiguous properties.

6 HEARING OFFICER COCHRAN: Okay. I'm not sure how an
7 assessor's parcel number is going to give you an occupant. That
8 will give you the owner, but not the occupant.

9 MR. OLIVER: That was one resource as well as others
10 that were relied on for occupancy.

11 HEARING OFFICER COCHRAN: Okay. Perhaps the Applicant
12 can shed some light on this for me? Mr. Salamy has also
13 previously been sworn.

14 MR. SALAMY: Hi, this is Jerry Salamy with Jacobs
15 Engineering. We developed that list by contracting with a
16 company that does a search via the County Assessor's parcel
17 number and then also has access to databases that will also list
18 apartments and other leased facilities within 1,000 feet of the
19 project site and within 500 feet of the linear feature. Absent
20 any additional guidance, we went with the AFC criteria for
21 identifying property owners.

22 HEARING OFFICER COCHRAN: Okay, thank you.
23 So -- strike that. Mr. Sarvey, did you wish to say something?

24 MR. SARVEY: I just wanted to ask one question if I
25 could?

1 OFFICER COCHRAN: Absolutely.

2 MR. SARVEY: On the state library's list I don't see
3 any library in Santa Clara listed. Is that an omission, or?

4 MS. WORRALL: That's because the library in Santa
5 Clara is not a state library. It's a local library.

6 MR. SARVEY: Okay.

7 MS. WORRALL: They were actually included on the --
8 one moment.

9 MR. OLIVER: This is the final page of the exhibit,
10 which states the two local libraries in Santa Clara to which a
11 whole paper copy of the IS/PMND was sent.

12 MS. WORRALL: Yes, we mailed it to the Northside
13 Branch Library. And we also mailed the full document to the
14 City of Santa Clara Planning Division, Community Development
15 Department.

16 MR. SARVEY: Thank you.

17 HEARING OFFICER COCHRAN: Okay.

18 Turning now to the topic of Mitigation Measures and Mitigation
19 Monitoring and Reporting Program, there are mitigation measures
20 proposed in biological resources, cultural resources, and tribal
21 cultural resources. And when a lead agency adopts a Mitigated
22 Negative Declaration it must also adopt a program for reporting
23 on or monitoring the changes made a condition of approval to
24 mitigate or avoid significant environmental effects.

25 Now while a mitigation monitoring reporting program is

1 not required to be a part of the environmental document whether
2 that's an EIR or Negative Declaration or Mitigated Negative
3 Declaration, we still need to prepare a mitigation monitoring or
4 reporting program. Has one been prepared? Has staff prepared
5 one or do you have any suggestions about that?

6 MR. OLIVER: Staff has not prepared one. I think the
7 legal question of whether one is required for a context where
8 the CEQA document is being prepared for a SPPE exemption
9 proceeding where the project would subsequently be going on to
10 the city for enforcement of any mitigation is sort of an open
11 legal question. However, I would encourage Lisa or Ms. Worrall
12 to speak to speak to any outreach that has been done to the city
13 regarding our existing mitigation measures.

14 MS. WORRALL: Yes, we have included Ms. Agrawal,
15 Nimisha Agrawal, as part of outreach. And she participated in
16 the mitigation measures workshop that we held back in August in
17 which we discussed the staff's proposed mitigation measures.
18 And the Applicant had discussion and we had input from two
19 intervenors. And we arrived at a consensus on mitigation and
20 Ms. Agrawal was part of that process. And she's also been --
21 she also received the environmental document as well and had the
22 ability to make any comments.

23 HEARING OFFICER COCHRAN: Okay.

24 MR. HARRIS: If I could respond to the question too?

25 HEARING OFFICER COCHRAN: Yes, Mr. Harris.

1 MR. HARRIS: I actually think it's a closed legal
2 question. The Energy Commission process, the SPPE or the E as
3 exemption, (phonetic) we're exempting you from your process. As
4 Mr. Muell can painfully tell you he can't go start to build once
5 he gets your approval. We still have to go through an entirely
6 separate process with the city and the air district. It'll be
7 an air permit and all those fun things, so there's lot of CEQA
8 work ahead of us.

9 The mitigation measures as we described them, they're
10 in the Initial Study-Mitigated Neg Dec, are part of the project
11 description that are in this document. The city will rely on
12 that document and in relying on that document they will make
13 sure those measures are implemented.

14 If, for whatever reason the city has a different view
15 on mitigation they will be required to open up another CEQA
16 process to take a look at things. And so, there isn't a
17 requirement for a mitigations monitoring plan for an exemption.
18 There will be for the CEQA process with the city.

19 HEARING OFFICER COCHRAN: Assuming for purposes of the
20 following that a mitigation monitoring reporting program is
21 required, a public agency may delegate reporting or monitoring
22 responsibilities to another public agency or to a private
23 entity, which accepts the delegation. And that's under CEQA
24 Guideline Section 15097(a).

25 My question is, has the city of Santa Clara or the Bay

1 Area Air Quality Management District accepted the delegation of
2 monitoring or reporting on the mitigation measures that may be
3 adopted?

4 MR. HARRIS: I would again say that they don't have to
5 accept anything. That's their responsibility in carrying out
6 CEQA for their separate individual approval of the project. And
7 so, if you want a belt and suspenders approach, grant that to
8 them and ask them to accept it. I'm fine with that, but I don't
9 think it's a legal deficiency if they don't.

10 HEARING OFFICER COCHRAN: We'll beg to differ.

11 MR. HARRIS: Okay, that's fine.

12 MR. OLIVER: Yeah. I would just point you to Ms.
13 Agrawal, who is on the line and I'm happy to involve her in this
14 conversation. I think (indiscernible) has questions right
15 before her.

16 HEARING OFFICER COCHRAN: Is she on the line? I don't
17 see her. She was this morning. I don't see her now.

18 MR. OLIVER: Understood. If you like we can reach out
19 to her and see if we can get her back on the phone lines.

20 HEARING OFFICER COCHRAN: Or alternately we could
21 leave the record open that the city of Santa Clara will accept a
22 delegation. You may recall we did something similar in McLaren
23 where the city submitted a letter saying that they would
24 incorporate and monitor the mitigation measures.

25 MR. OLIVER: Staff has no objections to doing that.

1 MR. HARRIS: And to be clear, we don't object to that
2 process. I don't feel it's necessary as a matter of law, but
3 it's going to be protective of us, so we obviously will accept
4 that.

5 HEARING OFFICER COCHRAN: Thank you.
6 Another question I have is that staff has prepared an errata
7 relating to -- I'm sorry, Mr. Sarvey did you have any comments
8 that you wish to make on the discussion we just had?

9 MR. SARVEY: No, thank you.

10 HEARING OFFICER COCHRAN: Okay. So now I have
11 questions about incorporating staff's errata into a final
12 document for adoption or approval by the committee/commission.
13 Is there a way to make this an easier process for all concerned?
14 Has any thought been given to that?

15 MR. OLIVER: We have it as it as it stands right now.
16 We wouldn't -- we really like the (indiscernible) proposed
17 decision and actually incorporate the changes back into the
18 document. But that if would be cleaner, easier for staff to do
19 that work and republish some document that just combines the
20 errata with the IS/MND that is something that staff could
21 undertake.

22 HEARING OFFICER COCHRAN: What I'm trying -- the
23 reason I ask this question is the past practice has been that
24 the committee proposed decision, and ultimately the final
25 decision incorporate by reference the IS/MND, IS/PMND, whatever

1 we're calling the document. And because there were some
2 substantial changes made in response to the comments, we want to
3 make sure that that is accurately reflected.

4 So, and I'm not talking about republishing or
5 recirculating anything at this point. But I'm just trying to
6 get a single clean document together, so without my having to
7 type it all in. So perhaps we could explore that then
8 separately.

9 MR. OLIVER: Yeah, it seems like the two options are
10 either to incorporate both by reference or to instruct that we
11 prepare something else.

12 HEARING OFFICER COCHRAN: The problem is that the
13 errata is contained in a 100-page exhibit. It's not a separate
14 document at this point, so that's the difficulty I'm having in
15 trying to just incorporate some something. But we'll work it
16 out.

17 So, at this point, is there anything else that the
18 committee needs to hear today in terms of evidence? Not
19 argument. Not comment. I'm sorry, not argument, specifically
20 evidence. I'm trying to get to facts, appropriately admitted
21 opinion, etcetera. Last clear chance.

22 MR. OLIVER: Nothing from us.

23 HEARING OFFICER COCHRAN: Thank you.

24 MR. HARRIS: Other than being paranoid when you looked
25 at me when you said "argument," I have nothing else.

1 HEARING OFFICER COCHRAN: No. I was actually looking
2 at both of the attorneys who I see in front of me. But also, my
3 eye doesn't wander quite that far to capture Mr. Sarvey in that
4 view either.

5 Okay. Mr. Sarvey, do you have any further evidence.

6 MR. SARVEY: No. I have nothing else. Thank you.

7 HEARING OFFICER COCHRAN: Okay. Subject to the
8 discussion that we've had about the letter from the city of
9 Santa Clara, some of the exhibits that we have discussed
10 relating to Mr. Sarvey, I'm going to declare the hearing record
11 closed with the understanding that there are still outstanding
12 issues on admissibility, based on the objections of the parties
13 that will be addressed.

14 I will now ask you if you would like to provide any
15 closing argument at this point.

16 MR. OLIVER: None for staff.

17 MR. HARRIS: I have a hyper technical legal question.
18 I believe oral motions made at hearing need to be ruled upon at
19 hearing. But I also believe that the committee would have the
20 authority to defer their decision if they so announced. Like I
21 said hyper legal, but -- and I'm trying to find the section.
22 Let me see if I can find it.

23 MS. NEUMYER: 1211.5(c).

24 HEARING OFFICER COCHRAN: Let's see, I have it in
25 front of me. It does say that if the presiding member does not

1 make a ruling on the motion, at the end of the hearing the
2 motion is deemed denied. I think though that Section 1203 would
3 give us the ability to order our proceeding. So rather than
4 deny them at this time -- I'm pretty sure that would not be the
5 outcome that you would want. I could be wrong -- but I think
6 that we will continue to take them under submission for
7 discussion in the ultimate decision the committee may render.

8 MR. HARRIS: I agree you have preliminary authority to
9 use the lawyer words to do that, so thank you.

10 HEARING OFFICER COCHRAN: Thank you.

11 So, my next question then is do we want any briefing? Mr.
12 Harris, I believe at some point you've talked about having
13 evidentiary rulings, that you had a list prepared of specific
14 objections to some of Mr. Sarvey's testimony contained in
15 Exhibit 301 and 3-0 -- I'm sorry, 300 and 303.

16 MR. HARRIS: We're not asking for evidentiary rulings
17 on those. We would like to highlight where we believe there's
18 legal argument in the opening testimony and rebuttal testimony
19 and where we believe that there are unsupported statements.
20 Those go the weight of those, not the admissibility. So, we'll
21 provide it regardless and docket that later.

22 HEARING OFFICER COCHRAN: Well, what I want to make
23 sure is that all of the parties have equal access to do
24 something. And so, to the extent that you think that would be
25 helpful, that that is something that you wish to do for purposes

1 of our decision in this process, we would then create a briefing
2 schedule where you could submit that because then to the extent
3 that you submit that then the other parties have the opportunity
4 to respond to that.

5 MR. HARRIS: Which is my concern with schedule
6 obviously, so give us a minute if you will?

7 HEARING OFFICER COCHRAN: Certainly.

8 (Off mic colloquy.)

9 MR. HARRIS: There's something moving and I think it's
10 my foot and I don't want to shoot it. (Laughter.) So, I don't
11 want to create a briefing schedule just to submit this document.
12 We do trust the committee can determine what's a legal argument
13 versus what's not supported arguments. And so, I think I'll
14 just hold that document in reserve until we decide what's going
15 to happen on the briefing front. I really am not looking to
16 create a bunch of additional work and I'm not looking to make
17 Mr. Sarvey any more mad at me than he already is. So, can we
18 reserve the question until the end of the briefing discussion?

19 HEARING OFFICER COCHRAN: Sure. That was the one item
20 though that I had written in my notes and if I don't mention it
21 when I read it, then it flies away out of my brain. So, are the
22 other topics that the parties wish to present briefing to the
23 committee on?

24 We'll hold Applicant in reserve. Staff?

25 MR. OLIVER: From staff's perspective, we don't know

1 of any legal disputes between the parties that would require
2 briefing. There is the outstanding Motion to Dismiss based on
3 jurisdiction, which we have already essentially briefed on the
4 opposition papers and we granted that as fine as submitted by
5 all parties.

6 HEARING OFFICER COCHRAN: Okay.

7 Mr. Sarvey?

8 MR. SARVEY: I'm fine with the record as it stands. I
9 don't need to brief it, but if Mr. Harris wants to question my
10 qualifications, I'd be happy to respond and rearrange all my
11 time for that. I have an issue with it.

12 HEARING OFFICER COCHRAN: Okay. Just give me one
13 moment please. Okay.

14 (Off mic colloquy.)

15 HEARING OFFICER COCHRAN: Okay. After much
16 discussion, Mr. Harris, would your document that you've
17 referenced about what you consider the recitation or the
18 delineation of what's legal argument, what's unsupported, would
19 you be willing and able to file that on Monday? Monday,
20 November 4.

21 MR. HARRIS: Yeah, with the understanding that it's
22 not going to create a new briefing schedule and otherwise push
23 the schedule out, because otherwise I lost it. Just kidding.

24 HEARING OFFICER COCHRAN: No. What I would say is
25 that we would then make it very short order that any responses

1 would have to be filed by Wednesday to your Monday filing.

2 MR. HARRIS: Okay. Yeah, since I'm worried about
3 jamming people on time, so we'll file it and docket it today.
4 We'll give people copies today and I'm okay on giving them until
5 Wednesday. So, if they want to ruin their weekend reading
6 something that we produced they can do that as well. So, we'll
7 docket that today.

8 HEARING OFFICER COCHRAN: Okay. And so, then any
9 responses to the Applicant's filing will be due Wednesday,
10 November 7th.

11 MR. SARVEY: Excuse me?

12 HEARING OFFICER COCHRAN: 6th, sorry. I'm sorry, Mr.
13 Sarvey.

14 MR. SARVEY: I'm leaving the country Sunday for three
15 weeks, so --

16 MR. HARRIS: Motion to expedite the proceedings?

17 HEARING OFFICER COCHRAN: Would you be able, so if Mr.
18 Harris --

19 MR. SARVEY: I might be able to. I don't know.

20 HEARING OFFICER COCHRAN: Okay. So, here's what I'll
21 say. We will give you the opportunity. If you can avail
22 yourself of the opportunity, you have the opportunity. If you
23 are unable to then we'll just --

24 MR. SARVEY: I'm just not sure I'm going to have an
25 Internet connection. I'm going to be in South America, so.

1 HEARING OFFICER COCHRAN: Understood. But Mr. Harris
2 has said that he will provide a hard copy basically now and
3 we'll give you until Wednesday to respond.

4 MR. SARVEY: Okay.

5 HEARING OFFICER COCHRAN: Okay?

6 MR. SARVEY: Thank you.

7 HEARING OFFICER COCHRAN: I think that's everything,
8 so.

9 MR. HARRIS: We'll provide those hard copies right now
10 to Mr. Sarvey and the staff. I really don't want this to become
11 a piece of distraction. I don't want to ruin your work or your
12 vacation in South America. And again, we are not objecting to
13 the admission of your testimony. We just are talking about the
14 weight which certain things should be given, so.

15 MR. SARVEY: Previously I was feeling like I was
16 subject of a Trump Twitter, but now that I have this, I feel a
17 little better.

18 HEARING OFFICER COCHRAN: So yesterday the committee
19 had prepared a memo with two questions. And I know that we
20 discussed the first question. The second is the incorporation
21 of the mitigation measures into the negative dec, the IS/PMND
22 prior to its circulation, so I would like to hear from folks
23 about that.

24 Staff, I know that you had previously filed the former
25 Exhibit 207, which is now not an exhibit. So, is there anything

1 that you would like to say regarding that question regarding
2 15070 and 15369.5?

3 MR. OLIVER: I would say that assuming this is still
4 considered a memo to the docket our answers are the same. We
5 were able to reach agreement on the language of mitigation
6 measures at that meeting and incorporated that into the IS/MND
7 prior to any public review.

8 HEARING OFFICER COCHRAN: Okay. And where is -- and
9 see when I see the words "an agreement was reached," I don't
10 know what the agreement was. Did the Project Applicant agree to
11 include the mitigation measures in the IS/PMND so that they
12 were, for want of a better phrase, baked into the IS/PMND before
13 it was circulated?

14 MR. OLIVER: Yeah. I would let the Applicant answer
15 that.

16 MR. HARRIS: Yeah, let us find the TN number. Give us
17 a second.

18 HEARING OFFICER COCHRAN: Thank you.

19 MR. SARVEY: Give me some clarification. Are we
20 saying that it's already been submitted and you're going to
21 resubmit it or?

22 HEARING OFFICER COCHRAN: I'm sorry?

23 MR. SARVEY: Are we going to resubmit the IS/MND --

24 HEARING OFFICER COCHRAN: No. No.

25 MR. SARVEY: -- to the state clearing house?

1 HEARING OFFICER COCHRAN: What I'm asking is whether
2 at the time the IS/PMND was circulated that the mitigation
3 measures had been agreed to by the Applicant. That's my
4 specific question.

5 MR. HARRIS: Yeah, I think our response is in Exhibit
6 15, which is TN No. 229508, "Laurelwood Data Center's Comments
7 on Staff's Draft Mitigation Measures."

8 HEARING OFFICER COCHRAN: Okay that predates the
9 issuance of the IS/PMND. And all it does is offer comments on
10 the mitigation measures. It doesn't say that they are agreed
11 to. That also predates the date of the mitigation measure
12 conference.

13 MS. NEUMYER: Sorry about that, so we submitted those
14 additional -- or those comments in the exhibit number that Mr.
15 Harris just referenced. We had the workshop and then the
16 agreements that were reached in the workshop are memorialized in
17 Exhibit 200, page 1-2, which reflects that staff in agreement
18 had reached an agreement prior to publication of this document.

19 HEARING OFFICER COCHRAN: Okay. I understand it says
20 it reached an agreement, but an agreement can be yeah, you can
21 call them out as mitigation measures, but we're not agreeing to
22 them. It doesn't say what the agreement was.

23 MS. WILLIS: Staff Counsel, agreement was on the
24 mitigation measures. That was the subject of the workshop was
25 the actual mitigation measures, actually the words of them. And

1 staff and Applicant came to agreement on those words and they
2 were included in the Initial Study. And Applicant can represent
3 if that's correct.

4 HEARING OFFICER COCHRAN: Okay. So, because when I,
5 for example, look at the biological resources mitigation
6 measures in Exhibit 200 at page 5.4-4, it talks about staff
7 proposing them. It does not say Applicant agreed to them. Do
8 you see my confusion?

9 MS. NEUMYER: If you would prefer, we have Jerry
10 Salamy here who can also testify that we reached agreement with
11 CEC staff prior to publication of the Initial Study for the
12 relevant subject areas of biological resources, cultural
13 resources, and I think the third one we listed was tribal
14 resources. So, we can close that loop. And that those measures
15 were incorporated prior to publication of the IS/MND.
16 Basically, that the agreement that was reached at the workshop,
17 those words are accurately reflected in the published IS/MND.

18 MR. HARRIS: Yeah, and as my partner noted here,
19 Section 3.1 of the Initial Study talks about the workshop and
20 that the agreement was reached with the Applicant on those
21 issues as required by 15070(b)(1) of the CEQA Guidelines. So,
22 there's an express statement in the Initial Study Mitigated Neg
23 Dec. And then we can also prove the negative by confirming that
24 our comments are consistent with that finding, so.

25 HEARING OFFICER COCHRAN: Mr. Salamy, you were

1 previously sworn. You just heard the colloquy that we've had
2 with Counsel and the hearing officer. Do you confirm the
3 testimony that they just put in your mouth about the fact that
4 the mitigation measures were agreed to and were incorporated
5 into the IS/PMND and that the words reflected as the mitigation
6 measures are what were agreed to between the Applicant and CEC
7 staff?

8 MR. SALAMY: Yes, I do.

9 HEARING OFFICER COCHRAN: Thank you.
10 One last call. Okay. We have previously noticed a closed
11 session, but we will not be having closed session today.
12 Instead we're going continue the closed session until Thursday,
13 November 7th at a time to be determined. We will provide notice
14 of that as soon as we have a time. And that will be for closed
15 session purposes only.

16 MR. HARRIS: So, I don't make the same mistake again,
17 if you want the parties present, I assume your notice will let
18 us know that?

19 HEARING OFFICER COCHRAN: Yes.

20 MR. HARRIS: Okay. If there's a --

21 HEARING OFFICER COCHRAN: I think it will contain the
22 standard language. That the public portion will be brief,
23 because we are required to take comment on whether we should
24 meet in closed session, so we have a space for that to happen.
25 We also have to then be able to come and provide any information

1 about any reporting out that's required from that closed
2 session. But the public portion will be brief.

3 MR. HARRIS: Okay. Thank you.

4 HEARING OFFICER COCHRAN: So, with that we have
5 continued. I don't think we can adjourn as long as we have the
6 closed session open, so we are not adjourned, but we have
7 continued the closed session until November 7th. Thank you all
8 very much.

9 (Off the record at 3:11 p.m.)

10 (On the record at 3:11 p.m.)

11 HEARING OFFICER COCHRAN: Thank you.

12 I don't believe we have any blue cards. Mr. Sarvey made the
13 comments -- did you have any other public comment that you wish
14 to make, Mr. Sarvey?

15 MR. SARVEY: No. You've already been given me the
16 opportunity. Thank you.

17 HEARING OFFICER COCHRAN: Thank you. I just wanted to
18 make sure.

19 Anybody else in the audience today who would like to
20 make comments? Okay, we're going to try it again go unmute
21 everybody. If there's anybody online who would like to make
22 comments, you're all unmuted. Raise your hand.

23 (No audible response.)

24 HEARING OFFICER COCHRAN: So now we have continued the
25 closed session to November 7. Thank you very much.

1 (Thereupon, the Laurelwood Data Center Evidentiary
2 Hearing was continued to November 7, 2019 at 3:13
3 p.m.)

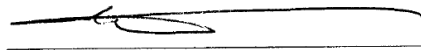
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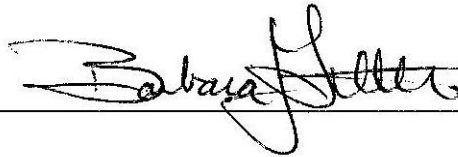
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