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CALIFORNIA ENERGY COMMISSION

In the Matter of:

Application for Small Power)
Plant Exemption for the)
Sequoia Data Center) Docket No. 19-SPPE-03
_____)

MOTION TO COMPEL

BY INTERVENOR ROBERT SARVEY

WARREN-ALQUIST STATE ENERGY BUILDING
ART ROSENFELD HEARING ROOM, FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 11, 2020

2:00 P.M.

Reported by:

Martha Nelson

APPEARANCES

HEARING OFFICER

Galen Lemei

COMMISSIONERS

Karen Douglas, Presiding Member

Patty Monahan, Associate Member

ADVISORS

Eli Harland, Advisor to Commissioner Douglas

Kourtney Vaccaro, Advisor To Commissioner Douglas

Kristy Chew, Technical Advisor on Siting

STAFF

Lisa DeCarlo, Senior Staff Attorney

Ann Chu

INTERVENOR

Robert Sarvey

APPLICANT

Scott Galati, Esquire, Dayzen, LLC

Marcela DeLong, Architect

CONSULTANT

Brewster Birdsall (via WebEx), Aspen Environmental Group

P R O C E E D I N G S

2:03 P.M.

1

2 SACRAMENTO, CALIFORNIA, WEDNESDAY, MARCH 11, 2020

3 COMMISSIONER DOUGLAS: So, again, good
4 afternoon. This is a hearing on Mr. Sarvey's
5 Motion to Compel the Applicant to perform a
6 Cumulative Impacts Analysis. And this is for the
7 Sequoia Backup Generating Facility, SPPE.

8 I'm Karen Douglas, the Presiding Member
9 of this Committee. And I'll start by introducing
10 everybody on the dais.

11 So Patty Monahan, the Associate Member,
12 is at the left of the Hearing Officer, Galen
13 Lemei, who is next to me. My advisors, Kourtney
14 Vaccaro and Eli Harland are to my right. And
15 Kristy Chew, the Technical Advisor on Siting for
16 the Commissioners is here with us as well.

17 I'll now ask the parties to please
18 introduce themselves and their representatives,
19 starting with Applicant.

20 MS. DELONG: I'm Marcela DeLong. I'm an
21 architect. I'm representing CyrusOne here today.

22 COMMISSIONER DOUGLAS: Thank you.

23 And Staff?

24 MS. DECARLO: Lisa DeCarlo, Energy
25 Commission Senior Staff Attorney. Also here

1 today is Ann Chu and Brewster Birdsall, our
2 technical experts in the areas of air quality and
3 public health, as well as additional Staff in the
4 audience should the need for them to weigh in
5 arise.

6 MR. SARVEY: Robert Sarvey, Intervenor.

7 COMMISSIONER DOUGLAS: All right. Thank
8 you.

9 And Mr. Galati?

10 MR. GALATI: Scott Galati representing
11 the Applicant.

12 COMMISSIONER DOUGLAS: All right. Thank
13 you very much.

14 Let's see, we have an application to
15 intervene from C.U.R.E. Just curious, is
16 C.U.R.E. in the room or on the WebEx? All right.

17 Any public agencies, starting with, well,
18 starting with people in the room, federal
19 agencies, state agencies, other than the Energy
20 Commission, Native American tribes or nations,
21 local agencies? All right.

22 What about on the phone? Okay.

23 So with the conclusion of these
24 introductions, I'll now turn over the conduct of
25 the rest of the Committee conference to Hearing

1 Officer Lemei.

2 MS. DECARLO: Before we begin, if I could
3 make one request? I just want to confirm that
4 Brewster can, indeed, hear us because he'll be an
5 important aspect of the conversation? So if we
6 could --

7 MR. BIRDSALL: Hi. This is Brewster.
8 I'm un-muted right now.

9 MS. DECARLO: Great. Thank you,
10 Brewster.

11 HEARING OFFICER LEMEI: All right. Can
12 everyone hear me? I am Galen Lemei, the Hearing
13 Officer in this proceeding.

14 As Commissioner Douglas stated, this is a
15 hearing on Mr. Sarvey's Motion to Compel the
16 Applicant to perform a Cumulative Impacts
17 Analysis. Specifically, Mr. Sarvey has filed a
18 Motion to Compel Applicant to respond to Staff's
19 Data Request number 14, which requested Applicant
20 to, quote, "Provide a cumulative important
21 modeling analysis, including SDC, of existing
22 data centers collocated on the SVP-60 kV Loop
23 (phonetic) and those sources identified above,"
24 end quote.

25 This request was promulgated by Staff on

1 September 13th, 2019 as part of Data Request Set
2 number 1. Mr. Sarvey filed his motion on
3 February 21st of this year. Applicant filed a
4 response to Mr. Sarvey's motion on February 25th.
5 The Committee issued notice of this hearing on
6 February 28th. Staff filed its response to the
7 motion on March 6th. And Mr. Sarvey filed a
8 reply on March 9th. All of these filings were
9 timely and the Committee has reviewed all
10 submissions of the parties on this motion to
11 date.

12 With that set up, I would now ask the
13 moving party, Mr. Sarvey, to speak to his motion.

14 MR. SARVEY: Thank you. My purpose here
15 today is to give you an overview of, actually,
16 what is operating out there and what is expected
17 to come.

18 Now I gave you a handout here that
19 provides -- and you've seen both of these maps,
20 they're in -- but the top map gives you a picture
21 of all the data centers currently operating in
22 Santa Clara. And on the back, I've put their
23 power requirements and their addresses on the
24 back for the Committee. I know the Committee has
25 been asking these questions. This information

1 hasn't been provided, so I'm providing it now.

2 The second map, you've already seen, are
3 the data centers under CEC review. And you can
4 see, there's quite a bit of overlap between
5 what's going -- what's there now and what we are
6 now looking at to permit.

7 The power requirements for the data
8 centers under review total 650 megawatts, and
9 that doesn't include another newly-announced
10 project. The City of Santa Clara has also
11 approved several data centers not identified on
12 the map I gave you. Their power requirements
13 amount to roughly 120.5 megawatts. And I listed
14 those in my response to Staff. In total, there's
15 over 1,150 megawatts of power required for just
16 the data centers, and that's just an estimate out
17 of the publicly-available information. There's
18 other data centers that don't offer you their
19 location, don't offer you their power
20 requirements, so there's other information out
21 there.

22 Since each of these data centers oversize
23 their generating facilities, I'm going to roughly
24 estimate there's 1,400 megawatts of diesel-fired
25 generators crammed into roughly three square

1 miles. So Staff is evaluating the SPPE Data
2 Center using BAAQMD CEQA Guidelines but BAAQMD
3 has already told them that they're not going far
4 enough with their analysis. And I won't get into
5 that because that's not part of this, what we're
6 looking at today.

7 But you'll note that on the second map
8 that I gave you it lists six of the facilities --
9 or seven of the facilities that have been -- two
10 have been approved and five are under review.
11 And the total greenhouse gas emissions from this
12 is 860,799 metric tons a year, which is very
13 significant. The annual megawatt hours required,
14 4,568,006.

15 So in my eyes, this place is a mess. And
16 I understand this is going to be a very
17 complicated, and Staff has explained, very
18 complicated to model all these things and I
19 understand that. And that's why I believe this
20 should be an AFC proceeding, not an SPPE. These
21 are some serious emissions here, very localized
22 in a small area, and I believe some kind of
23 cumulative impact needs to be assessed here.

24 Thank you.

25 HEARING OFFICER LEMEI: Thank you, Mr.

1 Sarvey. Sorry, I was looking at your materials.

2 I would now ask the Applicant, the party
3 to whom the motion is directed, to speak to the
4 motion.

5 MR. GALATI: First, I wanted to be
6 respectful and let Mr. Sarvey say the things that
7 he wanted to say.

8 I would like to make a general objection
9 that most of those are testimony that should be
10 subject to cross-examination. They're facts that
11 were presented to this Commission that we haven't
12 been able to respond to. It's why I made a
13 response that was largely procedural and not
14 substantive because I don't believe that today is
15 the day to decide exactly what level of
16 cumulative analysis should be done. I think
17 today is the day to decide whether Mr. Sarvey has
18 the right or the standing or the ability to
19 compel the Applicant to respond to a Staff data
20 request? And I would argue that he does not.

21 The only way to interpret his motion,
22 although he doesn't say under what authority he
23 is making a motion to compel, since he's making a
24 motion to compel to respond to Data Request 14,
25 it has to be under 1716. And what that says is

1 that the party who has asked the question has the
2 right to bring a motion to compel. Staff didn't
3 do so. The time to bring such a motion to compel
4 is past.

5 And, in addition, if the Committee wanted
6 to do their best to interpret this as a data
7 request from Mr. Sarvey to us, if he had done it
8 timely, we could have responded to that and then
9 had a discussion about whether or not we should
10 do this work, but that is also untimely.

11 And lastly, what Mr. Sarvey is arguing,
12 essentially, is that the methodology that was
13 used -- so let's make it really clear, a
14 cumulative impact air quality analysis was done
15 by the Applicant. A cumulative air quality
16 impact analysis was done by Staff. What hasn't
17 been done is a complex modeling effort and that
18 is what Mr. Sarvey is asking should be done.

19 I think that that is more appropriate for
20 evidentiary hearing for him to bring his offer of
21 proof and for us to be able to have our experts
22 here and the Committee to be able to hear from
23 the panel of experts, subject to cross-
24 examination, why we did what we did and why we
25 can't do what Mr. Sarvey is asking.

1 So I think this is relatively simple.
2 And it does not preclude Mr. Sarvey from bringing
3 these exact arguments up at evidentiary hearing
4 and that's the appropriate place because there's
5 a lot of questions I'd like to ask him, too,
6 about what he just testified to.

7 So we ask you to dismiss the motion
8 please.

9 HEARING OFFICER LEMEI: Thank you, Mr.
10 Galati.

11 I would now invite Staff to speak on the
12 motion.

13 MS. DECARLO: Lisa DeCarlo, Senior Staff
14 Attorney.

15 We agree with the Applicant that the
16 proper forum to really dive into these issues is,
17 really, the evidentiary hearing.

18 We provided a response to Mr. Sarvey's
19 motion seconding the procedural concerns
20 expressed by Applicant, but also providing
21 additional substantive information, just so the
22 Committee understood Staff's position on the
23 substance, that we were comfortable with the
24 information we already had, based on the BAAQMD
25 significance thresholds, we could reach a

1 conclusion and no further additional information
2 was required concerning the project's potential
3 impacts on air quality.

4 And we can certainly go into that in more
5 detail here. We have air quality and public
6 health staff. But we also believe that
7 evidentiary hearings are the best forum for that
8 discussion.

9 HEARING OFFICER LEMEI: Thank you.

10 Mr. Sarvey, would you like to respond to
11 anything --

12 MR. SARVEY: Yes, thank you.

13 HEARING OFFICER LEMEI: -- that Applicant
14 or Staff have said?

15 MR. SARVEY: From my review of Committee
16 hearings and stuff, this is the information that
17 the Committee has been asking for. And I believe
18 the Committee needs this information to make an
19 informed decision.

20 And not only that, this type of
21 information is required by CEQA. And I go
22 through that in my pleadings and such and I'm not
23 going to repeat that here. But, you know, if you
24 want to go ahead and provide a decision that's
25 not compliant with CEQA, of course, that's your

1 choice, but I believe you need that.

2 Thank you.

3 HEARING OFFICER LEMEI: All right. One
4 moment please.

5 (Off mike colloquy between Hearing Officer
6 Lemei and Commissioners Douglas.)

7 HEARING OFFICER LEMEI: All right. Thank
8 you.

9 Based on the written materials that were
10 provided, which has now been supplemented by the
11 comments from each of the parties, the Committee
12 has prepared a few questions that they'd like to
13 ask the parties.

14 The first question is for Mr. Sarvey and
15 that is that if your motion were granted and the
16 information required by Data Request 14 was fully
17 responded to by the Applicant, how would or
18 should this information affect the CEC's review
19 of the Sequoia SPPE application?

20 MR. SARVEY: My guess is that if you do
21 require this information, you're going to find
22 out that this project violates the California and
23 federal NO2 standards and, therefore, it's going
24 to be a significant impact and, therefore,
25 they're going to be required to file an

1 application for certification.

2 HEARING OFFICER LEMEI: Thank you, Mr.
3 Sarvey. That was concise.

4 Applicant, can you please explain --
5 (Off mike colloquy between Hearing Officer
6 Lemei and Commissioners Douglas.)

7 HEARING OFFICER LEMEI: Oh, sure. I'm so
8 sorry.

9 Would any of the parties like to respond
10 to Mr. Sarvey's response to that question?

11 MR. GALATI: Yeah, I would.

12 Mr. Sarvey is engaging in speculation,
13 which is exactly what the modeling would do. So
14 it depends on how you tried to model something
15 and how you would -- whether or not those
16 assumptions that you would make would be
17 appropriate.

18 I would point out that the Committee,
19 certainly the Commission, considered in
20 Laurelwood this same issue. And in Laurelwood the
21 project was approved over objection using the
22 cumulative thresholds that the Bay Area and using
23 the methodology that the Bay Area itself uses for
24 cumulative impacts. We agree a lot with what
25 Staff wrote in their response of why that makes

1 sense to do it that way.

2 I would tell you that this project and
3 the Walsh project were both sort of in limbo for
4 a while until that Laurelwood decision came out,
5 so we could get some direction on the right way
6 to treat some of these issues, so we wouldn't
7 have to hand these in every single case. And the
8 way that the IS/MND, and the way the data
9 responses we prepared were prepared, were
10 consistent with the Laurelwood decision. We
11 think that's the right way to go. We think it is
12 completely legally defensible. And we're prepared
13 to provide briefs on that after evidentiary
14 hearing when you hear all the facts.

15 HEARING OFFICER LEMEI: Thank you.

16 Staff, do you have anything to add?

17 MS. DECARLO: As we stated in our
18 response, we conclude that reliance on the BAAQMD
19 CEQA thresholds of significance is entirely
20 justified in this proceeding. It provides the
21 necessary point on which to make a decision about
22 the potential for the project's impacts on air
23 quality. And modeling, given the context of this
24 project and the specific circumstances, would not
25 provide any additional information that could

1 lead to a better review of the project impacts.

2 HEARING OFFICER LEMEI: Thank you.

3 All right, a few questions for the
4 Applicant. And I'll just go ahead and lump them
5 together and allow you to provide your response
6 as you see fit.

7 Why is it that the information that was
8 requested by Staff was ultimately not provided?
9 Could you provide the information requested in
10 Data Request 14 if the Committee so ordered? And
11 how long would that take?

12 MR. GALATI: We tried to get the
13 information. We submitted a Freedom of
14 Information Act request specifically to the Bay
15 Area Air Quality Management District. They did
16 not provide that information to us. They told us
17 that it was very difficult to compile. They told
18 us that they hadn't seen requests like that
19 before. They referred us to the thresholds.

20 This is very different than when you're
21 doing a large power plant because what you're
22 looking for are other large sources. There
23 weren't large sources within the, from our
24 perspective, within the realm of influence of
25 our, basically, very small stacks and very small

1 emissions units. If it was a very large emission
2 unit, then we would have been able to find two or
3 three or four sources and direct the Bay Area
4 exactly to those sources for the purposes of
5 gathering that information and then going ahead
6 and being able to do a cumulative air quality
7 impact analysis.

8 But when you're looking at all the
9 sources and that are both in process and
10 existing, that is not something that the Bay Area
11 could provide to us. And we have no way to get
12 it on our own.

13 We also know from our own experts that
14 the way that those cumulative air plumes would
15 likely interact would be such that they are not
16 going to interact over a six-mile radius.

17 And so, again, using the thresholds and
18 completely offsetting the one and only pollutant
19 that could trigger any possible violation, the
20 project is fully mitigated as is.

21 So this district and other districts
22 often look at a project such as this and
23 determine, first, are there any direct
24 significant impacts? And then compare it to a
25 threshold. They don't often require this kind of

1 cumulative impact analysis, as well, both for
2 CEQA or for issuing their own permits.

3 So if we were to try, if -- we would be
4 unable ever to get the information requested in
5 11, 12 and 13 and, I believe, 14.

6 HEARING OFFICER LEMEY: And when you say
7 you would be unable ever, that is based on your
8 past -- that's based on your experience in
9 response to your prior request?

10 MR. GALATI: Correct. For example, Mr.
11 Sarvey has plotted a bunch of existing data
12 centers on the site. The Bay Area does not -- for
13 example, for projects such as this, there isn't a
14 continuous emissions monitors in which they're
15 constantly reporting to the district what
16 emissions are. So the Bay Area Air Quality
17 Management District would have to ask to get the
18 forms associated with what each one of these
19 facilities is doing. And then we would, then, if
20 they did that, then we could possibly get that.

21 But then we would have to go and find out
22 what kind of stacks they have, what their --
23 how -- what their temperatures are, what their
24 make and models are, what all of their air
25 pollution control systems are. Then we'd have to

1 also get a map of their facility so we could map
2 how their facility and their buildings in between
3 ours and there's are going to affect each other.
4 And it becomes very, very difficult when you're
5 dealing with a lot of small sources as opposed to
6 a few very large sources.

7 So I don't believe that we would ever be
8 able to get this information. I know Staff has
9 asked for it before, also, from -- I don't know
10 about this district but other districts. It's
11 very difficult to get.

12 So I don't think we can do this modeling
13 analysis.

14 HEARING OFFICER LEMEI: So just to
15 clarify, is it Applicant's position that this is
16 difficult or that it is impossible?

17 MR. GALATI: I think that it is
18 impossible. I think that if we were to get some
19 of the information, that would also lead to -- I
20 believe we'd have to make a bunch of difficult
21 assumptions. And what you would get would be
22 assumptions by two or three different experts and
23 then you'd have to decide which expert you
24 believe. And that's the definition of we have an
25 analytical method that the Bay Area not only

1 specifies in its CEQA Guidelines but uses and
2 this Commission has used. We should continue to
3 do that.

4 HEARING OFFICER LEMEI: So I'll just go
5 down the row.

6 Staff, do you have any response to Mr.
7 Galati's response to that question?

8 MS. DECARLO: We agree with Mr. Galati's
9 representation of the issues and the problems
10 obtaining the information, also, the problems
11 with attempting to model based on the limited
12 information we'd be able to gather.

13 And, ultimately, BAAQMD has identified
14 and adopted these thresholds of significance for
15 a reason. We've used them. There's no
16 indication that this project presents a
17 circumstance where we cannot rely on those
18 thresholds of significance. Therefore, Staff
19 believes that the best approach is to rely on
20 what BAAQMD has already propounded that we do.

21 HEARING OFFICER LEMEI: Does Staff concur
22 in Mr. Galati's assertion that this modeling is
23 impossible?

24 MS. DECARLO: I don't believe he stated
25 the modeling itself is impossible. Obtaining, at

1 least from what I understood him to say --

2 HEARING OFFICER LEMEI: Thank you for the
3 correction.

4 MS. DECARLO: -- obtaining the
5 information to the extent that it was requested
6 is probably not possible to do in a complete
7 manner. And you'd end up with incomplete
8 information and, as Mr. Galati said, assumptions,
9 numerous assumptions that would have to be made
10 based on that incomplete information.

11 HEARING OFFICER LEMEI: Mr. Sarvey?

12 MR. SARVEY: First of all, the
13 information that's so impossible to gather
14 happens to be in Staff's hands as far as the new
15 projects that are being proposed here, and there
16 are seven of them, so they have that information
17 and they could use that.

18 As far as the BAAQMD CEQA Guidelines and
19 levels of significance, BAAQMD CEQA Guidelines
20 explicitly state,

21 "While the thresholds of significance give
22 rise to a presumption of insignificance the
23 thresholds are not conclusive and do not
24 excuse a public agency the duty to consider
25 evidence that a significant affect may occur

1 under the fair argument standard.”

2 Well, I’m making a pretty fair argument
3 here. There’s a lot of data centers out there,
4 and they’re all within a few square miles of each
5 other, and that’s a lot of pollution. And I
6 believe that, at the very least, they can at
7 least model what the other seven facilities that
8 are being permitted here, along with this one,
9 and that would at least give us some idea of
10 what’s going on, and that shouldn’t be that hard.

11 HEARING OFFICER LEMEI: Okay. Thank you,
12 Mr. Sarvey.

13 MR. SARVEY: Thank you.

14 HEARING OFFICER LEMEI: A couple of
15 questions for Staff. A few questions for Staff.

16 So can you please explain why it is that
17 you did initially request the information
18 referenced in Data Request 14? And when Staff
19 determined -- and when did Staff determine,
20 precisely, that this information was no longer
21 needed for the -- for your analysis of the SPPE?
22 What facts or factors led to this determination?
23 And is it Staff’s opinion that this information
24 would be of no value and can you please explain
25 that?

1 Oh, sorry. To clarify, I'm not asking
2 for any attorney-client privileged
3 communications.

4 MS. DECARLO: Thank you. I can attempt
5 to address the first one. And then I think I'll
6 hand it over to Mr. Birdsall, our technical
7 expert in this field.

8 MS. DECARLO: Why requested it was,
9 basically, a confluence of factors. One, we're
10 used to requesting this type of information for
11 our AFC proceedings.
12 You know, AFC proceedings are our bread and
13 butter. That's what we do. That's what we know.
14 And so because we've requested it in the past, we
15 just initially start off requesting this
16 information, especially at the very beginning of
17 a project where we haven't had time to really
18 dive into the modeling that's been provided, all
19 the information. You know, for these SPPE
20 proceedings, there's a very short turnaround time
21 for discovery, so we want to make sure we get out
22 the questions as soon as possible.

23 We also thought, based on the discussion
24 and status conference in Walsh, that the
25 Committee was interested in this type of

1 information.

2 And, thirdly, because we hadn't had a
3 chance to dive into the project information
4 provided by the Applicant at that point, we
5 didn't yet realize that we had all the
6 information we needed. So when we started to
7 dive into the data, we realized that we could
8 rely on the thresholds of significance and would
9 not need additional data.

10 For the other three questions, I'll turn
11 it over to Mr. Birdsall for a discussion about
12 why -- when Staff determined it was no longer
13 needed, if that response didn't already answer
14 the question, and a discussion of what facts led
15 to that determination and, lastly, whether or not
16 Staff sees any value whatsoever for a continued
17 attempt to obtain this information?

18 So, Brewster, I'm turning it over to you.

19 MR. BIRDSALL: Okay. That's fine, Lisa.
20 It sounds like I'm in the room. Yeah, so this is
21 Brewster Birdsall and I'm a contractor for the
22 Staff.

23 We, at Aspen Environmental Group, and my
24 firm helps to -- man. Excuse me. There's a
25 terrible echo. It's really distracting me.

1 We were bearing in mind the Committee's
2 opinions and interests in Walsh on taking a close
3 look at the cumulative effects of these projects
4 and the possibility of, you know, (indiscernible)
5 of the projects while also providing, hopefully,
6 a robust record (indiscernible). Those words in
7 the Walsh proceeding were really influencing
8 Staff's actions at the time of issuing data
9 requests for Sequoia.

10 And, you know, some of our data requests
11 are, at times, aspirational. And I think Data
12 Request 14 would probably fall into that category
13 where we, at Staff, are not exactly sure how the
14 information might come about or how it can be
15 obtained but we are curious if it can be. And we
16 do like to gather as much information about the
17 cases as we can before we go forward.

18 So I think, you know, as Lisa said, that
19 really does explain why Data Request 14 was
20 asked.

21 Now the other questions that you have
22 today are about at what point did we sort of
23 change course or decide that maybe the
24 information wouldn't need to be pursued in order
25 for us to go ahead and continue and complete the

1 initial study?

2 And I think part of that lies in this
3 idea that Mr. Sarvey presented today that he
4 thinks we'll see violations of California Ambient
5 Air Quality Standards or National Ambient Air
6 Quality Standards if we add more and more sources
7 to the modeling that we've already completed for
8 the subject facility, the Sequoia facility, today
9 or, in the case of two months ago or three months
10 ago, the Laurelwood or Walsh, for example. And I
11 don't think that this is necessarily true because
12 what you would have to have happen is, for a
13 violation of the Ambient Air Quality Standards,
14 is for the facilities to really be all operating
15 at the same time, first of all, and then they
16 would have to be impacting the same receptor in
17 meaningful ways at the one time that the
18 violation could occur.

19 And to take a step back, a violation or
20 an exceedance, rather, of National Ambient Air
21 Quality Standards or California Ambient Air
22 Quality Standard, that depends on two parts of
23 the concentration exceeding the standard. The
24 first part of the concentration is the
25 background. And then the second part of the

1 concentration is whatever we model in addition to
2 the background. And in the case of a project-
3 specific analysis, we model the project first.

4 And then for emergency testing at a
5 source that is really not operating most of the
6 time because, remember, these are backup
7 generators, we have to, first of all, assume that
8 the testing is going to occur. And we assume
9 that it occurs all the time because we want to
10 see whether or not the background plus the
11 project could possibly exceed the standard.

12 And I think our arrival at where we are
13 in the initial study depends on the realization
14 that facility A, B, C and D are not going to be
15 testing their engines all at the same hour at the
16 same time. And taking a step back, we see from
17 the emissions tabulation in the initial study
18 that the emissions increase caused by our
19 project, or the Sequoia project, by itself don't
20 trigger the significance thresholds for the mass
21 of emissions that's set forth by the Air
22 District. And at that point, we really can stop
23 the analysis of impacts for criteria air
24 pollutants because the Air District Guidelines
25 allows us to.

1 But we go further into the analysis in
2 order to see how the concentration will work out
3 during testing. And in order to do that, we have
4 to assume that the engines are basically being
5 tested whenever. And to model the impact we
6 assume that they're being tested every hour for
7 five years, which we know doesn't happen, but we
8 still go through that analysis anyway to show
9 that the impact to the ambient concentrations
10 would not exceed the standard when combined with
11 the background.

12 So to try to wrap it up, I guess I just
13 would like to say, when we consider the
14 independent nature of all of the different
15 sources that are in the region, we do find it
16 very unlikely that testing at one facility will
17 be happening at the exact time of testing at the
18 proposed project. And because the project that
19 we are looking at has emissions that fall below
20 the thresholds in the first place, we,
21 essentially, go no further than that.

22 So I'll pause here because I've been
23 talking a long time.

24 COMMISSIONER MONAHAN: Mr. Birdsall, this
25 is Patty Monahan, a Commissioner. I had a

1 question. You kept saying it would be unlikely
2 that they would be testing at the same time. Can
3 you explain what you mean by testing? Do you
4 mean using the generators simultaneously?

5 MR. BIRDSALL: I do. The analysis that
6 we have for the ambient air quality impacts in
7 the initial study is really the analysis of
8 readiness testing. And the engines, each engine
9 at each facility, might be tested for, you know,
10 somewhere between 12 or 28 or up to 50, allowed
11 by law, hours in a year. So that means for every
12 engine that's out there at a data center or at a
13 hotel or at a hospital that's available for
14 backup purposes, those engines can each be tested
15 up to 50 hours a year for reliability and
16 readiness testing. But the rest of the time the
17 facility is not emitting any of these pollutants.

18 COMMISSIONER MONAHAN: But since the
19 generators are used when there's a power shutoff,
20 wouldn't they all be used simultaneously?

21 MR. BIRDSALL: Well, we have a separate
22 discussion for the emergency scenario and the
23 potential for a widespread outage or an outage on
24 the SPPE system to trigger the operation of the
25 backup generators in a collective sense. And

1 that's really a separate analysis in the initial
2 study, and it comes a little bit later, after the
3 readiness testing discussion.

4 COMMISSIONER MONAHAN: I'm just trying to
5 understand, in an analysis of cumulative impacts,
6 couldn't you assume that the generators would be
7 used simultaneously in that response to the Data
8 Request 14?

9 MR. BIRDSALL: Well, I think it's a good
10 question. And the analysis that we have in the
11 initial study, essentially, concludes that the
12 combined or the reasonably foreseeable -- let me
13 back up a second -- that the likelihood of the
14 facilities coming on at the same time or being
15 operated in a manner that creates an impact that
16 can be analyzed is really -- would require too
17 much speculation for us to analyze in any
18 quantitative sense.

19 So to rephrase, we have a qualitative
20 approach for that separate question that you're
21 asking, the question of what happens during
22 emergencies when there's a widespread outage or,
23 rather, an outage at the data center that
24 triggers operation of dozens of engines
25 simultaneously? Our approach is more

1 qualitative.

2 Today's discussion, I think, is really
3 revolving around the Staff analysis of routine
4 readiness testing.

5 MS. DECARLO: Yes. Lisa DeCarlo just
6 chiming in.

7 Yes, the data request was focused solely
8 on readiness testing data, so that's the subject
9 of today's discussion.

10 MR. GALATI: If I could just add
11 something factually to the discussion is for the
12 Sequoia project, I believe that the maintenance
13 and testing is anticipated at 12 to 12-and-a-half
14 hours per engine per year and would only be done
15 one engine at a time.

16 So when it comes to evaluation, for
17 example, of a potential violation, our modeling,
18 as well as Staff's modeling, assume that an
19 engine was running every hour of every day for
20 five years. Then you compare that one hour to
21 the worst possible background one hour to
22 determine if there was a potential violation. So
23 it's already very, very conservative on a direct
24 project impact.

25 So now you take the facility down the

1 street. Would we assume that they would operate
2 their engine every hour for every day and then,
3 actually, that the day that the background is the
4 highest, both facilities were operating one
5 engine at a time? When you're only operating one
6 engine at a time, distance places a very large
7 role in whether or not the plumes combine. And
8 so the fact that there's a lot of data centers in
9 Santa Clara doesn't mean that all their plumes
10 combine.

11 In addition, there's a piece that's
12 missing here, and that is the project is
13 mitigating the one and only potential pollutant
14 that could cause a violation by offsetting to
15 zero all of its NOx, and all of the NOx, assuming
16 that it is for all of its maintenance and testing
17 for the life of the project.

18 So it is also really important to
19 understand that if we did this analysis and we
20 made assumptions, that you would still come back
21 to ask the question, have you mitigated your
22 impact? When it comes to cumulative impacts,
23 applicants can only mitigate their contribution
24 to a cumulative impact. Every project before the
25 Committee -- the Commission right now, every data

1 center, if it goes over 35 tons, and ours will --
2 well, actually, I should say even with the new
3 methodology for determining them, I believe
4 everyone would, we'll be offsetting its NOx to
5 zero.

6 So that's why I really wanted this
7 discussion to be procedural because this is
8 really important that what I just said comes from
9 a witness that somebody can cross-examine. And
10 what Brewster just said, I would like to ask him
11 questions about. And what Mr. Sarvey just said,
12 I would like to ask him questions about so the
13 Committee can get a real understanding of what's
14 a fact, what's opinion,
15 and who's qualified to make them on how to do
16 modeling?

17 And I would still urge the Committee just
18 to go back, from a procedural perspective, and
19 let's have this discussion. It's important to
20 have this discussion but let's do it the right
21 way with the right experts.

22 (Off mike colloquy between Hearing Officer
23 Lemei and Commissioner Douglas.)

24 HEARING OFFICER LEMEI: All right, Mr.
25 Galati, you just said a bit, but wanted to ask

1 you if you have any additional responses in
2 conclusion or if --

3 MR. GALATI: No. We'll be prepared to
4 put on a very good case of how we did what we did
5 and why we think it's defensible at evidentiary
6 hearing.

7 HEARING OFFICER LEMEI: And, Mr. Sarvey,
8 do you have any -- would you like to respond?

9 MR. SARVEY: Yes, I would. Thank you.

10 HEARING OFFICER LEMEI: Okay.

11 MR. SARVEY: I believe what the
12 Commissioners have been asking, from my review of
13 your status reports, is you're asking what would
14 happen if all the data centers on the SPPE South
15 Loop went down and all the data centers were
16 operating at once? Staff and Applicant are
17 confusing this with one facility overlapping
18 another one during a maintenance testing. I
19 believe the Committee was asking, what would
20 happen in emergency testing? But the Committee
21 is there. They know what they were asking for.

22 As far as the Laurelwood project, they
23 did an assessment of emergency operation of just
24 that facility. And this proceeding, they haven't
25 even done an evaluation of emergency operation of

1 just this one facility, much less all the other
2 facilities surrounding it, and I believe that's
3 important to have.

4 And when I was talking about there may be
5 as many as 1,400 megawatts of diesel engines
6 there and if -- that could be as many as 500
7 diesel engines. So if you're talking about
8 testing them once a month, you've got about 15
9 engines a day testing, if you want to go with
10 that argument, but I don't think that's what the
11 argument is. But if they want to address that
12 argument, fine, we can talk about that.

13 But the other thing is, is they did, in
14 fact, address one, just one engine operating one
15 time, and their total impact was 333 micrograms
16 per cubic meter, which is 98 percent of the state
17 one-hour standard. And the federal -- their
18 assessment of the project, the 187 micrograms per
19 cubic meter was the impact, and the limiting
20 standard is 188 micrograms per cubic meter.
21 We're talking about one diesel engine. We're not
22 talking about the whole facility, testing the
23 whole facility, if it goes down at once and you
24 have an emergency operation.

25 The whole purpose of this project is to

1 backup this thing in case it does go down. And
2 we're not going to evaluate the purpose of the
3 project and that's my issue right now. And I
4 think the Committee can answer what they want but
5 that's what I read that the Committee wanted, so
6 that's all I have to say about it.

7 Thank you.

8 HEARING OFFICER LEMEI: Thank you. All
9 right.

10 I'd like to thank all the parties.

11 At this time the Committee is going to go
12 into closed session, as noticed in the agenda.
13 And just to clarify, the Committee is not
14 planning to continue the substantive or
15 procedural discussion after the hearing is over.
16 We will, of course, close out the proceeding in
17 the traditional manner. Our best estimate is
18 approximately one hour, although that is not a
19 commitment. And we do not expect the parties to
20 remain here.

21 **(Whereupon, closed session commenced at 2:48**
22 **p.m., until ???)**

23 HEARING OFFICER LEMEI: The Committee is
24 continuing the closed session to Tuesday, March
25 17, at 3:30 p.m. in Room Four North A of the

1 California Energy Commission, located at 1516 9th
2 Street, Sacramento, California, 95811, no, 95814.

3 Before we end for today, is there any
4 public comment?

5 Hearing none, today's session is
6 concluded.

7 (At ??? p.m. the hearing was continued until
8 March 17, 2020 at 3:30 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of June, 2020.



MARTHA L. NELSON, CERT**367

CERTIFICATE OF TRANSCRIBER

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

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

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



MARTHA L. NELSON, CERT**367

June 2, 2020