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EVIDENTIARY HEARING BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the matter of,)
Walsh Backup Generating) Docket No. 19-SPPE-02
Facility)

PREHEARING CONFERENCE

REMOTE WEBEX ACCESS ONLY

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

MONDAY, MAY 18, 2020

12:04 P.M.

Reported by:

Peter Petty

APPEARANCES

SITING COMMITTEE MEMBERS AND ADVISORS PRESENT:

Karen Douglas, Commissioner, Presiding Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Patty Monahan, Associate Member
Ben De Alba, Advisor to Commissioner Monahan
Jana Romero, Advisor to Commissioner Monahan
Kristy Chew, Technical Advisor on Siting Matters

HEARING OFFICER:

Susan Cochran, California Energy Commission

CEC STAFF PRESENT:

Leonidas Payne, Project Manager
Jared Babula, Staff Counsel
Rosemary Avalos, Public Advisor's Office
Raj Singh
Eric Knight

APPLICANT:

Scott Galati, Applicant's Representative
Joe Hubbard, Digital Realty Trust
Greg Darvin, Atmospheric Dynamics

INTERVENOR:

Robert Sarvey

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

2 MAY 18, 2020

2:11 P.M.

3 PRESIDING MEMBER DOUGLAS: And I was able to unmute
4 myself, so that's a good sign.

5 HEARING OFFICER COCHRAN: Good.

6 PRESIDING MEMBER DOUGLAS: Good afternoon everybody
7 and welcome, and thanks for joining us today.

8 This is the Prehearing Conference for the Application
9 for a Small Power Plant Exemption for the Walsh Backup
10 Generating Facility.

11 Before we begin, I'd like to make introductions and
12 then ask the parties to identify themselves for the record.
13 I'm Karen Douglas, Commissioner and Presiding Member of this
14 Committee. My advisors are on this WebEx today, Kourtney
15 Vaccaro and Eli Harland.

16 Patty Monahan is on and sorry about the challenges
17 joining, Commissioner Monahan. She's a Commissioner and
18 Associate Member. Jana Romero, her Advisor.

19 Noemi Gallardo -- or, actually Rosemary Avalos,
20 you're on as well, right? And Susan Cochran, Hearing
21 Officer.

22 And let me ask the parties to introduce themselves
23 and their representatives, starting with the Applicant. Go
24 ahead.

25 MR. GALATI: Hi, this is Scott Galati. And joining

1 us on the call today is Greg Darvin from Atmospheric Dynamics
2 and Air Quality. Mike Lisenbee and Desiree Dei Rossi. I
3 think they're both under the same name there, from David J.
4 Powers and Associates. And the Applicant representative from
5 Digital Realty is Joseph Hubbard, Joe Hubbard.

6 PRESIDING MEMBER DOUGLAS: Great. Thank you. Let me
7 go to staff, now.

8 MR. BABULA: This is Jared Babula, Staff Attorney.
9 And Lon Payne, he's the Project Manager, is on the line. And
10 then, we also have various technical staff who are listening
11 in and can speak, if needed. Thank you.

12 PRESIDING MEMBER DOUGLAS: Thank you very much.

13 I'm going to read through the Intervenors, so please
14 speak up if you're on. From Helping Hand Tools, Evan Wynns?

15 How about California Unions for Reliable Energy,
16 CURE?

17 And I know we heard Robert Sarvey. Mr. Sarvey, are
18 you there? Mr. Sarvey, we haven't muted you, I hope. Are
19 you still there?

20 HEARING OFFICER COCHRAN: I see Mr. Sarvey and I had
21 unmuted him myself, but he -- I haven't heard him speak.

22 PRESIDING MEMBER DOUGLAS: He may have stepped away
23 from the computer for a moment.

24 HEARING OFFICER COCHRAN: Okay.

25 PRESIDING MEMBER DOUGLAS: I'll move down the list --

1 I'll move down the list for now and we can ask, verify with
2 him later.

3 Are there any elected officials or representatives
4 from any federal government agencies on the line? If so,
5 please unmute yourselves and speak up.

6 Any state government agencies, besides the Energy
7 Commission?

8 How about Native American Tribes?

9 All right, is anyone on from the Bay Area Air Quality
10 Management District?

11 How about the City of Santa Clara?

12 Silicon Valley Power?

13 Any other local agencies?

14 All right, at this point I'll hand over the conduct
15 of this hearing to Hearing Officer Susan Cochran.

16 HEARING OFFICER COCHRAN: Thank you all and thank you
17 for bearing with us as we move through this remote meeting.

18 The Committee noticed today's prehearing conference
19 in the Notice of Prehearing Conference and Evidentiary
20 Hearing Revised Scheduling Order, and further orders issues
21 on April 30, 2020.

22 As we explained in the April 30, 2020 notice, the
23 basic purposes of the prehearing conference are to assess the
24 project's readiness for hearings, to clarify areas of
25 agreement or dispute, to identify witnesses and exhibits, to

1 determine the areas requiring hearing time so that the
2 parties may question the other party's witnesses, and to
3 discuss associated procedural matters.

4 Before I begin with the substantive portion of this
5 prehearing conference, I want to discuss housekeeping duties.
6 As you see, we've had a little bit of struggle getting
7 everybody in today. And we also want to make sure that we
8 are practicing the skills that we're going to need for a
9 remote public hearing.

10 This prehearing conference, as well as next week's
11 scheduled evidentiary hearing will be held remotely. That is
12 we are in separate locations and communicating only through
13 electronic means. We are meeting in this fashion consistent
14 with Executive Orders N25-20 and N29-20 and the
15 recommendations from the California Department of Public
16 Health to encourage physical distancing in order to slow the
17 spread of COVID-19. Meeting this way presents some
18 challenges in ensuring that we have a clear record. So, we
19 are going to practice some of the new things that we need to
20 do in order to have a clear record.

21 First, I'm going to ask that only one person speak at
22 a time. We've been doing that pretty well so far.

23 If you need to be recognized or wish to be
24 recognized, use the raise your hand feature or the chat
25 feature, if you need me to call on you.

1 After you've been called on, please lower your hand
2 if you use that feature, so that I can make sure that you
3 have been recognized.

4 Second, please identify yourself before you speak. I
5 know that our court reporter will ask who was speaking, if
6 it's unclear to him. But I would like it if we could try to
7 do that for him to limit the interruptions.

8 When we are all gathered together, it's easier for me
9 and the court reporter to see who's speaking or who wants to
10 be recognized.

11 Does anybody have any questions about the way in
12 which we're going to conduct both this prehearing conference
13 and next week's evidentiary hearing?

14 Moving now to the substance. And you'll have to
15 forgive me because it takes me a while to scroll through all
16 the names to see if anybody's hand is raised.

17 Moving now to the substance, this prehearing
18 conference concerns the application for a Small Power Plant
19 Exemption that I'm going to refer to as an SPPE, for the
20 Walsh Backup Generating Facility. The application was filed
21 by the Applicant on June 28, 2019. The application and many
22 of the documents I will be mentioning today are available in
23 the online docketing system used by the Energy Commission.

24 The backup generating facility would be used to
25 ensure an uninterruptible power supply to the Walsh Data

1 Center, the data center.

2 The data center consists of a four-story, 435,050
3 square-foot data center building that will house computer
4 servers in a secure and environmentally controlled structure,
5 and a three-story administrative building containing support
6 facilities, such as the building lobby, restrooms, conference
7 rooms, and office space.

8 The backup generating facility includes a total of 33
9 diesel-fired generators. A single, 2-megawatt diesel-fired
10 generator would support the administration space, shipping
11 and receiving, and common building systems such as elevators.

12 The remaining 32 generators will each be 3-megawatt
13 diesel-fired generators that will provide up to 80 megawatts
14 of electricity to the data center. The 80 megawatts
15 represents the maximum building load of the data center.

16 Under Public Resources Code Section 25541, found in
17 the Warren-Alquist Act, the Commission may grant an SPPE only
18 when it makes three separate and distinct findings. First,
19 the proposed power plant has a generating capacity of up to
20 100 megawatts. Two, no substantial adverse impact on the
21 environment will result from the construction or operation of
22 the power plant. And three, no substantial adverse impact on
23 energy resources will result from the construction or
24 operation of the power plant.

25 In addition to the findings required under the

1 Warren-Alquist Act, the Energy Commission acts as the lead
2 agency under the California Environmental Quality Act, CEQA.

3 In reviewing an SPPE, the Energy Commission considers
4 the action. For the application, the whole of the action
5 means the backup generators, the data center, and other
6 project features such as a substation. Therefore, when I
7 refer to the project, I mean the backup generators, the data
8 center, and the other projects such as the substation.

9 To aid in the consideration of the application under
10 both the Warren-Alquist Act and CEQA, staff prepared and
11 published its initial study and proposed mitigated negative
12 declaration, ISPMND, on February 18, 2020. The ISPMND was
13 subject to a public review and comment period that ended on
14 March 19, 2020.

15 Comments were received from the County of Santa Clara
16 Roads and Airports Department, and from the Bay Area Air
17 Quality Management District. No comments were received from
18 the general public, any intervenor, or the Applicant.

19 To conduct a prehearing conference efficiently, we
20 require that a party filing a prehearing conference -- we
21 required a party to file a prehearing conference statement if
22 that party wanted to participate in this prehearing
23 conference, or to present evidence, or cross-examine
24 witnesses at the evidentiary hearing.

25 We have received prehearing conference statements

1 from staff, Applicant, and Intervenor Sarvey. Intervenor
2 CURE and Helping Hand Tools did not file prehearing
3 conference statements.

4 The April 30, 2020 notice also contained a series of
5 questions regarding air quality, greenhouse gas emissions,
6 and public health. We invited the parties, the Applicant,
7 staff, and the intervenors, and the public, especially the
8 City of Santa Clara, Silicon Valley Power, and Bay Area Air
9 Quality Management District, BAAQMD, to submit responses to
10 these questions either in the form of evidence or briefings
11 by May 13, 2020. We received responses from Applicant,
12 staff, and Mr. Sarvey.

13 Liza, could you now go to the portion of the notice
14 that you're displaying now, that shows the prehearing
15 conference -- the evidentiary hearing process, please, page
16 5? Right there where it says formal hearing procedures.
17 Thank you.

18 As set forth in the April 30, 2020 notice, the
19 evidentiary hearings will be held and conducted using a
20 formal hearing procedure modified to fit the remote nature of
21 the hearing.

22 First, while formal, we will not take time to
23 describe the exhibit list and the exhibits that are moved
24 into evidence, or to describe topics covered by declaration.

25 You may prepare an exhibit list by going to the

1 Energy Commission's website, and I'm about to share my screen
2 with you all, so that I can show you how to create your own
3 exhibit list. Because I'm going to ask that the parties
4 review the exhibit lists created thus far and ensure that
5 your documents are there. So, let me get to the Walsh Data
6 Center.

7 So, bear with me, please, this didn't come up as
8 quickly as I wanted it to. Here we go.

9 Okay, this is the Energy Commission siting cases
10 Walsh main page where you land. You'll see that I'm in the
11 file that shows original proceedings. You'll see here that
12 there's a hyperlink for exhibit list. You press on that an
13 there's the exhibit list for this proceeding.

14 So, again, I would ask that the parties review this
15 before next week and if there are any changes that need to be
16 made, please let me know.

17 I'm now going to turn the control of the meeting to
18 -- Liza, you're going to need to take control back all by
19 yourself. Okay.

20 Regarding direct testimony and examination, we will
21 deem all parties' opening and rebuttal testimony as their
22 direct examination. There is no need to discuss experts
23 resumes if we have them in writing, and there's no objection
24 to the witnesses as an expert.

25 If witnesses testify who have not filed written

1 testimony, please have them identify themselves. For
2 example, if I were testifying I would say I'm Susan Cochran,
3 Hearing Advisor II for the California Energy Commission.

4 If any party has any objection to the qualifications
5 of a witness, please be prepared to state the objection and
6 its basis.

7 So, we had shown the hearing procedure that we had
8 outlined in the notice. Have all of the parties had a chance
9 to review the process in the April 30, 2020 notice?

10 MR. BABULA: Yes, this is Jared. I reviewed it.

11 HEARING OFFICER COCHRAN: Thank you, Mr. Babula.

12 Applicant, do you have any questions about the
13 procedure?

14 MR. GALATI: I apologize; I muted my phone as well.
15 This is Scott Galati. I have reviewed it. I have no
16 question.

17 HEARING OFFICER COCHRAN: Thank you. And, finally,
18 Mr. Sarvey, do you have any questions?

19 Mr. Sarvey shows as unmuted. Mr. Sarvey, are you
20 speaking and we're just not picking you up?

21 MR. BABULA: Can you type in the -- this is Jared
22 Babula. Can you type in the chat message?

23 HEARING OFFICER COCHRAN: Mr. Sarvey, can you send us
24 a chat message? Are you having difficulties with WebEx?

25 So, Mr. Sarvey, if you can see onscreen this blue

1 button right here that says closed chat, that would be the
2 button you would press to send a chat message.

3 Ms. Avalos, have you received any contact from Mr.
4 Sarvey about difficulties participating in this hearing
5 today?

6 So, I know some folks can hear me. I'm becoming a
7 little concerned that not everyone can hear me. Mr. Layton,
8 can you hear me?

9 PRESIDING MEMBER DOUGLAS: Susan, this is
10 Commissioner Douglas. I think Mr. Layton might be scrambling
11 for his --

12 HEARING OFFICER COCHRAN: Oh, okay.

13 PRESIDING MEMBER DOUGLAS: You're very audible, I
14 believe.

15 HEARING OFFICER COCHRAN: Okay. Okay, I'm just
16 concerned that I've heard from like sort of the same people,
17 and so I wanted to check someone who I hadn't heard from.

18 MR. KNIGHT: Hearing Officer Cochran?

19 HEARING OFFICER COCHRAN: Yes?

20 MR. KNIGHT: This is Eric Knight. I can hear you
21 fine.

22 HEARING OFFICER COCHRAN: Thank you, Mr. Knight.

23 MR. KNIGHT: You're welcome.

24 MR. SINGH: Hey, Susan, this is Raj.

25 HEARING OFFICER COCHRAN: Yes?

1 MR. SINGH: This is Raj. If Mr. Sarvey cannot hear
2 you or we cannot communicate, if there's a phone contact
3 number or something I can call him, or we talk to him to help
4 him troubleshoot what's going on. I'm ready to do that.

5 HEARING OFFICER COCHRAN: Okay, let me find his phone
6 number from the order admitting him to the proceedings.
7 Please bear with me, I'm typing as fast as I can.

8 MR. SINGH: Sure.

9 HEARING OFFICER COCHRAN: Because this is a public
10 record, I believe this is disclosable. His phone number is
11 209-835-7162.

12 MR. SINGH: Okay, 209-835-7162 correct?

13 HEARING OFFICER COCHRAN: Yes. Thank you.

14 MR. SINGH: Okay. All right, thanks.

15 HEARING OFFICER COCHRAN: I had a very specific
16 question for Mr. Sarvey. In his prehearing conference
17 statement he had asked that TN232956 be marked as Exhibit
18 504. I believe that should be TN232996, Silicon Power's 2018
19 Integrated Resource Plan. But I would like to confirm that
20 with him. So, okay.

21 MR. BABULA: You're talking about -- this is Jared
22 Babula. His Exhibit Number 504, he actually has it titled as
23 the Energy Commission's Evaluation of SVP's IRP.

24 HEARING OFFICER COCHRAN: Right.

25 MR. BABULA: It's actually different.

1 HEARING OFFICER COCHRAN: Well, 232996 appears to be
2 that document, Mr. Babula.

3 MR. BABULA: Yeah, okay.

4 HEARING OFFICER COCHRAN: And when filed by him, it
5 says Exhibit 504 in the document title. So.

6 MR. BABULA: Okay.

7 HEARING OFFICER COCHRAN: So, we'll probably have to
8 clean that up after the fact, unfortunately.

9 So, for purposes of the evidentiary hearing are there
10 any objections to previously filed evidence? And I will look
11 at the Applicant, first.

12 MR. GALATI: No, I don't have any objection.

13 HEARING OFFICER COCHRAN: Okay. Staff?

14 MR. BABULA: This is Jared Babula. I don't have any
15 objections.

16 HEARING OFFICER COCHRAN: Okay. And Mr. Sarvey, are
17 you with us yet?

18 Okay. Because we're using the formal process, we ask
19 that if possible you have most of your cross-examination
20 written out or outlined. As set forth in the April 30, 2020
21 notice, you may only use a document that has been previously
22 identified as an exhibit when questioning a witness. When
23 asking your questions start by identifying the document
24 either by exhibit number or its TN, and the specific page
25 number you may be referencing.

1 Allow the witness to finish their answer. For the
2 benefit of the court reporter and the transcript, please
3 remind your witnesses not to talk over each other or over the
4 person asking questions.

5 Finally, I would like to remind you about the
6 requirement contained in the April 30, 2020 notice that you
7 file the list of exhibits, either your own or another party's
8 that you intend to use during the evidentiary hearing no
9 later than May 27. Next Tuesday, because Monday is a
10 holiday.

11 What I want to try now is to use the raise your hand
12 function. So, are there any questions from any of the
13 parties?

14 MR. BABULA: I have a --

15 HEARING OFFICER COCHRAN: Yes.

16 MR. BABULA: This is Jared Babula. I have a --

17 HEARING OFFICER COCHRAN: Yes.

18 MR. BABULA: -- question on -- and I don't know if
19 we're at this point, now, but regarding Silicon Valley Power
20 and the Bay Area Air Quality Management District and their
21 participation. So, should I move forward on that or are we
22 getting to that part?

23 HEARING OFFICER COCHRAN: We can do that -- let's do
24 it when we talk about the issues that we're going to be
25 talking about next week. Would that be better? Would that

1 be a good time?

2 MR. BABULA: Sure.

3 HEARING OFFICER COCHRAN: No, let's just go ahead and
4 do it right now.

5 MR. BABULA: Okay. So, I believe that the Silicon
6 Valley Power and both Bay Area Air Quality Management
7 District will have people at the -- to participate and
8 available to address questions. So, I was trying to figure
9 out what process you would like to use for them? So, for
10 example, are they going to be sworn in?

11 Also, are you thinking of having the Committee be the
12 question asker and it flows that way, so it's organized and
13 simple? Because I believe that both for Bay Area and for
14 Silicon Power their information may resolve a number of
15 issues that Mr. Sarvey has brought up that could then reduce
16 other needs for direct, and cross, and so forth. So, I'm
17 trying to -- I'm wondering what type of process you'd like to
18 use for both of those agencies?

19 HEARING OFFICER COCHRAN: I think --

20 PRESIDING MEMBER DOUGLAS: Susan, I'm sorry, this is
21 Commissioner Douglas.

22 HEARING OFFICER COCHRAN: Sure.

23 PRESIDING MEMBER DOUGLAS: I just wanted to verify,
24 are we attempting to reach out to Mr. Sarvey? It was strange
25 because we heard his voice earlier and he did seem to be

1 signed on. So, I just wanted to find out if somebody is --
2 has reached out to him or perhaps at least that he has not
3 reached out to the Public Advisor or anybody else?

4 MS. LOPEZ: Hi, this is Licha, the host. I can see
5 that he is on and there are sound waves coming out of his
6 name. I just don't know if he's just not speaking.

7 PRESIDING MEMBER DOUGLAS: Okay.

8 MS. LOPEZ: He has reached out to him on the number
9 provided and it is not working. It's not a working number.

10 PRESIDING MEMBER DOUGLAS: Okay.

11 MS. LOPEZ: We are still trying to reach out to him.

12 MR. SINGH: Yeah, I also -- this is Raj. I also sent
13 him a chat, a couple of the chats. I couldn't hear anything
14 back from him.

15 HEARING OFFICER COCHRAN: Commissioner Douglas,
16 perhaps we can have the Public Advisor's Office reach out to
17 him to make sure that he will be able to participate next
18 Wednesday?

19 PRESIDING MEMBER DOUGLAS: Well --

20 HEARING OFFICER COCHRAN: Or I can.

21 PRESIDING MEMBER DOUGLAS: And the rest of this
22 session as well, if possible.

23 HEARING OFFICER COCHRAN: Yeah.

24 PRESIDING MEMBER DOUGLAS: Okay, we should just be
25 prepared to summarize and catch him up as best we can, if he

1 is able to rejoin us. I just wanted to triple check that
2 we'd made every effort to reach him. So, go -- you had a
3 question you were answering and I jumped in.

4 HEARING OFFICER COCHRAN: Oh, I thought perhaps you
5 wanted to answer the question.

6 PRESIDING MEMBER DOUGLAS: Oh, no, I was going to let
7 you answer it.

8 HEARING OFFICER COCHRAN: Oh, thank you so much. I
9 think that the way we handled it when we had similar
10 instances in Laurelwood worked well. And that is that the
11 parties asked them questions or presented some of the
12 evidence that we thought they would be presenting.

13 I note that in your prehearing conference statement,
14 Mr. Babula, that you mentioned that Kevin Kolnowski from
15 Silicon Power SVP was going to be present. And one of the
16 questions I had was whether Bay Area Air Quality Management
17 District was going to be able to participate.

18 MR. BABULA: Yes. This is Jared Babula. My
19 understanding is that they will be. I don't have -- at this
20 time I'm not a hundred percent sure exactly who that will be,
21 which is why I didn't put a name down. But I do believe they
22 will be there and be able to field questions.

23 HEARING OFFICER COCHRAN: Okay.

24 MR. BABULA: So, based on the order of how you have
25 things going with the Applicant first, presumably if the

1 Applicant goes first they will then ask the questions, which
2 could reduce the need. I think they might cover the
3 questions needed for anyone else to ask so --

4 HEARING OFFICER COCHRAN: Correct.

5 MR. BABULA: Okay.

6 HEARING OFFICER COCHRAN: Correct. And, obviously,
7 the Committee will then be able to make sure that the
8 questions it has will be asked or answered, and ask its own
9 questions, just as we did in Laurelwood.

10 MR. BABULA: Right. Yeah, my primary concern is
11 making sure the Committee gets what it needs to make its
12 decision. So, yes, definitely.

13 HEARING OFFICER COCHRAN: That's my primary concern,
14 too, so --

15 Okay, have we heard anything at all from Mr. Sarvey?

16 MR. SARVEY: Can you hear me, now?

17 HEARING OFFICER COCHRAN: Yes. Thank you, Mr.
18 Sarvey. Welcome.

19 MR. SARVEY: Finally, I got through. I had to hang
20 up and dial in again, so I think I can -- I've been hearing
21 everything you said, but I just haven't been able to speak.

22 HEARING OFFICER COCHRAN: Okay. Is there anything
23 you would like to -- so, obviously, we've covered some
24 ground, do you have any questions or comments?

25 Mr. Galati, I see your hand. I'll call on you after

1 Mr. Sarvey.

2 MR. SARVEY: Well, I heard you say there was
3 something in particular you had a question about my
4 prehearing conference statement and that would be the only
5 thing that I'd --

6 HEARING OFFICER COCHRAN: Yes. It concerns the TN
7 for your Exhibit 504.

8 MR. SARVEY: Okay.

9 HEARING OFFICER COCHRAN: In your prehearing
10 conference statement you listed 232956, but I think it should
11 be 232996.

12 MR. SARVEY: I'll check that. Thank you.

13 HEARING OFFICER COCHRAN: Okay. And make -- and if
14 there is, if you do need that changed, please let me know
15 before next Wednesday.

16 MR. SARVEY: Absolutely.

17 HEARING OFFICER COCHRAN: So, that way I can have the
18 exhibits ready.

19 MR. SARVEY: Will do, thank you.

20 HEARING OFFICER COCHRAN: Thank you.

21 Mr. Galati?

22 MR. GALATI: Yes, thank you. I just wanted to
23 correct something. I think that you had said we would file a
24 list of the exhibits, ours or others that we would like to
25 use during the evidentiary hearing. And I think you said

1 Tuesday, the 27th, when I think --

2 HEARING OFFICER COCHRAN: I'm sorry, 26th. The 26th,
3 sorry.

4 MR. GALATI: Thank you. Yeah, just wanted to clarify
5 that, thank you.

6 HEARING OFFICER COCHRAN: I keep thinking that
7 Wednesday is the 28th, but it's not. So, that's my fault.
8 But they are due Tuesday, the 26th.

9 Turning now to the Committee questions that Mr.
10 Babula referenced previously. In the April 30, 2020 notice
11 we stated that we would discuss the need for and timing of
12 any rebuttal to the filings made.

13 Does anybody need to discuss the need for rebuttal or
14 will we just be able to handle that through the evidentiary
15 hearing? Again, please use -- Mr. Galati?

16 MR. GALATI: Yes, Scott Galati. I was planning to do
17 our rebuttal. Since we don't have sort of a reply, I was
18 planning to do our rebuttal to what was filed last Wednesday
19 in our witness's opening statements, and in our direct
20 examination. Are you talking about --

21 HEARING OFFICER COCHRAN: Okay.

22 MR. GALATI: -- rebuttal after cross, at the hearing?

23 HEARING OFFICER COCHRAN: No, I was talking about --
24 so, originally, I think the plan was that there might be
25 written rebuttal, just like we do opening and rebuttal

1 testimony on other things.

2 For this supplemental testimony that we solicited to
3 answer our questions, because it was due fairly short order
4 we had said we would discuss the need to prefile that
5 evidence. But if the parties can resolve their responses,
6 rebuttal to the testimony that was previously filed in
7 response to the questions during the evidentiary, I believe
8 that's acceptable. Is that -- Mr. Babula?

9 MR. BABULA: Yeah, this is Jared Babula. I was
10 planning to utilize the staff's summary that you want the
11 staff witness to have a summary of their key points, to
12 utilize that to address some of the key points brought up for
13 rebuttal.

14 So, yeah, similar to Mr. Galati, I was just planning
15 on using that as the vehicle to get that information into the
16 record.

17 HEARING OFFICER COCHRAN: Okay. Mr. Sarvey, do you
18 have any comments on that?

19 MR. SARVEY: No, that would be acceptable to me,
20 thank you.

21 HEARING OFFICER COCHRAN: Thank you. So, now, I'll
22 turn to the issues that are likely to be discussed at the
23 prehearing conference.

24 Applicant's prehearing conference statement indicates
25 the following is requiring time at the evidentiary hearing:

1 Energy Resources, Greenhouse Gas Emissions, Air Quality and
2 Public Health, Utilities and Public Services, Environmental
3 Justice.

4 Staff's prehearing conference statement indicated
5 readiness to provide witnesses on Air Quality, Greenhouse Gas
6 Emissions, Energy Resources, and Public Health, if requested
7 by the Committee.

8 Staff also requested time to question Mr. Sarvey on
9 his opening and rebuttal testimony on the topics of energy
10 resources, Silicon Valley Power's power supply, and Air
11 Quality.

12 Finally, Mr. Sarvey listed the following as requiring
13 adjudication: Under Air Quality I believe he had two topics,
14 analysis of emergency operation impacts and a statement
15 regarding PG&E, PSPS events were not considered.

16 On Greenhouse Gas Emissions, compliance with local,
17 regional, and state plans for reducing greenhouse gas
18 emissions.

19 On Utility Services and Systems, construction of new
20 substation, cumulative impact based on demand of Walsh and
21 other planned data centers.

22 And on Energy Resources, increased reliance on fossil
23 fuels due to iterate nature of renewables to meet round-the-
24 clock demand. And he also described that as a Greenhouse Gas
25 impact through indirect emissions from power provided.

1 Is that a correct summary of the issues that we'll be
2 needing to address at next week's evidentiary hearing?

3 Mr. Galati?

4 MR. GALATI: That is a correct summary of what we
5 intend to -- I would point out that Mr. Sarvey's testimony
6 also includes a cumulative impact analysis.

7 HEARING OFFICER COCHRAN: Other than under Utility
8 and Service Systems?

9 MR. GALATI: Mr. Sarvey filed some document that
10 comments on the ISMND and also Title testimony, I believe.
11 And there are comments about cumulative impact modeling
12 analysis.

13 HEARING OFFICER COCHRAN: Okay. Mr. Babula?

14 MR. BABULA: Yeah, that's a correct assessment. And
15 I think that some of the information would be addressed by
16 Silicon Valley Power, especially a lot of the issues raised
17 by Mr. Sarvey in some of his filings. So, that might reduce
18 the need if he's satisfied with their response on some of the
19 cross and other aspects. So, but overall it's a correct
20 summary of the issues that we're trying to address through
21 our direct, which primarily covers the issues raised by Mr.
22 Sarvey.

23 HEARING OFFICER COCHRAN: Okay. I note, Mr. Sarvey
24 and Mr. Galati that I think, Mr. Galati, you had listed
25 Environmental Justice as being an issue from Mr. Sarvey's

1 testimony. Are we going to actually require evidentiary
2 hearing time on Environmental Justice, Mr. Galati?

3 MR. GALATI: I wasn't planning to. I was planning to
4 cross Mr. Sarvey on that subject because of his earlier
5 comments on the Environmental Justice.

6 HEARING OFFICER COCHRAN: Mr. Sarvey, are you
7 intending to present evidence at the evidentiary hearing on
8 Environmental Justice?

9 MR. SARVEY: No, I was going to brief it.

10 HEARING OFFICER COCHRAN: Okay. Do you need
11 evidentiary hearing time for Environmental Justice issues?

12 MR. SARVEY: The only questions would be to the
13 BAAQMD, it wouldn't be any of the other witnesses.

14 And I was wondering if BAAQMD and Silicon Valley
15 could file something so we know what to expect?

16 HEARING OFFICER COCHRAN: Well, we have asked them to
17 do that and thus far they have not. We had asked them to
18 file it at the same time that the parties filed their
19 responses to the comments. And I don't know whether given
20 the remote work that all of us are doing, they have the
21 ability to make those responses. So, I'm not sure. I'm not
22 sure.

23 MR. SARVEY: Okay, thank you.

24 HEARING OFFICER COCHRAN: So, do you want to have
25 time for Environmental Justice at the evidentiary hearing?

1 MR. SARVEY: I'll have no questions of staff or
2 Applicant. And unless I do something in oral testimony, no,
3 there won't be anything there that I -- I don't have any
4 questions for anybody else.

5 HEARING OFFICER COCHRAN: And are you planning to say
6 something beyond that which you've filed previously on
7 Environmental Justice?

8 MR. SARVEY: Only for briefing, no. I think it could
9 totally be handled in briefing. But I don't know if we're
10 going to be allowed to brief this or what, so that's kind of
11 the stipulation I'm under.

12 HEARING OFFICER COCHRAN: Are there any other topics
13 that I didn't list? Mr. Galati, just so you know, I consider
14 Cumulative Impacts part of the whole impact analysis. So,
15 direct, indirect, and cumulative. And I see that you've
16 raised your hand, Mr. Galati.

17 MR. GALATI: Yes, I'll handle any questions regarding
18 Environmental Justice under Air Quality.

19 HEARING OFFICER COCHRAN: Okay. Thank you, Mr.
20 Galati.

21 Mr. Babula: Yeah, thanks. This is Jared Babula.
22 So, what I'm trying to do is I'm looking at the filings Mr.
23 Sarvey has filed, specifically Exhibit 501 and 502, and 500,
24 and going through that. And so, any issue he's raised, where
25 he's made some statement, raised a concern, I am going to

1 have somebody address it at the evidentiary hearing. Unless
2 after, say, Mr. Kolnowski of Silicon Valley Power speaks, and
3 then if Mr. Sarvey says, okay, that addresses the issue, then
4 I can take that off the table. But regardless of what he is
5 saying he wants to bring to the evidentiary hearing, I want
6 to make sure these outstanding claims and allegations are
7 buttoned up, and resolved, and responded to. And so, I'm
8 going off not so much what he's going to be talking to at the
9 evidentiary hearing, but what he's already filed that's in
10 the record.

11 HEARING OFFICER COCHRAN: Okay. So, then I'll have a
12 -- I'll keep a placeholder at the evidentiary hearing for
13 Environmental Justice to have space for that. Is that fair?
14 Yes, Mr. Babula?

15 MR. BABULA: Yeah. I mean he's -- yeah, everything
16 he's filed I want to be able to have someone at least say
17 something about it.

18 HEARING OFFICER COCHRAN: Okay.

19 MR. BABULA: And it could be rather quick. Some of
20 this could be addressed fairly quickly.

21 HEARING OFFICER COCHRAN: Okay.

22 MR. BABULA: And one of the things, too, is I'm
23 trying to ensure that our witnesses, such as Dr. Chu, and Dr.
24 Qian, and Dr. Jiang are -- we're ready to go and we're going
25 to hit the points and be efficient in a way that comports

1 with the WebEx system. So, it should be, hopefully, fairly
2 efficient.

3 HEARING OFFICER COCHRAN: Okay. That would be great
4 and appreciated.

5 So, the Committee still has one outstanding issue and
6 that is the record indicates that the Applicant accepted the
7 staff's proposed mitigation measures for Biological Resources
8 before the ISPMND was circulated. In prior cases, for
9 example, McLaren and Laurelwood, we had correspondence from
10 the City of Santa Clara that it would implement the new
11 mitigation measures if imposed by the Commission.

12 Is there a similar agreement from the City of Santa
13 Clara forthcoming? Has anyone talked to the City about that?

14 MR. BABULA: This is Jared Babula. I believe we
15 included that in the initial study that was filed.

16 HEARING OFFICER COCHRAN: Okay.

17 MR. BABULA: Let me check on that. Yes, it seems to
18 me that --

19 HEARING OFFICER COCHRAN: Okay, if you could just
20 point that out to me, I may have missed it so --

21 MR. BABULA: Yeah. Lon, if you are on and you know
22 the answer jump in. Otherwise, I'll have to get back to you.
23 But I believe wanted to include that in there.

24 HEARING OFFICER COCHRAN: Okay. I have a copy of the
25 initial study, so I can check that as well.

1 MR. BABULA: Okay.

2 HEARING OFFICER COCHRAN: Before next week. And
3 we'll have a resolution one way or the other next week.

4 MR. BABULA: Right.

5 HEARING OFFICER COCHRAN: Okay. Thank you so much.

6 So, we talked about a briefing schedule. Are briefs
7 going to be required and if so on what subject matters? What
8 are the parties' preferences on a briefing schedule?

9 Mr. Sarvey, you've already talked about wanting a
10 briefing schedule and you had a schedule laid out in your
11 prehearing conference. My recollection is that neither staff
12 nor Applicant saw the need for briefing. Am I correct staff
13 and Applicant?

14 MR. GALATI: This is Scott Galati. You're correct.
15 I think that you have asked for testimony specifically or
16 briefs specifically on points that we all had to file on the
17 13th.

18 HEARING OFFICER COCHRAN: Okay.

19 MR. BABULA: This is Jared Babula. And I agree, I
20 don't see a need at this point for any briefing.

21 HEARING OFFICER COCHRAN: Okay. Mr. Sarvey, what
22 briefing do you believe is necessary or what subject matters
23 would it cover?

24 MR. SARVEY: It would cover Air Quality, Public
25 Health, Energy Resources, probably Utilities and Service

1 Systems. And to be quite honest with you, I think we'd be
2 better off briefing this than even having an evidentiary
3 hearing, because this is going to be pretty wild trying to
4 cross-examine somebody. It's like talking to your teenage on
5 the phone, you don't know what's in his eyes, or what he's
6 saying, or what's going on. So, I think briefing's very
7 important since we have such a limited opportunity to address
8 each other.

9 HEARING OFFICER COCHRAN: Okay. Thank you for that.

10 Are there any other topics that we have not yet
11 discussed in the prehearing conference, that any of the
12 parties think need to be discussed?

13 MR. BABULA: This is Jared Babula. Can I just jump
14 back to briefing?

15 HEARING OFFICER COCHRAN: Sure.

16 MR. BABULA: First of all, in just a regular CEQA
17 context briefing, there isn't such a thing. Normally,
18 briefing is for discussing a legal issue, a discrete legal
19 issue that's come up. A lot of what's termed briefing is
20 just a reiteration of the factual record. And so, if there's
21 still a pending question that needs to be addressed with
22 facts and expert testimony, then the evidentiary hearing is
23 the place that hole gets filled. Not to try to fill it in
24 later with briefing which should be on a discrete legal
25 issue, and not summarizing the record, especially when you

1 have initial study which is supposed to lay out the factual
2 basis for staff's findings. And then, you have the oral
3 testimony, and you have the response to questions. So, the
4 record's going to be very robust and so that's, again, why I
5 don't see the need for briefing unless there's a discrete
6 legal issue that the Committee finds that needs to have that
7 part analyzed.

8 MR. SARVEY: This is Robert Sarvey. I'd like to know
9 what staff and Applicant's fear of briefing is. I don't
10 understand their problem with it. It's done in every other
11 proceeding I've been in, so I don't understand why it's not
12 being done here.

13 HEARING OFFICER COCHRAN: Well, I think again it
14 depends on the definition of briefing. When you say
15 briefing, Mr. Sarvey, how are you defining that term?

16 MR. SARVEY: Well, I think that the Committee needs
17 the explanation of facts from everybody's point of view, and
18 the legal opinions need to be squared out in the briefing.
19 And I don't see how we're going to do this in the evidentiary
20 hearing with everybody on the phone. This, to me, hasn't
21 worked very well, so that's just my opinion.

22 HEARING OFFICER COCHRAN: Mr. Knight, I see your hand
23 raised.

24 MR. KNIGHT: Yes, Hearing Officer Cochran, this is
25 Eric Knight. The letter from the City of Santa Clara

1 agreeing to the Biological Resources mitigation is Appendix
2 D. It's the last page of the staff initial study, Proposed
3 Mitigated Negative Declaration.

4 HEARING OFFICER COCHRAN: Thank you so much for that.

5 MR. KNIGHT: You're welcome.

6 MR. BABULA: Thanks, Mr. Knight.

7 MR. KNIGHT: You're welcome, Jared.

8 HEARING OFFICER COCHRAN: Sorry, my beagle is trying
9 to get my attention.

10 MR. GALATI: Hearing Officer Cochran, can I respond?

11 HEARING OFFICER COCHRAN: Please go ahead, Mr.
12 Galati.

13 MR. GALATI: Yes. Yeah, and this is Scott Galati.
14 The issue about briefing is one that should be of a legal
15 nature or a procedural nature. You asked at the beginning of
16 this whether I objected to any of the parties' filings of
17 testimony. And because many of the items in Mr. Sarvey's
18 filings go beyond testimony and include argument, and
19 opinion, and briefing I didn't object to that, rather than
20 drag us through what a specific fact sentence and what's not.

21 Mr. Sarvey, all of his information can come in. I'm
22 not objecting to the different pieces that include briefing.
23 As far as I'm concerned what Mr. Sarvey has filed from the
24 beginning is a mixture of briefs, opinions, and fact. So, I
25 don't believe that the Committee decided that there was no

1 need for briefing, that Mr. Sarvey would have had any
2 inability to prepare and participate in this proceeding like
3 he has in the last.

4 So, my proposal would be that at the end of
5 evidentiary hearing, if the Committee had a legal question, a
6 very discrete legal question, not argument or closing
7 statement, but a discrete legal question that needed briefing
8 then maybe we do at that time. Otherwise, the Committee has
9 already asked us to opine about the application of the CEQA
10 guidelines through the questions that they have.

11 HEARING OFFICER COCHRAN: Thank you for that. In
12 general, we don't have what would be considered a closing
13 statement at evidentiary hearings. Would that be a helpful
14 vehicle for this? I'm throwing that out to the parties.

15 Mr. Galati?

16 MR. GALATI: Yes, I've been arguing for that for 10
17 years, I'd be happy to do a closing statement.

18 HEARING OFFICER COCHRAN: Mr. Babula, do you have an
19 opinion on that?

20 MR. BABULA: Like as a live closing statement or is
21 it written?

22 HEARING OFFICER COCHRAN: Yeah.

23 MR. BABULA: Okay. Yeah, I would --

24 HEARING OFFICER COCHRAN: A live close.

25 MR. BABULA: I'd be fine with having some

1 encapsulating summary at the end to close it off.

2 HEARING OFFICER COCHRAN: Would that address your
3 concerns, Mr. Sarvey about being able to respond?

4 MR. SARVEY: No, personally it wouldn't. See,
5 Applicant and staff have lots of people helping them. You
6 know, they have lots of, you know, support and everything.
7 I'm here by myself. In order to explain myself, I need to be
8 able to brief it. And that's been a major problem in the
9 last two proceedings I've been in. You know, I don't have
10 five people to sit there and say, oh yeah, it's over here,
11 it's over there. You know, so it's very difficult for me to
12 participate in an evidentiary hearing without an opportunity
13 to gather everything at the end, look at the transcript, look
14 at the evidence and present my case to the Committee. And
15 that's why I live the briefing.

16 If they just want one opening brief, that's fine with
17 me. But I would like to explain my position. And it's very
18 difficult for me as one person against ten people with the
19 staff, and ten people at the Applicant. I need that and
20 that's why I'm requesting it.

21 HEARING OFFICER COCHRAN: Okay. I think we can take
22 that under advisement.

23 Commissioner Douglas, I believe we're now at public
24 comment.

25 PRESIDING MEMBER DOUGLAS: Okay, that sounds right.

1 So --

2 HEARING OFFICER COCHRAN: So, I will unmute everyone.

3 PRESIDING MEMBER DOUGLAS: Good.

4 HEARING OFFICER COCHRAN: So that that way -- the
5 lines are open. Is there anyone who would like to offer a
6 public comment? You can just start talking. You don't have
7 to raise your hand. You don't have to send me a chat.

8 I'm not seeing anyone wishing to make a public
9 comment. Am I correct? Speak now or forever hold your
10 peace.

11 Okay. The Committee will now adjourn to a closed
12 session in accordance with California Government Code Section
13 11126(c)(3), which allows a state body to hold a closed
14 session to deliberate on a decision to be reached in a
15 proceeding the state body was required to conduct by law.

16 Mr. Galati, is your hand up again? No.

17 Okay, so we anticipate that we will return from
18 closed session in about an hour. So, thank you for your
19 participation here. And we are now in closed session.

20 (Convene Closed Session at 3:02 p.m.)

21 (Reconvene Open Session at 4:00 p.m.)

22 HEARING OFFICER COCHRAN: So, we're back on the
23 record following the closed session. The following is the
24 reportable action from that closed session.

25 The Committee is inviting the parties to prepare and

1 give a closing statement, argument, whatever you'd like to
2 call it that summarizes the evidence that's presented at the
3 evidentiary hearing. Each party will have a time limit of
4 between five to ten minutes for this summarization.

5 In addition, we want to alert the parties that we
6 will be -- that part of the discussion at the evidentiary
7 hearing will concern the schedule for the issuance of a
8 decision, including a revised date for the business meeting.
9 So, please be prepared to discuss that.

10 I will also be putting this information into an email
11 memo or the docket.

12 Are there any questions? I see that Mr. Galati did
13 not stay on the line. So, Mr. Babula or Mr. Sarvey, do you
14 have any questions about the reported action?

15 MR. BABULA: This is Jared Babula. I do not.

16 HEARING OFFICER COCHRAN: Thank you.

17 MR. SARVEY: This is Bob Sarvey. I don't have any
18 questions either, thank you.

19 HEARING OFFICER COCHRAN: Okay. Commissioner
20 Douglas, if you could now adjourn the meeting?

21 PRESIDING MEMBER DOUGLAS: All right. Well, thank
22 you again Hearing Officer Cochran.

23 And we are adjourned.

24 HEARING OFFICER COCHRAN: Thank you all very much.

25 Next week's evidentiary hearing begins at 10:00 on Wednesday,

1 May 27.

2 (Thereupon, the Hearing was adjourned at

3 4:02 p.m.)

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REPORTER' S CERTIFICATE

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.



PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

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 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.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520