

| DOCKETED | |
|-------------------------|---|
| Docket Number: | 19-SPPE-03 |
| Project Title: | Sequoia Data Center |
| TN #: | 234018 |
| Document Title: | Draft Transcript 5-29-20 re Prehearing Conference |
| Description: | N/A |
| Filer: | Patty Paul |
| Organization: | California Energy Commission |
| Submitter Role: | Commission Staff |
| Submission Date: | 7/27/2020 10:37:35 AM |
| Docketed Date: | 7/27/2020 |

CALIFORNIA ENERGY COMMISSION

In the Matter of:) Docket No. 19-SPPE-03
))
))
Sequoia Data Center) PREHEARING CONFERENCE
Small Power Plant Exemption)
(SPPE)) RE: Sequoia Data Center
_____)

STATE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

PREHEARING CONFERENCE

REMOTE

FRIDAY, MAY 29, 2020

2:03 P.M.

Reported by: Peter Petty

APPEARANCES

SITTING COMMITTEE MEMBERS AND ADVISERS:

Commissioner Karen Douglas, Presiding Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Jana Romero, Advisor to Associate Member Patty Monahan

CEC STAFF PRESENT:

Galen Lemei, Hearing Officer
Lisa DeCarlo, Staff Counsel
Noemi Gallardo, Public Advisor
Susan Cochran, Hearing Officer
Liza Lopez

APPLICANT:

Santa Clara, LLC
Scott Galati, Esq., DayZen, LLC

INTERVENORS:

Robert Sarvey
California Unions for Reliable Energy (CURE)

PUBLIC AGENCIES:

Bay Area Air Quality Management District (BAAQMD)
Silicon Valley Power (City of Santa Clara)

PUBLIC COMMENT:

None

INDEX

| | Page |
|--|------|
| 1. Call to Order | 4 |
| 2. Reportable Action from Closed Session | 42 |
| 3. Adjournment | 42 |
| Reporter's Certificate | |
| Transcriber's Certificate | |

P R O C E E D I N G S

1
2 May 29, 2020

2:03 P.M.

3 HEARING OFFICER LEMEI: So Commissioner Douglas,
4 would you like to --

5 COMMISSIONER DOUGLAS: Yes.

6 HEARING OFFICER LEMEI: -- start us off?

7 COMMISSIONER DOUGLAS: Yes. I will do that. Good
8 afternoon, everybody.

9 This is the Prehearing Conference for the
10 Application for a Small Power Plant Exemption for the Sequoia
11 Backup Generating Facility. I'm Karen Douglas, the presiding
12 member of the Committee assigned to conduct proceedings on
13 the application.

14 Before we begin, I would like to make
15 introductions. Then ask that the parties identify themselves
16 for the record. My advisors are Kourtney Vaccaro and Eli
17 Harland. Patty Monahan is the associate member of this
18 Committee. And her advisor, Jana Romero, is also on the
19 WebEx with us today. The Public Advisors Office is
20 represented by Noemi Gallardo, the public advisor, and
21 Rosemary Avalos. And Galen Lemei, our hearing officer.

22 I would like to ask the parties to please introduce
23 themselves and their representatives at this time now.
24 Starting with the Applicant.

25 MR. GALATI: Good afternoon, everybody. This is

1 Scott Galati. I'm representing C-1 Santa Clara, LLC and that
2 is owned by CyrusOne. That's the Applicant.

3 We have some other members of our team. I don't
4 think they'll be needed today so I'll introduce them as we
5 go, if needed.

6 COMMISSIONER DOUGLAS: That sounds very good.
7 Thank you very much.

8 Staff.

9 MS. DECARLO: Good afternoon. This is Lisa
10 DeCarlo, Energy Commission staff attorney representing Energy
11 Commission Staff.

12 We as well have other staff members available
13 online, if needed, and I'll introduce them at that time.

14 COMMISSIONER DOUGLAS: Thank you very much.

15 Now I'm turning to intervenors. Mr. Sarvey.

16 MR. SARVEY: Yeah, this is Bob Sarvey, intervenor.

17 COMMISSIONER DOUGLAS: All right. Thank you very
18 much.

19 Is anyone on from California Unions for Reliable
20 Energy, or CURE? What -- okay that's -- that's it for
21 intervenors.

22 So let me turn to agencies now. Are there any
23 elected officials or agency representatives from the federal
24 government? What about state agencies other than the Energy
25 Commission? Native American Tribes? Bay Area Air Quality

1 Management District? Any representatives from the City of
2 Santa Clara or Silicon Valley Power? How about anybody from
3 any other local government agency or entity?

4 All right. At this time I'll hand over the conduct
5 of this prehearing conference to the hearing officer Galen
6 Lemei.

7 HEARING OFFICER LEMEI: All right. Thank you.

8 So first of all, thank you all for being here.
9 Please be patient with me. This is my first prehearing
10 conference that I've conducted, that I've presided over as a
11 hearing officer. And doing it remotely has -- makes it
12 especially exciting. But fortunately I get to stand on the
13 shoulders of giants and follow closely in the footsteps of
14 our Walsh prehearing conference that was held relatively
15 recently. And today's prehearing conference is going to
16 track quite closely with -- with that for anyone who
17 participated in that, in that proceeding as well.

18 The Committee noticed today's prehearing
19 conference, and the Notice of Prehearing Conference and
20 Evidentiary Hearing Revised scheduling order, and further
21 orders issued on May 8th, 2020. Going forward I'll just refer
22 to that as the -- the May 8th notice.

23 As explained in the May 8th notice, the basic
24 purpose of the -- purposes of the prehearing conference are
25 to assess the project's readiness for hearings, to clarify

1 areas of agreement, to identify witnesses and exhibits, to
2 determine the areas that the parties need to question the
3 other -- the other parties witnesses on, and to discuss
4 associated procedural matters.

5 Before we proceed with the substantive portions of
6 this prehearing conference, I want to discuss some
7 housekeeping issues. This prehearing conference, as well as
8 next week's scheduled evidentiary hearing will be held
9 remotely. That is, we are in separate locations and
10 communicating only through electronic means. We are meeting
11 in this fashion, consistent with Executive Orders N25-20 and
12 N-29-20, and the recommendations from the California
13 Department of Public Health to encourage physical distancing
14 in order to slow the spread of COVID-19.

15 Meeting this way presents some challenges ensuring
16 that we have a clear record. So we are going to practice
17 some of the changes necessary. First, I'm going to ask that
18 only one person speak at a time. Please use your raised hand
19 or chat feature if you need to be recognized. After you've
20 been called on, please lower your hand if you used that
21 feature so that I can make sure that you've been recognized.

22 Secondly, please identify yourself when you speak.
23 When we're all gathered together it's easier for me, the
24 hearing officer, and the court report to see who is speaking
25 and who wants to be recognized. And I think as -- as we've

1 done before, since we do have a number of folks
2 participating, you know, the chat function can be helpful,
3 particularly if I don't see the raised hand right off.

4 Are there any questions about that? Sounds good.

5 No surprise since I think everyone is, at this point,
6 somewhat familiar with how these are -- how these are going.

7 I also need to provide an important update about
8 the upcoming evidentiary hearing. In the May 8th notice we
9 indicated the meeting would be held via WebEx. However,
10 starting on June 1st, the Energy Commission will transition to
11 using Zoom for most public events. Therefore, the
12 evidentiary hearing will be conducted via Zoom. I will be
13 docketing an updated, updated login information for the
14 evidentiary hearings as soon as I have it. And that will of
15 course supersede the -- the login information that was
16 provided in the May 8th notice.

17 I would also encourage anyone who doesn't already
18 have the Zoom application installed on your computer to
19 install it at the, I don't know for sure that's it's
20 necessary to have it installed. You might need to have it
21 installed. But I do know that it will make the participation
22 more seamless. So I do apologize for that -- for that
23 adjustment, but hopefully we'll be able to make the
24 alternative platform work.

25 Does anybody have any questions about that? Again,

1 I'll be providing the login information as soon as I have it
2 into the docket.

3 MS. DECARLO: This is Lisa DeCarlo.

4 Just a quick question. What are the expectations
5 for having the video feature enabled for participants, for
6 witnesses? Does the Committee expect to be able to see each
7 witness or would they prefer that the videos not be enabled?

8 HEARING OFFICER LEMEI: This is not something that
9 I've had an opportunity to discuss with the Committee
10 members. I'll say, speaking for myself that, you know, since
11 we've been conducting these historically without video, I do
12 not think that -- that video would be essential. I do know
13 that sometimes it can be nice when we can see one another.

14 Commissioner Douglas, do you have -- do you have
15 thoughts on that question?

16 COMMISSIONER DOUGLAS: I think that we, unless you
17 see something different from the Committee, we conducted the
18 last evidentiary hearing without video and -- and could, the
19 one for Walsh is what I mean. And so I think the format, you
20 can assume the format will generally be similar, just on a
21 different platform, unless you hear otherwise.

22 MS. DECARLO: Great. Thank you.

23 HEARING OFFICER LEMEI: Great. Hearing no other
24 questions, I will move on to substance.

25 This prehearing conference concerns the application

1 for a small power plant exemption, which I might refer to as
2 an SPPE for the Sequoia Backup Generating Facility filed by
3 the Applicant on August 14th, 2019. The application, and many
4 of the other documents I will be mentioning today are
5 available in the online docketing system used by the Energy
6 Commission.

7 The backup generating facility will be used to
8 ensure an uninterruptable power supply for the Sequoia Data
9 Center located at 2600 De La Cruz Boulevard in Santa Clara,
10 California. The data center consists of a four story, seven
11 hundred two thousand, eleven hun -- 114,000 -- sorry 702,114
12 square foot data center building that will house computer
13 servers in a secure and environmentally controlled structure,
14 with approximately 70,000 square feet dedicated to
15 administrative and office uses.

16 The Applicant proposes to construct and operate the
17 Sequoia Backup Generating Facility consisting of 54 Tier 2
18 standby diesel fire generators, each of which -- each with a
19 maximum peak rating of 2.25 megawatts. Located in the
20 generator equipment yard, the generators will be configured
21 in a distributive redundant configuration to provide up to
22 96.5 megawatts, the buildings, the maximum building load of
23 the Sequoia Data Center.

24 The Applicant also intends to construct an onsite
25 100 megavolt amp electrical substation and electrical

1 switchgear, and distribution lines between the substation and
2 the buildings, as well as from the backup generator yards in
3 each of their respective buildings. The substation will
4 allow delivery of power from Silicon Valley Power but will
5 not allow any electricity generated from the backup
6 generators to be distributed off the Sequoia site.

7 Under Public Resources Code Section 25541, the
8 Commission may grant an SPPE only when it makes three
9 separate and distinct findings. First, the power plant must
10 have a generating capacity up to 100 megawatts. Two, no
11 substantial adverse impacts on the environment will result
12 from the construction or operation of the power plant. And
13 three, no substantial adverse impacts on energy resources
14 will result from the construction or operation of the power
15 plant.

16 In addition, the Commission acts as lead agency
17 under CEQA. In reviewing an SPPE, the Energy Commission
18 considers the whole of the action. For the application, the
19 whole of the action means the backup generators, the data
20 center, and other project features such as the substation.
21 When I refer to the project, I mean the backup generators,
22 the data center, and other project features such as the
23 substation.

24 To aid the consideration of the application under
25 both the Warren-Alquist Act and CEQA, staff prepared and

1 published an Initial Study and Proposed Mitigated Negative
2 Declaration, or which I -- something I heard refer to this as
3 the ISPMND, on January 23rd. The ISPMND was subject to a
4 public review and comment period that ended on February 28th,
5 2020. Comments were received from Robert Sarvey, the
6 Department of Toxic Substance Control, the City of San Jose
7 Airport Department, and the Bay Area Quality Management
8 District, or BAAQMD before the close of the comment period.
9 Comments were also received from the National Fuel Cell
10 Research Center on May 22nd, 2020.

11 To conduct this prehearing conference efficiently,
12 we required that a party, each party file a prehearing
13 conference statement if that party wanted to participate in
14 this PHC, or present evidence, or cross-examine witnesses at
15 the evidentiary hearing. We have received pre -- prehearing
16 conference statements from staff, Applicant, and Intervenor
17 Sarvey.

18 The May 8th, 2020 notice contained a series of --
19 also contained a series of questions regarding air quality,
20 greenhouse gas emissions, and public health. We invited the
21 parties, the Applicant, staff, and intervenors, and the
22 public, especially the City of Santa Clara, and Silicon
23 Valley Power, and BAAQMD to submit comments -- to submit
24 responses to these questions, either in a form of evidence or
25 briefings by May 22nd -- by May 22nd, 2020. We received

1 responses from Applicant and staff.

2 Now to address the hearing procedure as set forth
3 in the May 8th, 2020 notice. The evidentiary hearings will be
4 conducted using a formal hearing procedure modified to fit
5 the remote nature of the hearing. First, while formal, we
6 will not take time to describe the exhibits that are moved
7 into evidence or described, or to describe topics covered by
8 declaration. An exhibit list has been prepared and is
9 available on the website.

10 Liza, are you able to post the exhibit list easily?
11 That is on the proceeding page? There we go. Thank you,
12 Liza. So there is the -- there is the current exhibit list.

13 Any person can prepare an exhibit list. Please be
14 sure to check the exhibit list and notify me of any changes
15 or errors in writing before the hearing on June 5th. And
16 sooner would be -- would be better if you do identify errors.

17 Regarding direct examination, we will deem all
18 parties' opening and rebuttal testimony as their direct
19 evidence. There is no need to discuss experts' resumes if we
20 have them in writing and there's no objection -- and there's
21 no -- sorry, my apologies. There's no need to discuss expert
22 resumes if we have them in writing and there's no objection
23 the witness is an expert.

24 If witnesses testify who have not filed written
25 testimony, please have them identify themselves. For

1 example, I might identify myself as Galen Lemei, senior
2 attorney for the California Energy Commission. If any party
3 has an objection to the qualifications of a witness, please
4 be prepared to state the objection and its basis.

5 Liza, are you able to bring up the notice of this
6 hearing of the -- of the prehearing conference and
7 evidentiary hearings? Thank you, Liza.

8 And let me see which page I was going to take us
9 to. My apologies, my Internet closed. I was hoping to move
10 to the procedural instructions beginning on page 4 of that
11 notice. There we go.

12 So the notice did provide instructions for the
13 conduct and proceedings. I'll just ask, have all the parties
14 had a chance to review the process set forth in the May 8th
15 notice, and are there any questions? I'll start with
16 Applicant. Do you have any questions regarding the
17 instructions in the notice?

18 MR. GALATI: Yes, I do. This is Scott Galati
19 representing the Applicant.

20 The question that I have is the Committee asked
21 several questions for us to respond in testimony of which two
22 of us did, Mr. Sarvey did not.

23 HEARING OFFICER LEMEI: Uh-huh.

24 MR. GALATI: I'm -- I'm assuming that since the
25 directions are clear that all opening, direct, and rebuttal

1 testimony needs to be filed prior to our evidentiary hearing,
2 that Mr. Sarvey should be limited to cross-examination on
3 those questions. Is that correct?

4 HEARING OFFICER LEMEI: Mr. Sarvey, do you have
5 a -- a response to that before I respond?

6 MR. SARVEY: I have no idea what Mr. Galati's
7 talking about. He's already trying to limit my participation
8 about five minutes in the prehearing conference. I will ask
9 questions about anything that they filed, anything I filed,
10 any reference documents they used, and any reference
11 documents I used. I'll use them in the hearing.

12 HEARING OFFICER LEMEI: Okay. Right. I think
13 that, Mr. Galati, I understand your question to really be
14 speaking to, you know, sort of, sort of preemptively speaking
15 to what can be addressed at the evidentiary hearing. And it
16 is my preference not to, you know, not to make a ruling in
17 the abstract. If something is raised at the evidentiary
18 hearing and you have concerns about that, that it's
19 inconsistent with the, with the instructions provided by
20 the -- by the Committee in the notice, I think it's best to
21 address that when that issue comes up.

22 MR. GALATI: It's your way. But just to clarify
23 to -- so that Mr. Sarvey can properly prepare, I'm -- I'm not
24 objecting to him asking question. My objection was for him
25 testifying. As you know, sometimes he is witness, and

1 sometimes he's asking cross-examination question. Because --
2 yeah. So I just wanted to clarify for him. But I'll make my
3 appropriate objections if -- if direct evidence starts to
4 come in that should have been prefiled.

5 MR. SARVEY: Can I respond to that?

6 HEARING OFFICER LEMEI: You may.

7 MR. SARVEY: In the last hearing I think Mr. Galati
8 was admonished for testifying when he had witnesses
9 available, but I don't have any witnesses available, so
10 sometimes I do have to serve as a dual role. But when I,
11 when I'm questioning, I'll try not to testify.

12 Thank you.

13 HEARING OFFICER LEMEI: Okay. Well hopefully we'll
14 be able to keep that straight when, when we're -- when we're
15 in the evidentiary hearing.

16 Staff, did you have any questions about the
17 instructions in the May 8th notice?

18 MS. DECARLO: Yes. This is Lisa DeCarlo.

19 One quick question. I just wanted to make sure
20 that there was flexibility in the opening statement directive
21 to present that as a question and answer, in that format if
22 staff chooses to.

23 HEARING OFFICER LEMEI: Oh, right, because the
24 instructions were for, for each witness to provide a brief
25 opening statement. You're saying that your preference might

1 be to have the -- have the opening testimony be provided
2 through question and answer.

3 MS. DECARLO: Yeah. Sometimes it's easier when,
4 especially when topics are complicated and varied. Sometimes
5 it's easier just to walk through it in question and answer,
6 answer format.

7 HEARING OFFICER LEMEI: Yeah. I don't -- I don't
8 think that we would have an objection to that. The -- again,
9 the purpose of these instructions were to just clarify that
10 we needed to maintain a clear record and needed to, you know,
11 have the parties take turns in order needed to be a bit more
12 formal. But -- but what you're describing, Ms. DeCarlo, is
13 consistent with -- with that intention I believe.

14 MS. DECARLO: Great. Thank you.

15 HEARING OFFICER LEMEI: Mr. Sarvey, do you have any
16 questions?

17 MR. SARVEY: No, I do not. Thank you.

18 HEARING OFFICER LEMEI: Sure. And I will ask if
19 CURE has any questions, but I don't believe CURE is
20 participating. I will take that silence as confirmation that
21 they have not joined us since -- since we got started.

22 So then on a related note, are there any objections
23 made to evidence that has previously been filed? Again, I'll
24 just go through the parties in order.

25 Applicant, do you have any objections?

1 MR. GALATI: No, I do not.

2 HEARING OFFICER LEMEI: Staff, do you have any
3 objections?

4 MS. DECARLO: No objections.

5 HEARING OFFICER LEMEI: Mr. Sarvey, do you have any
6 objections?

7 MR. SARVEY: No objections.

8 HEARING OFFICER LEMEI: And in the unlikely event
9 that CURE just joined, do you have any objections?

10 Hearing none.

11 All right. Because we're using a formal process,
12 we ask that if possible, you have most of your cross-
13 examination written out or outlined. As set forth in the
14 May 8th notice, you may only use documents, a document that
15 has been previously identified as an exhibit when questioning
16 a witness.

17 When asking your questions, start by identifying
18 the document, either by exhibit number or its CAN or ideally
19 you'll be able to provide both, and the specific page number
20 you may be referencing. Please allow the witness to finish
21 their answer and for the benefit of the court reporter and
22 the transcript, please remind your witness not to talk over
23 each other or the person who's asking the questions.

24 I will observe that this didn't go seamlessly in
25 the recent Walsh hearing, and we managed to -- to make it

1 through. But it really would be appreciated, you know,
2 insofar as we're able to have the, the exhibits queued up in
3 advance, it really can make things go a bit more efficiently,
4 and -- and a reference to, you know, if it's a voluminous
5 document to the specific portion we're going to be speaking
6 about. That -- that will save time. And to the extent that
7 that's possible, it's -- it really, we would really like the
8 parties to do that.

9 Finally, I'd like to remind you about the
10 requirements to file the list of exhibits you intend to use
11 no later than the hearing, June 5th. I just spoke to that.

12 MS. DECARLO: This is Lisa DeCarlo. I'm sorry.
13 Just a quick question on that.

14 HEARING OFFICER LEMEI: Uh-huh.

15 MS. DECARLO: If we don't have any additions to the
16 exhibit list we filed in our prehearing conference statement,
17 does the Committee still want us to file something?

18 HEARING OFFICER LEMEI: No, no. I'm sorry. Let me
19 clarify. This is not -- this is not asking for a supplement
20 to the prehearing conference statements. And I apologize. I
21 could have worded this better.

22 This is requesting that any parties that, any
23 documents that a witness is going to speak to or use at the
24 hearing, we would appreciate, we would like prior to the
25 hearing, meaning before Friday. Since the hearing is at

1 10:00 a.m., it would be nice to be able to use Thursday or at
2 least Friday morning to do this. Make sure those exhibits
3 are queued up and ready to go so that our -- so that our
4 support staff is able to put them up on the screen and we're
5 all able to have them ready and in front of us so that we can
6 all be talking from the, you know, have the benefit of seeing
7 the same thing.

8 And it -- it's even more important so that the
9 members of the Committee are able to, you know, it can be
10 challenging to follow the document on the screen. It's nice
11 if you can bring it up on your own computer and, you know,
12 see -- see what's being discussed in context. But that is
13 much, much easier if we have a list in advance and people can
14 have those documents queued up and ready so that when they're
15 discussed by witnesses, we have them on hand for reference
16 and don't have to dive into the exhibit list and find them
17 and scroll to the right page.

18 Does that make sense?

19 MS. DECARLO: Yes, thank you.

20 HEARING OFFICER LEMEI: So again, I'll just go
21 through, Applicant do you have any questions about that?
22 Concerns about that?

23 MR. GALATI: Yeah, the only question that I have is
24 we did that for Walsh. We all submitted which exhibits we
25 wanted to use. Were you asking us to submit which portion of

1 those exhibits as well?

2 HEARING OFFICER LEMEI: It's not an absolute
3 requirement, but it would -- it would help us get the, you
4 know, have the relevant portions. I mean if it's a short
5 document, it's not that big a deal. But if it's a -- if it's
6 a long document, something that's, you know, a couple hundred
7 pages long, being able to find that quickly, you know, just
8 for example, we could -- we could have those queued up and
9 ready to go in advance if we do have that, the more specific
10 citation. This wasn't, I don't think this was specifically
11 stated in the instructions that we provided. But insofar as
12 it's possible, it would be appreciated.

13 MR. GALATI: Okay. Thank you.

14 HEARING OFFICER LEMEI: And Mr. Sarvey, do you have
15 any -- any questions or concerns?

16 MR. SARVEY: No, I don't. Thank you.

17 HEARING OFFICER LEMEI: All right.

18 CURE, I assume that you are not yet, not have
19 joined us. Okay. All right.

20 Regarding the questions the Committee asked. In
21 the May 8th notice, the Committee stated that -- sorry. In
22 the May 8th notice, we stated that we would need, discussed
23 the need and time for any rebuttal to the filings submitted
24 in response to the questions. Does anybody want to discuss
25 the need or the need for rebuttal to the, specifically

1 rebuttal to the -- to the answers? Or to the answer, to
2 the -- how do I say this?

3 Does anybody wish to discuss the need and timing
4 for rebuttal to the filings that were specifically in
5 response to the Committee's questions?

6 And Liza, do we have anyone indicating through a
7 raised hand feature? Maybe I'll just go through the parties
8 again.

9 Applicant, do you -- do you have anything to say on
10 that?

11 MR. GALAI: Yes, Mr. Lemei. Thank you.

12 That was the purpose of my question before. If
13 there is -- if Mr. Sarvey specifically is going to be
14 providing direct rebuttal testimony that is not in writing
15 when he did not file answers to the questions, I think it
16 would be helpful, and think it should be required that he
17 file those in writing ahead of time.

18 HEARING OFFICER LEMEI: Okay. Mr. Sarvey, do you
19 have a position on Applicant's request that you file any
20 rebuttal? That if you wish to provide rebuttal testimony to
21 either staff or Applicant's filings in response to the
22 Committee's questions, that you do so in writing in advance
23 of the hearing?

24 MR. SARVEY: Well the fact is on the supplementary
25 testimony that was provided, there was no rebuttal to it.

1 So. We encountered this in the last proceeding and, you
2 know, he's -- they're going to rebut whatever testimony I put
3 forward, and I'm going to rebut whatever testimony they put
4 forward. There was no rebuttal on that final -- on the final
5 information that the Committee asked for.

6 HEARING OFFICER LEMEI: Right. The Committee did not
7 explicitly provide for written rebuttal. I understand
8 Mr. Galati to be essentially asking the Committee to order
9 such rebuttal be filed in writing in advance of the hearing,
10 you know, if somebody wishes to submit rebuttal testimony.

11 I guess I'll just ask it this way. Do you wish,
12 Mr. Sarvey, to file written rebuttal testimony in advance of
13 the hearing?

14 MR. SARVEY: I don't see any purpose in it. No.

15 HEARING OFFICER LEMEI: But do you wish to reserve
16 the right to provide oral rebuttal testimony at the hearing?

17 MR. SARVEY: Oh, yes.

18 HEARING OFFICER LEMEI: And Mr. Galati, do I
19 understand you to be objecting to that at this stage?

20 MR. GALATI: That's exactly what I'm objecting to.
21 Mr. Sarvey had an opportunity like everybody else to answer
22 the Committee question and to provide rebuttal that we, staff
23 and I, cannot prepare for because he chose not to answer the
24 question in writing.

25 Remember, rebuttal is his testimony, his actual

1 explanation of what his position is. And we would like to
2 know what that explanation is. He's perfectly fine crossing
3 our witnesses and perfectly fine asking questions of other
4 witnesses on those topics. I just want to know if he is
5 going to also, then, tell the Committee what he thinks the
6 answers to those questions should be as direct -- as
7 testimony.

8 HEARING OFFICER LEMEI: Okay. So --

9 MR. SARVEY: I think Mister -- excuse me.

10 HEARING OFFICER LEMEI: Go ahead.

11 MR. SARVEY: I think Mr. Galati is a little confused
12 with the Walsh Data Center. I did file rebuttal. I did
13 answer the Committee's questions in this proceeding.

14 MR. GALATI: You did not answer the Committee's
15 questions in this proceeding, you did it in the Walsh
16 proceeding.

17 MR. SARVEY: I think it was just the opposite. But
18 I'll look in to it. I do get confused, I'm in four of these
19 things. So, yeah, but I think you might be wrong on that.

20 HEARING OFFICER LEMEI: That was is under --

21 MR. SARVEY: I'll check that.

22 HEARING OFFICER LEMEI: Okay. Please do check that.

23 And I guess just for completeness, I will ask staff
24 if they have a position on this current exchange between --
25 on this very specific issue of Mr. Sarvey's potential

1 rebuttal testimony either in writing or orally at the hearing
2 that would specifically respond to staff and Applicant's
3 written responses to the questions.

4 Applicant, do you have a position on Mr. Galati's
5 request?

6 MS. DECARLO: Lisa DeCarlo for staff.

7 Yeah, we agree with the Applicant that if any
8 rebuttal testimony is going to be presented, that it should
9 be presented prior to the evidentiary hearing.

10 HEARING OFFICER LEMEI: Okay.

11 MR. SARVEY: So does that mean staff and Applicant
12 are not providing any oral rebuttal testimony at the hearing?
13 Is that what we're agreeing to?

14 MR. GALATI: Excuse me, I raised my hand. I'd like
15 to respond to that.

16 HEARING OFFICER LEMEI: Sorry. Go ahead, Mr. Galati.

17 MR. GALATI: Mister -- I checked the docket,
18 Mr. Sarvey did not file responses to the Committee's
19 questions. So we have nothing to rebut because he didn't
20 file any testimony of what his opinion is on the answers to
21 those questions.

22 HEARING OFFICER LEMEI: Right. So my understanding
23 is that --

24 MR. GALATI: We will file and we will --

25 HEARING OFFICER LEMEI: -- Mr. Sarvey did not

1 respond -- not any responses to the question.

2 MR. GALATI: Correct. I'm only -- my objection is
3 only to the responses to the questions. We filed rebuttal
4 testimony to the other testimony that Mr. Sarvey filed and we
5 plan to present that testimony.

6 When it comes to the last filing, which were the
7 responses to the Committee questions, that's my only
8 objection. We should -- I would like to see and we think
9 it's fair that staff and we see what Mr. Sarvey believes is
10 the answer to those questions so we can prepare rebuttal
11 testimony.

12 HEARING OFFICER LEMEI: Okay.

13 MR. SARVEY: I believe that -- I believe this was
14 raised in the last proceeding and it was overruled. But
15 you're welcome to make whatever ruling you want.

16 HEARING OFFICER LEMEI: So I think -- you know, I
17 wasn't residing over the last proceeding and -- but my memory
18 is that, present forward, my memory is the issue was subtly
19 different as it came up in the evidentiary hearing. Of
20 course in that context, we weren't dealing with something
21 that was extract, we were dealing with very specific
22 information that was being put in the record.

23 Whereas here, we're speculating about what Mr. Sarvey
24 might want to put into the record at the -- at the hearing.
25 What I will notice, first, Mr. Sarvey didn't provide

1 responses to the questions in the first instance. However,
2 responding -- rebutting staff and Applicant's answers to the
3 questions in whatever form they took is distinct from
4 providing answers in the first instance.

5 But Mr. Sarvey, you were not -- you do not wish to
6 provide written responses to -- written rebuttal to staff's
7 and Applicant's responses.

8 MR. SARVEY: Well to be honest with you, Applicant
9 and staff have a lot of people behind them, I have nobody
10 behind me. I didn't have time to answer the Committee's
11 questions, just too busy dealing with the evidentiary hearing
12 in the other proceeding.

13 But I don't see how me responding to what they have
14 written in their answers to Committee questions, how that in
15 any way prejudices them.

16 MS. DECARLO: This is Lisa DeCarlo.

17 I think the concern is if that -- if there's an
18 intent to provide new evidence to address or respond to the
19 Applicant and staff's responses. I think the concern is if
20 new evidence is intended to be provided, that we would ask
21 that that be presented prior to the evidentiary hearing.

22 MR. SARVEY: Well I'll file all the documents I
23 intend to use but as far as, you know, that goes, are you
24 guys going to file all your questions to me in advance?

25 HEARING OFFICER LEMEI: Well they're not asking -- I

1 think they're asking the questions be filed in advance,
2 they're asking that testimony be filed in advance. And --

3 MR. SARVEY: I don't think the Committee's authorized
4 that.

5 HEARING OFFICER LEMEI: So --

6 COMMISSIONER DOUGLAS: Mr. Lemei, this is
7 Commissioner Douglas.

8 Let's -- I think we've had a thorough discussion of
9 this topic. We have a closed session scheduled at the close
10 of the prehearing conference.

11 HEARING OFFICER LEMEI: Yes.

12 COMMISSIONER DOUGLAS: Let's go on and if we wish to
13 clarify this question in writing, we can do so.

14 HEARING OFFICER LEMEI: Yeah, I think that that -- I
15 think that that makes a lot of sense.

16 So at this point the Committee's not making the
17 ruling on any objections and taking the position of the party
18 under advisement.

19 All right. I've lost my place in the script, so let
20 me -- let me try to figure out where we were. That was a --
21 that was a rather in-depth discussion.

22 So I think that -- I think that I had asked staff for
23 their position. I didn't formally go through and ask all the
24 parties for -- I didn't ask each party for their own desire
25 to provide rebuttal testimony, we were speaking exclusively

1 to the question of Mr. Sarvey's.

2 I take it that that was the only issue that anyone
3 had with respect to responses or rebuttals. And I'm going to
4 move on to the next issue.

5 Okay. So.

6 MR. SARVEY: Can I ask one more question?

7 HEARING OFFICER LEMEI: You may.

8 MR. SARVEY: Mr. Galati's filed quite a few exhibits
9 already that -- and I assume I get to use those in
10 questioning his witnesses and staff's witnesses. Is that
11 correct?

12 HEARING OFFICER LEMEI: I believe you can question
13 Mr. Galati's witnesses about his exhibits.

14 MR. SARVEY: Okay. Thank you.

15 HEARING OFFICER LEMEI: Do you have an objection to
16 that, Mr. Galati?

17 MR. GALATI: No. And again, just to be real clear, I
18 don't have any problem with Mr. Sarvey using anything in the
19 record to cross-examine any of the witnesses. I wasn't --
20 that's not what my objection. Actually, it's not an
21 objection, it was a question.

22 I'll wait and object as it comes up. I just thought
23 it would be important to address this issue now. And thank
24 you for the Committee considering it in closed session
25 (indiscernible).

1 HEARING OFFICER LEMEI: Yeah, we'll discuss it. My
2 inclination is to this is best to address at the evidentiary
3 of hearing. But we will discuss it in closed session and if
4 we feel the need to provide written -- written guidance or
5 written response, then we will.

6 Okay. So regarding the issues that were raised by
7 the parties in their prehearing conference statements. First
8 of all, thank you everyone for filing prehearing conference
9 statements.

10 So starting with the Applicant's prehearing
11 conference statement indicates the following as requiring
12 time at the evidentiary hearing. The issues were
13 jurisdiction in grid capacity, energy resources, greenhouse
14 gas emissions, air quality and public health, utilities and
15 public services, and environmental justice.

16 Did I get that list right?

17 MR. GALATI: Yes, you did.

18 HEARING OFFICER LEMEI: Okay.

19 MR. GALATI: And I could handle environmental justice
20 and air quality if the -- if the issues were combined like
21 they were in Walsh which I think that they were,
22 environmental justice as it relates to air quality emission.

23 HEARING OFFICER LEMEI: Okay. That's good enough.
24 Thank you.

25 Okay. Staff's prehearing conference statement

1 indicated staff would like to invite witnesses on grid
2 capacity, air quality, greenhouse gases, energy resources and
3 public health. Staff also requested time to question
4 Mr. Sarvey on his opening rebuttal testimony on the topics of
5 air quality, greenhouse emissions, and energy and energy
6 resources.

7 Staff, did I get that list correct?

8 MS. DECARLO: Yes, I believe so.

9 HEARING OFFICER LEMEI: Great. All right.

10 Mr. Sarvey listed the following as required in
11 adjudication. Air quality, including the analysis of
12 emergency operations and impacts. And greenhouse gas -- or
13 air quality, including the analysis of emergency operations
14 and potential impacts therefrom. Greenhouse gas emissions,
15 utilities and service systems, energy resources, and
16 jurisdiction.

17 Mr. Sarvey, did I -- did I get that list correct?

18 MR. SARVEY: Yeah, jurisdiction related to generating
19 capacity.

20 HEARING OFFICER LEMEI: Right. Jurisdiction related
21 to generating capacity. Thanks for the clarification.

22 So the parties have confirmed that's the right list.
23 No other topics were identified. Are there any other
24 additional topics that anyone wishes to request at this time?

25 MR. GALATI: Mr. Lemei, this is Scott Galati.

1 I may have misheard but I wanted to make sure that
2 you also identified for the record that I had requested some
3 time for cross-examination. I think you only asked me about
4 the questions in my affirmative testimony. But I do have
5 cross-exam --

6 HEARING OFFICER LEMEI: I think you're right. That's
7 a good point and my apologies for that omission.

8 MR. GALATI: It's okay. Thank you.

9 HEARING OFFICER LEMEI: So I will make a note of that
10 right now.

11 Okay.

12 MR. SARVEY: And I've also asked for cross-
13 examination too.

14 HEARING OFFICER LEMEI: Right. I'll make a note of
15 that as well.

16 All right. Is there anything anyone wants to discuss
17 in addition to just clarifying the time to cross-examine,
18 does anyone wish to discuss further the testimony they want
19 to provide at this stage?

20 MS. DECARLO: This is Lisa DeCarlo.

21 I just want to confirm that we'll be able to present
22 our testimony in various panels because of a significant
23 amount of crossover in the Cal air quality testimony.

24 I think this happened in Walsh as well. We presented
25 our direct testimony from various witnesses and also

1 presented other witnesses who weren't presenting direct
2 testimony but were available to respond to questions all
3 together.

4 HEARING OFFICER LEMEI: Yeah. So in general, we're
5 just going to be following the same format for Walsh. You
6 know, what I will note is that what's different about these
7 proceedings from how we, you know, conducted some of our
8 evidentiary hearings in the not so distant past for, you
9 know, in other context and for other proceedings is that we
10 would sort of had more of a free-form panel discussion and
11 here we're really looking to have the -- the question and
12 answer be much more specific to keep a much cleaner record
13 than we might have from our even more informal processes that
14 we've used before.

15 But my sense of the Walsh proceeding is that it
16 adhered to that and within keeping with that objective. So
17 as long as don't depart from that, I think we'll be fine.

18 MS. DECARLO: Great. And then just confirming, too,
19 that as in Walsh, it was I think helpful to have the
20 representative from SVP and the representative from BAAQMD
21 going before at least staff because a lot of I think
22 Mr. Sarvey's questions really focus on their expertise.

23 HEARING OFFICER LEMEI: Got it. Okay.

24 So what I think I hear you saying is that you're
25 looking to follow the same order of operations for this

1 proceeding -- for this evidentiary hearing as you did for the
2 Walsh proceeding including the order of presentation of those
3 witnesses.

4 MS. DECARLO: Yes, if possible.

5 HEARING OFFICER LEMEI: I think that makes sense.

6 Does anyone else have any objection to that?

7 MR. GALATI: This is Mr. Galati, no objection.

8 MR. SARVEY: No objection. Bob Sarvey.

9 HEARING OFFICER LEMEI: Good. Okay.

10 I guess I'll just before -- before moving on to
11 briefing schedule, I'll just check in with the Committee and
12 also, and it's a little unorthodox, but my fellow hearing
13 officer Susan Cochran, if you're listening. If there's
14 anything that you think, you know, since this is my first
15 prehearing conference. If there's anything additional that
16 you think I need, you know, we might want to ask at this
17 juncture in anticipation of the hearing.

18 COMMISSIONER DOUGLAS: This is Commissioner Douglas.
19 I think we're fine.

20 HEARING OFFICER LEMEI: And I don't -- I don't know
21 if Susan is on the line, I don't hear her speaking up. So
22 I'm going hope that her silence is in assent to what we have
23 so far.

24 MS. COCHRAN: My silence was acquiescence.

25 HEARING OFFICER LEMEI: Acquiescence. Perfect.

1 Thank you.

2 That was Susan Cochran, for the court reporter.

3 Okay. Just a quick question about the briefing
4 schedule.

5 Do parties have -- have positions or wish to make
6 requests with respect to briefings at this juncture?

7 MR. GALATI: This is Scott Galati.

8 Yes. I do think that when, you know, hopefully
9 before next week we will get the requests for briefing in
10 Walsh. To the extent that that request asks for evidence to
11 be provided, we're going to be proactive and try to provide
12 that evidence to the Commission.

13 And again, I think if it's evidence, it should come
14 in an evidentiary hearing, not in briefs. But I think that
15 it would be probably helpful, although I don't believe we're
16 going to need time for briefs, it would probably be helpful
17 to wait till at the end of the evidentiary hearing and have
18 the Committee tell us should they want something briefed.

19 HEARING OFFICER LEMEI: Uh-huh. So I wasn't sure if
20 I fully understood the first aspect of your -- of your
21 comment or request.

22 You were saying that before next week, you do expect
23 the brief will be filed in this other proceeding, Walsh, and
24 that if evidence is requested, I didn't totally understand
25 what, you know, you're anticipating or speculating that maybe

1 there'll be a request for additional evidence and if there
2 is, then what?

3 MR. GALATI: You know, Mr. Lemei, I think that what's
4 happening is I can't let go of my old trial room roots and
5 having a very hard time sometimes sitting in with the
6 informal process.

7 HEARING OFFICER LEMEI: Okay.

8 MR. GALATI: I'm very -- try to be clear what's
9 evidence and what's legal. The issues that happened in
10 Walsh, it's difficult to dispense -- it's difficult to
11 separate them easily between whether CEQA is a legal issue or
12 a practical opinion-related expert issue.

13 What I was saying is when we get the questions from
14 the Commission in Walsh, not when we file the answers but
15 when we get the questions from the Committee, to the extent I
16 believe that those questions require an expert opinion such
17 as it is evidence, I will try to provide it in this
18 proceeding so that truly all we need to do is brief legal
19 issue if the Committee requests at the end. That was what I
20 was just trying to --

21 HEARING OFFICER LEMEI: That makes complete sense,
22 Mr. Galati.

23 And, yeah, I mean, I think that all of us would
24 acknowledge the reality that there is some crossover in terms
25 of the issues that are raised in the Walsh proceeding and

1 this proceeding.

2 And so, yes, and so far as you're able to extrapolate
3 from requests in that proceeding and get ahead of what might
4 be similar in this proceeding, that is of course helpful and
5 encouraged and has the potential to make this proceeding go a
6 little bit -- a little bit more in a more streamlined manner.

7 Thank you, Mr. Galati.

8 Do staff, do you have any specific comments with
9 respect to potential briefing for the Sequoia proceeding at
10 this time?

11 MS. DECARLO: This is Lisa DeCarlo.

12 Only to state that staff does not feel the need for
13 briefs or does not desire to require briefs so we're
14 certainly happy and willing to provide briefs if the
15 Committee determines at the end of evidentiary hearing that
16 they're necessarily for their use.

17 HEARING OFFICER LEMEI: And Mr. Sarvey, do you have a
18 specific position with respect to briefs for this proceeding
19 at this time?

20 MR. SARVEY: Yeah, in my prehearing conference I
21 requested briefs two weeks after the opening -- after the
22 transcript comes out and reply briefs two weeks after that.

23 HEARING OFFICER LEMEI: Do you have a specific
24 subject matter that you think -- that you would particular
25 like to brief on them?

1 MR. SARVEY: All the contested issues. That's what
2 we normally do in most proceedings.

3 HEARING OFFICER LEMEI: Okay. Briefs are most
4 helpful when they are resolving -- when they're shedding
5 light on particular legal questions that are -- that are
6 potentially outstanding.

7 At this point, are there any particular legal
8 questions that you think may be outstanding and need
9 briefing? Understand that we haven't had evidentiary
10 hearings yet, and that you foresee what potential warrant
11 briefing?

12 MR. SARVEY: Certainly we're going to be talking
13 about thresholds of significance of greenhouse gases. I'm
14 sure we're going to need to brief that. And depending on the
15 outcome of the evidentiary hearing, it's a lot easier for the
16 Committee to issue a PMPD when all the parties' positions and
17 all the parties' interpretation of the facts.

18 And for me to participate, I don't have a big crew
19 behind me, hard for me to get everything out in an
20 evidentiary hearing, but if I have a little bit of time to
21 brief it, I can give a coherent description to the Committee
22 with the legal facts I think they're appropriate. And I
23 always recommend that we do briefing. It's better for the
24 Committee and said they put a PMPD out and then, you know, I
25 have sit there and say oh, that's not what I said or that's

1 what they said or blah, blah, blah.

2 So I just think it's much clearer for the Committee
3 if they have briefs to fall back on.

4 HEARING OFFICER LEMEI: And just to put a fine point
5 on it, your preference is to have briefs and not, for
6 example, use closing testimony at the evidentiary hearing to
7 sort of summarize your position?

8 MR. SARVEY: I think briefs are much better. I know
9 Mr. Galati favors closing -- the closing statement. I think
10 both's appropriate.

11 HEARING OFFICER LEMEI: Okay. Well appreciate
12 hearing at this juncture what the parties' positions are on
13 that.

14 Okay. I think that that concludes the portion that I
15 wanted to -- my leading the discussion in anticipation of the
16 evidentiary hearing.

17 I will at this point ask if there are any members of
18 the public that wish to comment on what they heard in the
19 prehearing conference or otherwise comment on the proceeding.

20 I'm scrolling through and I am not seeing any raised
21 hands. Not obvious to me that we have many members of the
22 public participating. Although we have a few calling agents
23 that I haven't been able to identify.

24 Are the lines unmuted right now so that if anyone
25 wanted to speak up they'd be able to or can we unmute the

1 lines?

2 MS. LOPEZ: This is Liza, the host.

3 Galen, you want me to unmute everybody?

4 HEARING OFFICER LEMEI: Yeah. I think just briefly
5 just for the moment. I'm sure we'll get a bunch of
6 background noise. But just so that anyone, if there are
7 members of the public that haven't been identified, it gives
8 them the chance.

9 So the public, if anyone wants to speak up, you
10 are -- everyone is unmuted. I'm not hearing anyone.

11 I don't know if the public advisor is present. And
12 if they had knowledge of anyone, I assume that they would let
13 me know. I'm going to take it that there are no public -- no
14 members of the public that wish to comment at this time.

15 MS. GALLARDO: Galen, this is Noemi Gallardo, the
16 public advisor.

17 HEARING OFFICER LEMEI: Yes.

18 MS. GALLARDO: Just wanted to say we should probably
19 remind folks to unmute themselves if they do want to speak.
20 I would give that a couple of seconds.

21 HEARING OFFICER LEMEI: That's a good point. Thank
22 you, Noemi.

23 MS. GALLARDO: And I did not receive anything in
24 writing.

25 HEARING OFFICER LEMEI: Okay. Let's unmute the lines

1 one more time and just remind everyone that if you are muted
2 and wish to speak, please unmute yourself. We can only
3 unmute you on our end.

4 So again, I think everyone is going to be unmuted and
5 anybody who wishes to speak, please unmute yourself and let
6 us know.

7 So I'm not hearing any responses. And I am hopeful
8 that by now anyone who wanted to speak would have had enough
9 time to let us know if they were -- if they were having
10 difficulty.

11 Okay. I'm going to take it that there is no member
12 of the public wishing to comment.

13 All right. The Committee is now going to adjourn to
14 a closed session. As indicated in the notice, in accordance
15 with California Government Code Section 11126, subdivision
16 (c)(3) which allows for state body to hold a closed session
17 to deliberate on a decision to be reached in a proceeding the
18 state body is required by law to conduct.

19 I think we anticipate returning in no more than an
20 hour. Are we anticipating a report out to the --

21 COMMISSIONER DOUGLAS: Galen, this is Commissioner
22 Douglas.

23 HEARING OFFICER LEMEI: Yes.

24 COMMISSIONER DOUGLAS: No.

25 HEARING OFFICER LEMEI: Okay.

1 COMMISSIONER DOUGLAS: Let's release the parties.

2 HEARING OFFICER LEMEI: Okay. So we are not
3 anticipating a substantive -- anything substantive after the
4 close of -- or after the closed session. So the parties are
5 not expected to be present for the conclusion -- at the
6 conclusion of the closed session.

7 So with that, I'm going to step away from the public
8 portion and join the closed session with the Committee.

9 Thank you all for participating.

10 (Off the record at 3:30 p.m.)

11 (On the record at 3:55 p.m.)

12 COMMISSIONER DOUGLAS: We are back from closed
13 session.

14 And Galen, is there anything else you wanted to say?

15 HEARING OFFICER LEMEI: Let me pop over to my script.
16 I believe that -- no, at this point, I will hand the meeting
17 back over to Commissioner Douglas to adjourn the meeting.

18 COMMISSIONER DOUGLAS: And we're adjourned. Thank
19 you, everybody.

20 (Thereupon, the Hearing was adjourned at 3:55 p.m.)

21 --oOo--

22

23

24

25