

DOCKETED

Docket Number:	19-SPPE-03
Project Title:	Sequoia Data Center
TN #:	237814
Document Title:	Transcript 5-11-21 of Prehearing Conference, Evidentiary Hearing, Scheduling Order, and Further Orders
Description:	N/A
Filer:	Ngoc Tran
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	5/14/2021 3:14:44 PM
Docketed Date:	5/14/2021

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

In the matter of,)
) Docket No. 19-SPPE-03
Application for Small Power Plant)
Exemption for the Sequoia)
Backup Generating Facility)

PREHEARING CONFERENCE, EVIDENTIARY HEARING,
SCHEDULING ORDER, AND FURTHER ORDERS

REMOTE ACCESS ONLY
VIA ZOOM VIRTUAL MEETING PLATFORM

TUESDAY, MAY 11, 2021
10:00 A.M.

Reported by:
Martha Nelson

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Karen Douglas, Commissioner, Presiding Member

Kourtney Vaccaro, Advisor to Commissioner Douglas

Eli Harland, Advisor to Commissioner Douglas

Patty Monahan, Commissioner, Associate Member

Mona Badie, Advisor to Commissioner Monahan

Ben De Alba, Advisor to Commissioner Monahan

Jim Bartridge, Technical Advisor to the Commission on Siting
Matters

HEARING OFFICER:

Susan Cochran, California Energy Commission

CEC STAFF PRESENT:

Lisa DeCarlo, Senior Staff Attorney

Leonidas Payne, Project Manager

PUBLIC ADVISOR:

Rosemary Avalos

APPLICANT:

C-1 Santa Clara, LLC

Scott Galati, Esq.

DayZen, LLC

Steven Branoff, Ramboll

Marcela Long, Corgan

INTERVENOR:

Robert Sarvey

INDEX

	Page
1. Call to Order	4
2. Committee discussion with the parties about use of informal procedures and other matters in preparation for the Evidentiary Hearing	9
3. Public Comment	17
4. Break	19
Evidentiary Hearing	
5. Receipt of evidence from the Applicant, Staff, and Intervenors Sarvey and CURE on the application for a small power plant exemption for the Sequoia Backup Generating Facility	19
6. Public Comment	38
7. Committee Closed Session Deliberations on the Application for a small power plant exemption for the Sequoia Backup Generating Facility	40
Adjournment	40
Reporter's Certificate	41
Transcriber's Certificate	42

P R O C E E D I N G S

1
2 MAY 11, 2021 10:00 A.M.

3 HEARING OFFICER COCHRAN: Okay, my clock shows 10:00.
4 Let's start the recording. We are going live for the
5 California Energy Commission Prehearing Conference and
6 Evidentiary Hearing for the Application for a Small Power
7 Plant Exemption for the Sequoia Backup Generating Facility.
8 Today is May 11, 2021.

9 Commissioner Douglas and Commissioner Monahan are
10 both here. Are you both ready to proceed?

11 COMMISSIONER DOUGLAS: Hi, this is Commissioner
12 Douglas. I'm ready to proceed.

13 HEARING OFFICER COCHRAN: Okay.

14 COMMISSIONER MONAHAN: And this is Commissioner
15 Monahan and I am as well.

16 HEARING OFFICER COCHRAN: Then let's go.

17 COMMISSIONER DOUGLAS: All right, super. Well, I
18 will kick things off. This is the Prehearing Conference and
19 Evidentiary Hearing for the Application for a Small Power
20 Plant Exemption for the Sequoia Backup Generating Facility.

21 I'm Karen Douglas, the Presiding Member of the
22 Committee assigned to conduct proceedings on the application.

23 Commissioner Patty Monahan is here today and is the
24 Associate Member of this Committee.

25 We are all participating remotely today using Zoom.

1 Before we begin, I would like to make introductions
2 of the following individuals, and we're participating via
3 teleconference. Kourtney Vaccaro and Eli Harland, my
4 Advisors. Mona Badie and Ben De Alba, Commissioner Monahan's
5 Advisors. Jim Bartridge, Technical Advisory to the
6 Commission on Siting Matters. And Susan Cochran, the Hearing
7 Officer for this proceeding. I would also like to introduce
8 Rosemary Avalos from the Public Advisor's Office.

9 And at this time I will ask the parties to please
10 introduce themselves and their representatives, starting with
11 the Applicant.

12 MR. GALATI: Good morning, Scott Galati representing
13 C-1 Santa Clara, which you know is Cyrus 1. I have with me
14 today only two witnesses, if they're needed. Steven Branoff
15 with Ramboll, R-A-M-B-O-L-L. And Marcela Long (phonetic)
16 with the architecture firm Corgan.

17 COMMISSIONER DOUGLAS: All right, thank you very much
18 Mr. Galati.

19 And now, staff.

20 MS. DECARLO: Good morning Commissioners and Hearing
21 Officer Cochran. Lisa De Carlo, as an Energy Commission
22 Staff Counsel. With me today is Leonidas Payne, Project
23 Manager with the Energy Commission.

24 And we also have a host of witnesses that I can go
25 through now, if you would like, or I can save that for when

1 we get into the substantive aspects of the hearing.

2 COMMISSIONER DOUGLAS: I think you could save that,
3 if you don't mind, Ms. De Carlo. Thank you.

4 MS. DECARLO: Sure, thank you.

5 COMMISSIONER DOUGLAS: And Intervenor Robert Sarvey?

6 MR. SARVEY: Yes, this is Bob Sarvey on the line.

7 COMMISSIONER DOUGLAS: All right, thank you very
8 much.

9 Now, I will ask if there are any elected officials or
10 representatives from agencies of the federal government or
11 the State of California, or Native American Tribes
12 participating today?

13 Okay, what about Bay Area Air Quality Management
14 District?

15 Is anyone here from the City of Santa Clara, or
16 Silicon Valley Power, or any other local agencies?

17 All right, Commissioner Monahan anything you'd like
18 to say by way of opening?

19 COMMISSIONER MONAHAN: Sure, just briefly. I just
20 want to thank staff, especially Lisa De Carlo and Lon Payne,
21 Mr. Sarvey and the Applicant represented by Mr. Galati. I
22 think we all recognize this has been a long process and we
23 are committed to issuing a decision that's grounded in strong
24 analysis as quickly as we can. So, looking forward to
25 today's hearing and thanks to everyone.

1 COMMISSIONER DOUGLAS: Thank you, Commissioner
2 Monahan. And I definitely join in those remarks.

3 And at this point I'll hand over the conduct of this
4 Prehearing Conference to Hearing Officer Susan Cochran.

5 HEARING OFFICER COCHRAN: Thank you Commissioner
6 Douglas and Monahan. And again, good morning.

7 The Committee noticed today's Prehearing Conference
8 in the Notice of Prehearing Conference and Evidentiary
9 Hearing, Revised Scheduling Order, and Further Orders issued
10 on April 12, 2021. I'll be referring to that as the April 12
11 Notice from hear on out.

12 As explained in the April 12 Notice, the basic
13 purposes of the Prehearing Conference are as follows. To
14 assess the parties' readiness for hearings, to identify the
15 matters in dispute, and to discuss the remaining issues and
16 procedures necessary to conclude the SPPE process.

17 Before we proceed with the substantive portion of
18 this Prehearing Conference, I want to discuss housekeeping
19 issues.

20 Consistent with Governor Newsom's Executive Orders N-
21 25-20 and N-29-20, and the recommendations from the
22 California Department of Public Health to encourage physical
23 distancing to slow the spread of COVID-19, we are conducting
24 the Prehearing Conference and Evidentiary Hearing remotely
25 using Zoom.

1 The next slide, please. We have set up this Zoom
2 meeting so that the parties are panelists. This means that
3 they will mute and unmute themselves to speak and have the
4 option to use the video feature.

5 Please note that if you are making noise that
6 disrupts the meeting, the host may mute you. When you need
7 to speak, you will need to raise your hand to have your
8 microphone turned on again.

9 The next slide, please. On the screen you can see
10 the participant instructions for using Zoom. To find your
11 participation options look for the black bar at the bottom of
12 your Zoom screens. If you want to be recognized, please use
13 the raise hand feature. If you are on the phone, press *9 to
14 raise your hand. If you have muted your phone by press *6,
15 please be sure to unmute yourself by pressing *6 again. The
16 raise hand feature creates a list of speakers based on the
17 time when your hand was raised and we will call on you in
18 that order.

19 The general public will have two opportunities to
20 speak today. There are public comment periods toward the end
21 of both the Prehearing Conference and the Evidentiary
22 Hearing.

23 A court reporter is present today, who is taking down
24 all of the discussion and will prepare a transcript of what
25 is said. To ensure that we have a complete and accurate

1 transcript, I must ask that only one person at a time speak.

2 Second, please identify yourself before you speak.

3 When you speak for the first time please say and spell your
4 name slowly. Meeting remotely like this makes it harder for
5 the court reporter and for me to identify who is speaking, or
6 wishes to be recognized.

7 The next slide, please. If you run into difficulties
8 today during this meeting, please contact the Public
9 Advisor's Office, or Zoom's help center. The contact
10 information for both of these is on this slide and is also in
11 the name -- I'm sorry, in the notice of today's hearing.

12 Before we proceed, are there any questions about how
13 to use Zoom for today's Prehearing Conference and Evidentiary
14 Hearing?

15 Seeing no raised hands and hearing no questions, I
16 will now move on to the substance.

17 This Prehearing Conference concerns the application
18 for a small power plant exemption, SPPE, for the Sequoia
19 Backup Generating Facility. The application was filed by the
20 Applicant on August 14, 2019. The application and many of
21 the other documents I will be mentioning today are available
22 in the online docketing system used by the Energy Commission.

23 The next slide, please. Here is the agenda for
24 today's proceedings. Briefly, the Applicant proposed to
25 install and operate 54 diesel-powered backup generators to

1 provide an uninterruptable power supply to the Sequoia Data
2 Center to be located at 2600 De La Cruz Boulevard in Santa
3 Clara, California.

4 Each generator is capable of providing up to 2.25
5 megawatts of power to meet the data center load of 96.5
6 megawatts. The generators and their related fuel tanks are
7 to be set in below grade concrete vaults because of the
8 project's proximity to Mineta International Airport.

9 In addition, the Applicant will construct a
10 substation for Silicon Valley Power, the local electricity
11 provide, on the project site.

12 I may refer to all of these features as the project,
13 moving forward.

14 As originally proposed, the backup generators would
15 have been consistent with USEPA Tier 2 emission standards.
16 The backup generators would not be able to deliver power off
17 of the project site. Instead, the generators would only
18 serve the data center load.

19 The Committee already conducted an Evidentiary
20 Hearing on the project in June 2020. The Committee then
21 issued its proposed decision for the project on August 21,
22 2020. That Committee-proposed decision recommended that
23 based on the hearing record of these proceedings, the CEC
24 grant the requested exemption and adopt a mitigated negative
25 declaration to address the project's potential environmental

1 and energy resource impacts.

2 The CEC conducted a public hearing on the Committee-
3 proposed decision on September 9, 2020. At the September 9,
4 2020 Business Meeting, the California Air Resources Board,
5 CARB, made oral comments concerning the project and its
6 potential air quality impacts. The Bay Area Air Quality
7 Management District, Bay Area, also raised concerns about the
8 project. Specifically, CARB and Bay Area proposed that the
9 CEC consider additional information about air quality and
10 public health impacts, particularly in light of recent energy
11 emergencies where existing data center backup generators had
12 been called on to provide power to avoid curtailment of
13 power.

14 The CEC ultimately voted to remand the project to the
15 Committee to obtain additional information about CARB's and
16 Bay Area's concerns. That remand decision leads us to
17 today's Prehearing Conference and Evidentiary Hearing.

18 In late December 2020, Bay Area notified the CEC that
19 it had established a new best available control technology,
20 BACT, guideline. This new BACT guideline is application to
21 the Sequoia Project and requires that backup generators of
22 the size proposed for the Sequoia Project meet USEPA Tier 4
23 Emissions Standards.

24 Accordingly, on January 25, 2021 the Applicant filed
25 a revised project description to convert the backup

1 generators to meet the more stringent Tier 1 -- I'm sorry,
2 Tier 4 Emissions Standards. To meet the Tier 4 standards,
3 the Application is proposing to add a Miratech system
4 consisting of selective catalytic reduction, SCR, and a
5 diesel particulate filter. The SCR uses urea that would be
6 stored in tanks in the same concrete basins as originally
7 proposed for the generators and the diesel fuel tanks. The
8 below grade basins would be slightly enlarged to accommodate
9 the urea tanks and there would be one urea tank for every two
10 generators. This revised project description is the focus of
11 the proceedings today.

12 Public Resources Code Section 25541 specifies that
13 the CEC may grant an SPPE only when it makes three separate
14 and distinct findings. The proposed power plant has a
15 generating capacity of no more than 100 megawatts, no
16 substantial adverse impact on the environment will result
17 from the construction or operation of the power plant, and no
18 substantial adverse impact on energy resources will result
19 from the construction or operation of the power plant.

20 In addition, the CEC acts as the lead agency under
21 CEQA. In reviewing an SPPE, the CEC considers the whole of
22 the action. For the application, the whole of the action
23 means the backup generators, including the added Miratech
24 system, the data center, and other project features such as
25 the substation. Again when I refer to the project I mean the

1 backup generators, the data center, and the other project
2 features such as the substation.

3 When considering the original project using Tier 2-
4 compliant backup generators, the Committee was informed by an
5 initial study and proposed mitigated negative declaration
6 prepared by staff, and filed on January 23, 2020, as well as
7 several supplemental staff filings afterwards.

8 In response to the project's conversion to Tier 4-
9 compliant generators, staff has prepared a compiled revised
10 IS/PMND that reflects new analysis related to the changes to
11 the project, as well as the supplemental filings previously
12 filed. The compiled, revised IS/PMND was filed on April 23,
13 2021.

14 We'll now talk about how we will be conducting the
15 Evidentiary Hearing today. As set forth in the April 12
16 notice, the Evidentiary Hearing will be conducted using an
17 informal hearing procedures, modified to fit the remote
18 nature of the hearing. In addition, the Committee notified
19 the parties that cross-examination would be by written
20 questions only. The Committee explained that if a party
21 failed to submit cross-examination, that party could be
22 precluded from questioning witnesses. Mr. Sarvey is the only
23 party who filed written cross-examination questions. Neither
24 staff, nor Applicant filed any cross-examination questions.

25 Eliza, could you display the exhibit list now,

1 please?

2 Because the hearing is being conducted remotely, we
3 required the parties to submit lists of exhibits to be
4 introduced. The exhibit list you see on the screen is -- has
5 been compiled by the hearing office and is a complete list of
6 the exhibits identified by the parties. It also includes the
7 exhibits that were previously admitted at the Evidentiary
8 Hearing conducted on June 5, 2020.

9 During the Evidentiary Hearing we will not take time
10 to describe the exhibits that are moved into evidence or to
11 describe the topics that are covered by declaration. You
12 have the ability to create your own exhibit list by going to
13 the CEC webpage for the Sequoia Project and clicking on the
14 link "exhibit list" in the box.

15 I know that this is quick. Have the parties had a
16 chance to generate exhibit lists of their own? And if not, I
17 would like you to take the opportunity to do that during our
18 break.

19 Ms. Lopez, could you return to the power point now
20 please.

21 During the Evidentiary Hearing I will ask you to
22 confirm that the exhibit list contains all of the exhibits
23 that you intend to rely on in the Evidentiary Hearing later
24 today.

25 Absent any objections, we will deem all parties'

1 opening and rebuttal testimony admitted. There is no need to
2 discuss experts' resumes because we have them in writing and
3 there has been, thus far, no objection to any witness as an
4 expert.

5 If any party has an objection to the qualifications
6 of a witness, please be prepared to state the objection and
7 its basis when we get to that point in the Evidentiary
8 Hearing.

9 As it relates to Mr. Sarvey's cross-examination
10 questions, the April 12 notice stated that objections to the
11 questions would be considered during the Evidentiary Hearing.
12 The parties should be ready to state objections to the
13 questions. And the Committee may rule on the objections
14 during the Evidentiary Hearing or take the objections under
15 submission.

16 As set forth in the April 12 notice, the Committee
17 may allow parties who filed cross-examination in accordance
18 with the notice limited cross-examination during the
19 Evidentiary Hearing. In order to avail yourself of having
20 the right to conduct oral cross-examination, you will need to
21 show good cause. Practically, in showing good cause the
22 person requesting oral cross-examination should be prepared
23 to show extraordinary circumstances, such as illness, and
24 other excusable circumstances beyond the requester's control
25 that prevented him or her from asking questions. Mere

1 disagreement with an answer is not sufficient for a showing
2 of good cause.

3 In addition, you will need to identify the witness to
4 be cross-examined, and tell us the availability of the
5 witness today and any time constraints the witness may have.

6 Finally, you will need to tell us the approximate
7 amount of time necessary to cross -- to conduct the cross-
8 examination.

9 At the conclusion of the admission of evidence at the
10 Evidentiary Hearing, the parties will be provided with an
11 opportunity to offer a summation or closing argument. Please
12 limit any such summation or closing argument to ten minutes.

13 Mr. Galati, would you like to go first or last in the
14 summation?

15 MR. GALATI: I would like to go last, since I have
16 the burden of proof. Thank you.

17 HEARING OFFICER COCHRAN: Thank you.

18 The April 12 notice did not call for briefing, nor
19 does the Committee foresee the need for briefing. Does any
20 party disagree? Does any party believe that briefing is
21 required in this case? Mr. Galati?

22 MR. GALATI: Briefing is not required from our
23 perspective.

24 HEARING OFFICER COCHRAN: Thank you.

25 Ms. DeCarlo?

1 MS. DECARLO: Staff does not believe briefing is
2 necessary in this case.

3 HEARING OFFICER COCHRAN: Thank you.

4 Mr. Sarvey?

5 MR. SARVEY: Yes, I believe briefing is necessary.

6 HEARING OFFICER COCHRAN: And why is briefing
7 necessary?

8 MR. SARVEY: We have a long, convoluted record here
9 and it needs to be summarized so the Committee can see the
10 points, point by point, and I think it would aid the
11 Committee in making their decision.

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

13 That concludes the Prehearing Conference. Did I --
14 before we move on to the public comment portion, which is
15 Item 3 on the agenda, does either Commissioner Douglas or
16 Commissioner Monahan wish to make any remarks?

17 COMMISSIONER DOUGLAS: No comments from me at this
18 point, thank you.

19 HEARING OFFICER COCHRAN: Thank you.

20 COMMISSIONER MONAHAN: And no comments from me,
21 either.

22 HEARING OFFICER COCHRAN: Thank you.

23 I am now -- we are now moving on to Item 3 on today's
24 agenda, the public comment portion. I am now going to hand
25 over control of the meeting to Ms. Avalos, from the Public

1 Advisor's Office, to assist in running the public comment
2 portion of the meeting.

3 Ms. Avalos, before you ask for verbal comments, has
4 the Public Advisor's Office received any written comments
5 that folks have requested be conveyed at today's Prehearing
6 Conference?

7 MS. AVALOS: As of today we have not received any
8 public comment, written or oral received in the Public
9 Advisory's Office.

10 HEARING OFFICER COCHRAN: Okay, thank you. If you
11 could proceed, now, with anyone who has oral comments right
12 now?

13 MS. AVALOS: I will first call on attendees using the
14 raise hand feature on Zoom. Please state your name and
15 affiliation, and spell you first and last name. Also, do not
16 use the speakerphone feature because we may not be able to
17 hear you clearly.

18 Okay, and I'm looking at the list to see if there are
19 any hands raised. And just as a reminder, dial *9 to raise
20 your hand if you are on the phone.

21 HEARING OFFICER COCHRAN: I am not seeing any raised
22 hands, Ms. Avalos.

23 MS. AVALOS: Neither am I. So, there are no raised
24 hands and, therefore, no public comment at this time.

25 HEARING OFFICER COCHRAN: Okay. So, the next slide,

1 please. The agenda calls for a ten-minute break. So, we
2 will return -- let's cut it to eight minutes, so we'll be
3 back at 10:30. Thank you.

4 (Off the record at 10:22 a.m.)

5 (On the record at 10:34 a.m.)

6 HEARING OFFICER COCHRAN: Ms. Lopez, could you please
7 advance to the next slide in the PowerPoint presentation?

8 I believe all of the parties are present, at least
9 I'm seeing their names in the list. Mr. Sarvey, Mr. Galati,
10 Ms. DeCarlo.

11 So, we will now proceed with the Evidentiary Hearing.
12 This is the Evidentiary Hearing provided for in the April 12
13 notice. We conducted the Prehearing Conference immediately
14 before this hearing. We are now going to have the receipt of
15 evidence.

16 I had asked each of the parties to review the exhibit
17 list that was prepared by the Hearing and Policy Unit of the
18 Chief Counsel's Office.

19 Do any of the parties see any errors or omissions in
20 the exhibit list?

21 Mr. Sarvey, for your exhibits please note that the
22 system does not allow for part 1 or part 2 of an exhibit.
23 So, we made the two-part exhibit that you had listed two
24 separate exhibits, and then renumbered the rest of your
25 exhibits. Did that appear understandable to you?

1 MR. SARVEY: Yes, I see that. Thank you.

2 HEARING OFFICER COCHRAN: Thank you.

3 So, are there any errors or omissions, Mr. Sarvey?

4 MR. SARVEY: None that I recognize at this point.

5 HEARING OFFICER COCHRAN: Thank you.

6 Mr. Galati, same question?

7 MR. GALATI: No errors.

8 HEARING OFFICER COCHRAN: Ms. DeCarlo, any errors or
9 omissions?

10 MS. DECARLO: No errors or omissions.

11 HEARING OFFICER COCHRAN: Thank you so much.

12 I'm now going to ask each party for a motion
13 concerning their exhibits. At this time, if you have an
14 objection to any of the exhibits or other evidence being
15 offered by any party, you will be given an opportunity to
16 make that objection.

17 I will first call on each party for a motion to admit
18 their evidence. I will then call on the other parties to see
19 if there are any objections to the proffered evidence.

20 For any objections to Mr. Sarvey's cross-examination
21 questions that are an exhibit in this proceeding, the
22 Committee reserves its right under Title 20, Section
23 1211.5(c) to rule on the objections after the hearings. Does
24 everyone understand how we will be proceeding?

25 MR. SARVEY: Yes.

1 HEARING OFFICER COCHRAN: Thank you.

2 Applicant, I will turn to you first. Do you have a
3 motion concerning your exhibits?

4 MR. GALATI: Yeah, I move Exhibits 36 through 48 into
5 the record, please.

6 HEARING OFFICER COCHRAN: Thank you.

7 Staff, do you have any objection to the admission of
8 Exhibits 36 to 48 into the evidentiary -- into the hearing
9 record for this proceeding?

10 MS. DECARLO: No objections from staff.

11 HEARING OFFICER COCHRAN: Mr. Sarvey, do you have any
12 objection to receiving Exhibits 36 to 48 into the hearing
13 record of this proceeding?

14 MR. SARVEY: No objection.

15 HEARING OFFICER COCHRAN: Thank you.

16 Staff, do you have a motion concerning your exhibits?

17 MS. DECARLO: Yes, I move Exhibits 205 through 213
18 into the record.

19 HEARING OFFICER COCHRAN: Thank you.

20 Applicant, do you have any objection to staff's
21 exhibits?

22 MR. GALATI: No objection.

23 HEARING OFFICER COCHRAN: Mr. Sarvey, do you have any
24 objection?

25 MR. SARVEY: No objection.

1 HEARING OFFICER COCHRAN: Thank you so much.

2 Mr. Sarvey, do you have a motion concerning your
3 exhibits?

4 MR. SARVEY: Yes, I would like to move 312 through
5 321 into the record, please.

6 HEARING OFFICER COCHRAN: Thank you.

7 Mr. Galati, do you have an objection to any of Mr.
8 Sarvey's exhibits?

9 MR. GALATI: You know, we joined in the objections to
10 Mr. Sarvey's cross-examination that go outside the scope of
11 the hearing. Other than that, no objection.

12 HEARING OFFICER COCHRAN: Okay.

13 Ms. DeCarlo, do you have any objection on behalf of
14 staff to the receipt of Mr. Sarvey's Exhibits 312 to 321?

15 MS. DECARLO: I do to the extent that portions of Mr.
16 Sarvey's direct testimony in Exhibit 312 and various other
17 exhibits go outside the scope of the Evidentiary Hearing
18 established in the April 12th notice. I object to the
19 introduction of those exhibits.

20 HEARING OFFICER COCHRAN: Do you have a list or a
21 citation to the portions of the exhibits that you are
22 objecting to?

23 MS. DECARLO: I could read -- to the portions of the
24 testimony, the portions of Exhibit 312 that staff objects to
25 are starting page 3 through page 12.

1 HEARING OFFICER COCHRAN: Okay.

2 MS. DECARLO: And then, for the exhibits, the whole
3 exhibits that we object to as outside the scope of the
4 notice, Exhibits 313 through 319, and Exhibit 321.

5 HEARING OFFICER COCHRAN: Thank you.

6 Mr. Sarvey, do you have any response to staff's
7 objections to your exhibits?

8 MR. SARVEY: Well, if I had a clue to what she's
9 objecting to, I would. But I can't tell from her objection
10 what specifically she's objecting to. So, if you could be a
11 little more specific. Let's start with the exhibits, say
12 321, she's objecting to that one, is that right?

13 MS. DECARLO: Yes. So, I can be a little bit more
14 specific, 321 --

15 MR. SARVEY: Why?

16 MS. DECARLO: It appears that your intent with this
17 exhibit is to focus on the cumulative impacts discussion and
18 that issue was already addressed in the previous Evidentiary
19 Hearing. It is not impacted by the change in the project to
20 Tier 4 or the additional data gathered by the Bay Area Air
21 Quality Management District regarding outages.

22 And so, it is my understanding that this is outside
23 the scope of what was established in the notice.

24 MR. SARVEY: I believe you need to reread the order
25 in the notice and I think you're clearly see the cumulative

1 impacts was an issue.

2 MS. DECARLO: I disagree, respectfully.

3 MR. SARVEY: I would ask you to read it again and
4 you'll see clearly cumulative impact issues were a part of
5 this.

6 MS. DECARLO: It's specifically directed to the
7 project's conversion to Tier 4-compliant engines and it's not
8 -- my reading of the notice is it is not intended to revisit
9 the identification of other projects within the vicinity of
10 this, and whether or not staff analysis and inclusion of
11 various projects in their cumulative analysis should be
12 revisited, or open to further discussion.

13 MR. SARVEY: Let me reread the notice --
14 (indiscernible) --

15 HEARING OFFICER COCHRAN: Okay. Okay, so that's
16 sufficient back and forth. I think we understand each
17 party's position. We have to understand that the intent of
18 this Evidentiary Hearing is to resolve questions related to
19 the changes to the environmental analysis as they related to
20 the revised project description to modify the backup
21 generators to meet Tier 4 emissions.

22 The Committee will take this motion to exclude under
23 submission.

24 MS. DECARLO: Thank you.

25 HEARING OFFICER COCHRAN: And any ruling will be

1 contained in the revised Committee proposed decision.

2 Again, as noted before, pursuant to Title 20, Section
3 211.5(c), the Committee will rule on the objections in the
4 revised Committee proposed decision.

5 MR. SARVEY: Absolutely not acceptable. We've got a
6 bunch of objections here that really aren't clear. They need
7 to be fleshed out. We can't just let the Committee decide
8 what the objections are when the objections aren't clear at
9 all. You should just --

10 HEARING OFFICER COCHRAN: Her objection -- Mr.
11 Sarvey, her objection is that you have exceeded the scope of
12 this Evidentiary Hearing. You're saying that you have not
13 exceeded the scope of the Evidentiary Hearing.

14 MR. SARVEY: Exactly.

15 HEARING OFFICER COCHRAN: That's the question.

16 MR. SARVEY: But there's more than that. She's
17 making a lot of assertions. She's trying to disqualify the
18 majority of my reply testimony without, you know, this is
19 outside the scope. It's not true. I mean if we're going to
20 start objecting on that basis, I'm going to object to staff
21 filing all their stuff late. They didn't even file their
22 responses until two days after the time it was supposed to be
23 filed --

24 HEARING OFFICER COCHRAN: Actually, Mr. Sarvey, if
25 you reread --

1 MR. SARVEY: They didn't file their exhibit list
2 until yesterday --

3 HEARING OFFICER COCHRAN: Which is when they were
4 due.

5 MR. SARVEY: -- (indiscernible) --

6 HEARING OFFICER COCHRAN: Which is when they were
7 due. Which is when they were due, Mr. Sarvey. There was
8 Hearing Officer memos that dictated and changed the
9 deadlines. That did say that parties had until May 10 to
10 file their exhibit lists, that staff and Applicant were
11 granted additional time to respond to the cross-examination
12 questions after you had revised them in order to meet the
13 original requirements from the April 12 notice.

14 MR. SARVEY: The only thing I revised was to the
15 (indiscernible) --

16 HEARING OFFICER COCHRAN: Which was -- which was
17 originally supposed to have been included in the questions
18 and was not. So, the Hearing Officer memo said you have
19 until May 4 to correct that error. Staff and Applicant, you
20 have additional time to answer the questions once you know to
21 whom the questions are directed. All parties, you have
22 additional time to then file your exhibit lists.

23 So, staff has not been untimely. Staff has followed
24 the amended dates set forth in the Hearing Officer memo that
25 were given for fair process for all concerned.

1 The objections are that your filings exceed the scope
2 of this Evidentiary Hearing. Ms. DeCarlo, is that the basis
3 of your objections?

4 MS. DECARLO: Yes. Although, I could provide a
5 little bit more focus on a few of the exhibits. The
6 objection also includes that these materials were not
7 submitted or directed in this specific proceeding. So,
8 Exhibits 315 and 316, BAAQMD's letters in other proceedings
9 do not directly address this proceeding.

10 And then, additionally, Exhibit 318, the revised
11 noise analysis for grade up south (phonetic) is not relevant
12 to this proceeding.

13 MR. SARVEY: Can I add one more thing, please?

14 HEARING OFFICER COCHRAN: Yes. Please go ahead, Mr.
15 Sarvey.

16 MR. SARVEY: Okay. I'm going to read to you -- I'm
17 going to read to you, this is from page 1 and 2 of your
18 Notice of Evidentiary Hearing.

19 It says: On November 16th, the CEC voted to affirm
20 its remand and to provide further directions to the
21 Committee. A subsequent order memorializing the action at
22 the business meeting and directed the Committee to conduct
23 additional proceedings to consider those comments raised by
24 CARB and BAAQMD in this proceeding that addressed input
25 assumptions regarding NO2 impacts from routine testing and

1 maintenance, and direct and cumulative impacts of emergency
2 operations of the Project's backup generators.

3 That is what your notice says. That is what my
4 testimony addresses.

5 MS. DECARLO: I would just direct you, Mr. Sarvey, to
6 page 4 of the Notice which specifically itemizes the
7 particular issues that the Committee is reopening this
8 Evidentiary Hearing for.

9 MR. SARVEY: Okay, it says: Direct and cumulative
10 impacts right there. On page 4 it says the same thing.

11 It says: Because the Committee previously held an
12 Evidentiary Hearing -- so the cumulative impacts are directly
13 and squarely within what we're talking about because that is
14 what BAAQMD and CARB raised. That was the issues that they
15 raised at that meeting.

16 HEARING OFFICER COCHRAN: Okay. I believe that the
17 Committee has sufficient argument from the parties on these
18 objections. And again, pursuant to Title 20, Section
19 1211.5(c), the Committee will rule on your objections in the
20 CPD, Committee Proposed Decision.

21 MS. DECARLO: Thank you.

22 HEARING OFFICER COCHRAN: Anything further?

23 MS. DECARLO: Nothing from staff. Thank you so much.

24 HEARING OFFICER COCHRAN: Thank you.

25 In the April --

1 MR. GALATI: Can I be heard on this point?

2 HEARING OFFICER COCHRAN: Absolutely, Mr. Galati.
3 I'm sorry.

4 MR. GALATI: Thank you. There is a different between
5 cumulative impacts when we just say cumulative impacts, then
6 there is something different between cumulative impacts from
7 emergency operation. The staff has addressed emergency
8 operations, we've addressed emergency operations. We've
9 addressed the specific issues of how emergency operations
10 should be treated, whether they're cumulative or direct.

11 So, I think that Mr. Sarvey's argument about
12 cumulative impacts and what he's arguing goes beyond what you
13 asked for because he hasn't made a showing that the
14 operational impacts -- excuse me, the emergency impacts
15 should even be modeled.

16 So, from my perspective, it's sort of a -- assuming
17 that emergency operations were done incorrectly and then,
18 also, they needed to be looked at from a cumulative
19 perspective.

20 We had a very, very long discussion on cumulative and
21 cross-examination on cumulative in general, and cumulative
22 specifically with respect to all of the modeling that was
23 done in this case in the earlier Evidentiary Hearings.

24 I just wanted to make that distinction.

25 MR. SARVEY: I'd like to add something, please.

1 HEARING OFFICER COCHRAN: Please, Mr. Sarvey. Yours
2 will be the last words.

3 MR. SARVEY: Okay. Once again, CARB and BAAQMD
4 raised this issue of cumulative impacts and that's what
5 (indiscernible) -- is all about. That's what specifically
6 the testimony entailed. Cumulative impacts, air quality
7 impacts. Staff and Applicant, neither one of them has
8 modeled the cumulative air quality impacts of emergency
9 operations or the cumulative air quality impacts period.
10 They have done a cumulative health risk assessment that's
11 inadequate because they didn't include three of the CEC RE
12 cited power plants. So, you know, there is no air quality
13 impact assessment performed for emergency operation or
14 cumulative impacts of the entire area. It hasn't happened.

15 HEARING OFFICER COCHRAN: Okay. Thank you, Mr.
16 Sarvey.

17 Again, we will rule on these objections in the
18 Committee Proposed Decision.

19 Let's now talk about the need for cross-examination.
20 In the April 12 Notice, the Committee indicated that it may
21 allow parties who filed cross-examination, in accordance with
22 the Committee Notice, limited cross-examination of witnesses
23 during this Evidentiary Hearing upon a showing of good cause.

24 Practically, showing good cause requires that the
25 person requesting oral examination show extraordinary

1 circumstances such as illness and other excusable
2 circumstances beyond the requester's control that prevented
3 him or her from asking questions.

4 Again, mere disagreement with an answer is not
5 sufficient for a showing of good cause.

6 Finally, we need to have a discussion about the
7 identity of the witness to be cross-examination -- cross-
8 examined, pardon me, their availability, and the amount of
9 time necessary.

10 Does any party move to conduct cross-examination?

11 Mr. Galati?

12 MR. GALATI: Madam Hearing Officer, we don't have any
13 cross-examination.

14 HEARING OFFICER COCHRAN: Thank you.

15 Ms. De Carlo?

16 MS. DECARLO: Staff does not have any cross-
17 examination.

18 HEARING OFFICER COCHRAN: Mr. Sarvey?

19 MR. SARVEY: No, I have no cross-examination.

20 HEARING OFFICER COCHRAN: Thank you.

21 As I mentioned during the Prehearing Conference, we
22 are going to offer the parties the opportunity to provide up
23 to ten minutes for a closing argument or summation. We will
24 start with staff, then go to Mr. Sarvey. And as the
25 Applicant bears the burden of proof, end with the Applicant.

1 So, Ms. DeCarlo are you ready to present a closing
2 statement?

3 MS. DECARLO: Yes. Thank you, Hearing Officer
4 Cochran.

5 Staff reaffirms its conclusion that the Sequoia
6 Backup Generating Facility would not result in any
7 significant adverse impacts and qualifies for an exemption
8 from CEC licensing.

9 The project's conversion to Tier 4-compliant engines
10 did not alter this conclusion, nor does the additional data
11 that the BAAQMD provided in other proceedings regarding
12 recent power outages.

13 The join letter submitted by the California Air
14 Resources Board and BAAQMD are the last comments these
15 agencies have provided in this proceeding. And the letter
16 specifically states that CARB and BAAQMD agree the use of
17 Tier 4 engines is adequate in this case.

18 We strongly encourage the Project Applicant to modify
19 the project to include this technology and the Committee to
20 revise its decision to reflect that change.

21 The project has been so revised and staff encourages
22 the Committee to affirm staff conclusion that the project
23 would result in less than significant adverse impacts and to
24 grant the requested exemption. Thank you.

25 HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.

1 Mr. Sarvey? Mr. Sarvey, if you're speaking we can't
2 hear you.

3 MR. SARVEY: Okay, I'm ready. Thank you.

4 HEARING OFFICER COCHRAN: Sorry.

5 MR. SARVEY: There's currently 25 data centers in
6 this Census tract where this data center is located,
7 according to Exhibit 313 (indiscernible). The Census tract
8 is in the upper 90 percent of communities exposed to these
9 particulates. You have already approved two new data centers
10 with over 250 megawatt diesel generators inside the Census
11 tract. Now, with Sequoia we'll potentially had another 121
12 megawatts of diesel engines.

13 In 2018, in the McLaren case I've argued to this
14 Commission requiring emergency and cumulative air quality
15 impacts. CARB and BAAQMD have recently supported the
16 requirement in several other data center siting cases,
17 initially in this one.

18 They've removed their objection to not doing it
19 mainly because of the time, in my belief, but they're not
20 here to testify so we'll leave that out.

21 Staff and Applicant are still refusing to conduct an
22 air quality impact assessment of emergency operations at the
23 Sequoia Project. BAAQMD's outage data, I encourage the (loss
24 of audio) -- to take a good look at it.

25 Exhibit 314 and 315 demonstrates the probability of

1 any data center in the Santa Clara area to operate in
2 emergency mode is over 20 percent, and that's with all the 39
3 data centers from Santa Clara that haven't reported their
4 emergency activity to BAAQMD.

5 Staff's cumulate health risk assessment does not
6 consider the Lafayette Data Center, which CEC staff has been
7 processing for almost a year. And the Santa Clara Data
8 Center sited by the CEC in 2011 is not included, or the
9 existing (indiscernible) data center, which was constructed
10 before McLaren.

11 Therefore, there's many remaining questions about
12 SPD's ability to supply the energy necessary for this massive
13 data center build up in Santa Clara.

14 I'm convinced by the fact that we had all these power
15 outages in 2020, in August.

16 The CEC's been advocating for many years for
17 reductions in GHG emissions and has now passed on an
18 opportunity to achieve substantial GHG emission reductions by
19 not requiring the Applicant to enroll this project in the
20 Santa Clara Clean Energy Program, using less GHG-producing
21 backup generators. That's a failure by this Commission.

22 Staff filed this original IS/MND in 2020, over 14
23 months ago. Since that time the project's been modified.
24 The IS/MND has over 80 additional pages of testimony which
25 state responsible agencies are not allowed to comment on when

1 the IS/MND was issued in January of 2020 (indiscernible).
2 Clearly the IS/MND should be refiled with the clearing house
3 (phonetic).

4 No discovery was allowed on the project modification.
5 So many questions remain for myself and possibly the other
6 agencies. Though, the other agencies were not offered an
7 opportunity to comment on it at hearing.

8 Unfortunately, I still dispute the project's
9 eligibility for SPPE treatment and I await a court decision
10 in the Laurelwood case which is still outstanding.

11 CARB and BAAQMD continue to advocate for air quality
12 assessment and cumulative impact assessments in other
13 proceedings. This does not go unnoticed. They should
14 require it here.

15 Thank you.

16 HEARING OFFICER COCHRAN: Now, I was struggling to
17 unmute myself. I apologize. Thank you, Mr. Sarvey.

18 Mr. Galati?

19 MR. GALATI: Thank you for conducting this
20 Evidentiary Hearing so quickly and efficiently, we really
21 appreciate it.

22 Wanted to remind the Committee that a decision in
23 June would be very, very helpful to us.

24 And also remind the Committee that this Applicant has
25 done everything that it was asked to do, when asked to do it.

1 It has designed a project that meets all requirements and
2 it's designed a project that previously didn't have any
3 significant impacts, and even with modification continues to
4 not have any significant impacts.

5 It is very easy for an Intervenor to say there are
6 questions or to raise questions about what should -- what
7 they think they should have done. But please, look closely
8 as to what your staff has said. They have looked at the
9 issue of emergency operations at least six times, three times
10 in this case, and have written extensively of why emergency
11 operation modeling is not appropriate, and is speculative
12 under CEQA. The Commission got it right the last several
13 SPPEs and got it right in this project as well.

14 The information that the Bay Area Air Quality
15 Management District circulated in its survey doesn't change
16 that conclusion. And it doesn't change that conclusion
17 because the vast majority of those operating hours were done
18 voluntarily pursuant to an Executive Order by the Governor's
19 Office. Which, as you know, is a very, very rare occasion.

20 That makes our point exactly is emergency operations
21 are rare. The best way to continue to make emergency
22 operations rare is to stabilize the grid. The Commission,
23 the California Public Utility Commission, the Cal ISO have
24 worked hard so far to do that and we are confident that they
25 will.

1 Mr. Sarvey raised in his -- whether or not -- you
2 know, in our cross-examination questions whether the
3 Applicant would agree to a condition that says it wouldn't
4 voluntarily operate pursuant to an Executive Order or
5 participate in the CPUC limited pilot program, allowing
6 diesel generators to generate during emergencies voluntarily
7 to do load shedding.

8 That is not our plan. We don't intend to do that.
9 And we're fine, we're ambivalent whether the Commission makes
10 it a condition because we don't intend to do it.

11 But I would be careful about whether the Commission
12 actually imposed such a condition because there might be
13 other applicants who might.

14 So, from this perspective we leave you with that
15 we're still ready and committed after all this time to build
16 this project. And we think that getting this project done in
17 June would sort of turn a page as to what happened to this
18 project and, hopefully, doesn't happen to other projects or,
19 hopefully this Applicant would consider doing another project
20 in California.

21 So, that's all we have to say, thank you.

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

23 The next slide, please. We are now to the public
24 comment portion of today's Evidentiary Hearing, where the
25 public may -- has three minutes, up to three minutes to

1 comment on the proceedings today.

2 Ms. Avalos, I am again turning this portion over to
3 you, to run for us on behalf of the Public Advisor's Office.
4 Thank you again for helping us today.

5 MS. AVALOS: Thank you, Susan. Again, I will repeat
6 that I will first call on attendees using the raised hand
7 feature on Zoom. And then, please state your name and
8 affiliation, and spell your first and last name. Also, do
9 not use the speaker feature because we may not be able to
10 hear you clearly.

11 I'm looking at the list of attendees and I do not see
12 any raised hands. But I'd like to remind those that are on
13 the phone that if you dial *9, you can raise your hands. So,
14 let me take a look here.

15 Okay, seeing there are no raised hands, I'll turn to
16 you, Susan, Hearing Officer Cochran.

17 HEARING OFFICER COCHRAN: Thank you so much, Ms.
18 Avalos.

19 At this time the Committee will now adjourn to a
20 Closed Session in accordance with California Government Code
21 Section 11126(c)(3), which allows a state body to hold a
22 Closed Session to deliberate on a decision to be reached in a
23 proceeding the state body was required by law to conduct.

24 We anticipate that we will return from Closed Session
25 in about an hour, would be my best guess. Maybe a little

1 longer. Please pause the recording during this time.

2 And I would instruct the parties to please stay, as
3 there may be something reportable coming out of this Closed
4 Session. I don't know, but in the interest of allowing you
5 to hear it more quickly than we might be able to with a
6 written order, you might want to stay.

7 So, with that --

8 MS. DECARLO: Just one --

9 HEARING OFFICER COCHRAN: I'm sorry?

10 MS. DECARLO: One question, sorry, Hearing Officer
11 Cochran.

12 HEARING OFFICER COCHRAN: Yes.

13 MS. DECARLO: Would you like the witnesses to stay as
14 well? We have half a dozen or so.

15 HEARING OFFICER COCHRAN: I don't believe we need any
16 of the witness, Ms. DeCarlo. Thank you for having them
17 available to us today. Again, this was a new process for us
18 with written questions as opposed to having cross-
19 examination. But if the Commissioners believe they need to
20 hear from a witness, please let me know. But otherwise, I
21 would say let the witnesses -- the witnesses may be released.

22 MS. DECARLO: Thank you so much.

23 HEARING OFFICER COCHRAN: So, with that we are
24 adjourned to Closed Session. Again, we'll be back in about
25 an hour. Thank you for your patience.

1 (Off the record for a Closed Session at 11:03 a.m.)

2 (On the record in Public Session at 12:07 p.m.)

3 COMMISSIONER DOUGLAS: Yes, so we're back from Closed
4 Session and I think I will turn it over to you, now, Susan.

5 HEARING OFFICER COCHRAN: Thank you. We have two
6 items of reportable action from the Closed Session.

7 First, the Committee has declined the request to have
8 briefing from the parties.

9 Second, we anticipate consideration and adoption of a
10 Revised Committee Proposed Decision on a Business Meeting
11 that is schedule for June 25, 2021, which is a Friday.

12 That is all of the reportable action.

13 Thank you all for participating today and for your
14 attention.

15 Commissioner Douglas, do you want to adjourn us or do
16 you want me to?

17 COMMISSIONER DOUGLAS: I will go ahead and adjourn
18 us. I just wanted to join in the thanks to everybody for
19 their participation. And with that, we're adjourned.

20 (Thereupon, the Conference was adjourned at
21 12:08 p.m.)

22

23

24

25