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

In the matter of, )  
 ) 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

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## 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

## CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2021.



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MARTHA L. NELSON, CERT\*\*367

**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2021.



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