

DOCKETED

Docket Number:	20-SPPE-01
Project Title:	Great Oaks South Backup Generating Facility Small Power Plant Exemption
TN #:	239801
Document Title:	Transcript of Prehearing Conference
Description:	N/A
Filer:	Ngoc Tran
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	9/20/2021 11:45:57 AM
Docketed Date:	9/20/2021

STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the Matter of:)
) Docket No. 20-SPPE-01
Great Oaks South Backup)
Generating Facility:)
Small Power Plant Exemption)
_____)

PREHEARING CONFERENCE

REMOTE ACCESS ONLY
VIA ZOOM VIRTUAL MEETING PLATFORM

TUESDAY, SEPTEMBER 07, 2021

10:00 A.M.

Reported by:

Elise Hicks

APPEARANCES

Commissioners and Commissioner Advisors:

Karen Douglas, Commissioner, Presiding Member
David Hochschild, Chair, Associate Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Le-Quyen Nguyen, Advisor to Chair Hochschild
Terra Weeks, Advisor to Chair Hochschild
Ken Rider, Advisor to Chair Hochschild

Staff:

David Gay, Technical Advisor to the Commission on Siting Matters
Ralph Lee, Hearing Officer for this Proceeding
Susan Cochran, Hearing Officer for this Proceeding
Noemi Gallardo, Public Advisor
Jon Hilliard, Siting Advisor
Kerry Willis, Staff Counsel
Lisa DeCarlo, Staff Counsel
Lisa Worrall, Project Manager
RoseMary Avalos, Public Advisor's Office

Applicant:

Masoud Zafaripour, Director, Construction, Equinix
Scott Galati, Applicant Representative, Attorney, DayZen

Intervenor:

Robert Sarvey

Agencies:

Ellen Peters, California Air Resources Board
Craig Segall, California Air Resources Board
Wesley Dyer, California Air Resources Board
Tom Andrews, California Air Resources Board
Courtney Graham, California Air Resources Board
Jakub Zielkiewicz, Bay Area Quality Management District

I N D E X

	Page
Items	
1. Call to Order.	4
2. Prehearing Conference.	6
Report from the Applicant, Staff and any intervenors regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses, Committee discussions with the parties about the order of subject areas, use of formal procedures, and other matters in preparation for the Evidentiary Hearing.	9
3. Public Comment.	38
Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.	
4. Committee closed session deliberations on the application for a small power plant exemption for the Great Oaks South Back up Generating facility.	40
5. Adjourn.	41

P R O C E E D I N G S

1 SEPTEMBER 07, 2021 10:07 a.m.

2 COMMISSIONER DOUGLAS: Great. All right. Well,
3 this is Commissioner Douglas, and it is now about 10:07
4 a.m. and we are on the record. This is the Prehearing
5 Conference regarding the Application for a Small Power
6 Plant Exemption for the Great Oaks South Backup Generating
7 Facility. The California Energy Commission has assigned a
8 committee of two Commissioners to conduct these
9 proceedings. I'm the presiding member of this Committee.
10 We're all participating remotely today using Zoom, and at
11 this point, I'll introduce some people in attendance today.
12 David Hochschild, the Chair of the Energy Commission and
13 the associate member for the Committee is here, along with
14 his advisor Le-Quyen Nguyen, and my advisors Kourtney
15 Vaccaro and Eli Harland are attending as well. Ralph Lee
16 and Susan Cochran are the assigned hearing officers. I
17 would also like to introduce Noemi Gallardo, the Energy
18 Commission's public advisor, and RoseMary Avalos may be
19 here as well. And at this point, I'll ask the parties to
20 please introduce themselves and their representatives,
21 starting with the Applicant.

22 MR. GALATI: Good morning. This is Scott Galati.
23 I am representing SV1, LLC, which is owned by Equinix for

1 the Great Oaks South Backup Generating Facility in the Data
2 Center. I have a bunch of people on the line as attendees
3 that could be promoted to panelists should the discussion
4 lead to that. We're pleased to be here. Thank you very
5 much.

6 COMMISSIONER DOUGLAS: Thank you very much. I'll
7 turn now to Staff.

8 MS. DECARLO: Good morning. Lisa DeCarlo, Energy
9 Commission Staff attorney here. Also with me is Lisa
10 Worrall, Energy Commission project manager for this
11 proceeding. And we have a number of Staff and supervisors
12 available as well, should the discussion lead to that, as
13 Mr. Galati said.

14 COMMISSIONER DOUGLAS: All right. Thank you very
15 much. And now Intervenor Robert Sarvey. Are you here?

16 INTERVENER SARVEY: Yes. This is Rob Sarvey,
17 intervener. Thank you.

18 COMMISSIONER DOUGLAS: All right. Thank you.
19 Now I invite any public agencies or representatives of any
20 Native American tribes or nations to please raise your hand
21 so we can unmute you. Once you are unmuted, you'll have an
22 opportunity to introduce yourselves. Is the public advisor
23 aware of any public agencies in attendance?

24 All right. Public agencies, anyone from federal
25 or state government, aside from the Energy Commission.

5

1 Anyone representing Native Americans. I'm sorry, go ahead.

2 MS. GALLARDO: Commissioner Douglas?

3 COMMISSIONER DOUGLAS: Any hands up? Yeah.

4 Mm-hmm.

5 MS. GALLARDO: Noemi Gallardo from the Public
6 Advisor's Office. We did not receive any public
7 comments --

8 COMMISSIONER DOUGLAS: Okay.

9 MS. GALLARDO: -- from the Public Advisor's
10 Office.

11 COMMISSIONER DOUGLAS: And do you see any hands
12 up or are you aware of any government agencies?

13 MS. GALLARDO: At this time, no.

14 COMMISSIONER DOUGLAS: Okay. I'll just call
15 through it. Anyone representing Native American tribes or
16 nations? Any elected or appointed officials from state,
17 county or local jurisdictions? City of San Jose? Bay Area
18 Air Quality Management District? Any others? All right, I
19 will now turn the proceeding over to Ralph Lee, one of the
20 hearing officers for this proceeding.

21 HEARING OFFICER LEE: Yeah, thank you. Good
22 morning. This is Ralph Lee. I'm a hearing officer with
23 the California Energy Commission. My role is to assist the
24 Committee, including with the conduct of Committee events
25 like today's Prehearing Conference. The Energy Commission

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1 has created an online docket for documents associated with
2 this proceeding, Docket number 20-SPPE-01. Notice of
3 today's Prehearing Conference was filed in that docket on
4 June 24th, 2021, in English, Spanish, and Vietnamese. This
5 notice and the other documents I may refer to today, as
6 well as future documents related to this proceeding, are
7 available on the online docket for this proceeding. Before
8 we move to the substance of the Prehearing Conference, I
9 need to discuss some housekeeping matters. Consistent with
10 Governor Newsom's Executive Order N-08-21, in order to
11 continue to help California respond to, recover from, and
12 mitigate the impacts of the COVID-19 pandemic, we are
13 conducting this Prehearing Conference remotely using Zoom.
14 We have set up this Zoom meeting so that most participants
15 will not be able to speak, mute or unmute themselves to
16 speak. Anyone who wants to speak will have an opportunity
17 to do so during the public comment period later today, as
18 I'll describe in a moment. You may still mute your phone
19 by pressing *6, and you should still be able to hear this
20 Prehearing Conference if you do so.

21 Today, we have a court reporter transcribing all
22 the statements made and the questions asked. Therefore, I
23 must ask that only one person speak at a time. If you wish
24 to be recognized, please use the raise hand feature. If
25 you're on your phone, press *9 to raise your hand. If

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1 you've muted your phone by pressing *6, please be sure to
2 unmute yourself again by pressing *6 again. The raise hand
3 feature creates a list of speakers based on the time when
4 your hand was raised. We will call on you in that order,
5 and I will summarize these directions again before we start
6 the public comment period. Please identify yourself before
7 you speak. When you speak for the first time, please say
8 and spell your name slowly to identify yourself. That's
9 important for me and for the court reporter. And if you
10 don't identify yourself, either the court reporter or I may
11 interrupt you to ask that you do so to ensure that we have
12 a complete and accurate record for today's Committee
13 Conference.

14 If you run into any technical difficulties,
15 please contact the Public Advisor's Office or Zoom's help
16 center. Contact information for both is listed on Page
17 nine of the notice of today's Prehearing Conference. At
18 this time, let me ask you, everyone, are there any
19 questions? If you have any questions, please use the raise
20 hand feature. And that's *9 if you're on the phone.

21 Seeing none, the purpose of today's Prehearing
22 Conference is to assess the parties readiness for
23 Evidentiary Hearing, to clarify areas of agreement or
24 dispute, to identify witnesses and exhibits, to determine
25 the topics which the parties wish to provide oral

1 testimony, and to cross-examine other party's witnesses,
2 and to discuss procedural and other matters related to the
3 upcoming Evidentiary Hearing, as needed.

4 I'll start by providing a background. I'll
5 briefly describe the application that's the subject of this
6 proceeding. Then I'll describe the Small Power Plant
7 Exemption known as an SPPE, and then I'll describe where we
8 are in this particular SPPE proceeding. After I give that
9 background, as stated in today's agenda, the Committee and
10 the parties may discuss their readiness for the upcoming
11 Evidentiary Hearing, including identifying any disputed
12 subject areas, the order the Committee will call testimony
13 for the disputed subject areas, a discussion of proposed
14 testimony and witnesses, the use of the formal hearing
15 procedure, and any other matters related to preparing for
16 the Evidentiary Hearing. There will then be an opportunity
17 for public comment. The Committee has also given notice
18 that it may hold a closed session. And following that
19 closed session, if any, we will adjourn the Prehearing
20 Conference. And now turning to my summary of the
21 Application.

22 On March 19th, 2020, SV1, LLC, the Applicant in
23 this proceeding, which is a wholly owned subsidiary of
24 Equinix, LLC, sub -- it submitted the Application to the
25 Energy Commission to obtain an exemption from the Energy

1 Commission's exclusive jurisdiction to license thermal
2 powerplants with generating capacities of 50 megawatts or
3 more of electricity. This exemption, as I mentioned, is
4 known as a Small Power Plant Exemption, or SPPE, for short.
5 The Applicant seeks to construct and operate the Great Oaks
6 South Data Center, the Great Oaks South Backup Generating
7 Facility, and related accessories, which are collectively
8 called the Project. The Project site is located in the
9 City of San Jose, California, at 123, 127, and 131 Great
10 Oaks Boulevard.

11 The proposed Data Center would consist of three
12 two-story buildings totaling approximately 547,000 square
13 feet, that would house computer servers in secure and
14 environmentally controlled structures.

15 The Great Oaks South Backup Generating Facility
16 would ensure reliable backup power to the Data Center in
17 the event of loss of power from the local electric utility,
18 with Pacific Gas and Electric Company, commonly known as
19 PG&E. Normally, the Backup Generating Facility would
20 operate only for testing and maintenance. The Backup
21 Generating Facility would consist of 36 3.25 megawatt
22 diesel-fired emergency backup generators, six of which
23 would be redundant and also three 0.5 megawatt life-safety
24 emergency generators. All generators would be located on
25 site. No electricity that's generated from the Backup

1 Generating Facility could be distributed offsite. The
2 Backup Generating Facility would generate up to 99
3 megawatts of power, which is the maximum load of the Data
4 Center.

5 Under the Warren-Alquist State Energy Resources
6 Conservation and Development Act, commonly known as the
7 Warren-Alquist Act, specifically Public Resources Code
8 Section 25541, the Energy Commission may grant an SPPE only
9 when it makes three separate and distinct findings, which
10 are: that the proposed power plant has a generating
11 capacity of no more than 100 megawatts; that no substantial
12 adverse impact on the environment will result from the
13 construction or operation of the power plant; and that no
14 substantial adverse impact on energy resources will result
15 from the construction and operation of the power plant.

16 In addition to meeting these Warren-Alquist Act
17 requirements, the Energy Commission must also analyze SPPE
18 applications under the California Environmental Quality
19 Act, known as CEQA. The Energy Commission is the CEQA lead
20 agency and considers the whole of an action. For this
21 application, the whole of an action means not just the
22 Backup Generating Facility, but also the entire Data Center
23 complex that the Backup Generating Facility would support
24 and includes the other Project features such as
25 landscaping. This whole of the action is collectively

1 called the Project, which again, includes the Backup
2 Generating Facility, the Data Center, and other Project
3 features.

4 Staff prepared a draft Environmental Impact
5 Report, known as the draft EIR, which Staff prepared in
6 furtherance of legal requirements and to aid in the
7 consideration of the Application under both the
8 Warren-Alquist Act and CEQA. Staff published the draft DIR
9 on May 21st. The draft EIR was subject to a public review
10 and comment period that ended on July 26, 2021. Comments
11 were received from the Bay Area Air Quality Management
12 District, the Project Applicant, the City of San Jose,
13 Claire Warshaw, and an entity called Enchanted Rock. No
14 comments were received from the intervenor. On July 28,
15 2021, Staff filed a final EIR, which included responses to
16 comments. On August 18th, 2021, Staff filed an Addendum to
17 the final EIR, which contained a Mitigation Monitoring and
18 Reporting Program and a Modified Proposed Mitigation
19 Measure, MM GHG-1. That concludes my overview of the
20 Application and of this proceeding.

21 Now we can move on to a discussion of the
22 upcoming Evidentiary Hearing. Ms. Lopez, yeah, could
23 you -- if this a notice of today's Prehearing Conference,
24 can I see page five, please? Well, before we discuss how
25 the Evidentiary Hearing will be conducted, I want to

1 discuss the timing of the Evidentiary Hearing.

2 Currently, the Evidentiary Hearing is scheduled
3 for next Monday, September 13th. Unfortunately, the full
4 Committee is unable to attend as currently scheduled. The
5 Committee intends to reschedule the Evidentiary Hearing by
6 pushing it back eight days to Tuesday, September 21st. We
7 apologize for this inconvenience. Before we move on, I
8 want to -- the Committee wants to make sure that the
9 parties are able to attend on September 21st. So I would
10 ask the parties to please take a moment and check your
11 calendars, if that's possible, and to let us know if you
12 and your witnesses would be unable to attend an Evidentiary
13 Hearing on Tuesday, September 21st. And again, in
14 responding, please do consider the availability of your
15 witnesses. And let me just give the parties a minute to
16 check their calendars. I'll call on each of the parties in
17 just a moment. Or if you're ready to answer, please raise
18 your hand.

19 I'm not seeing any raised hands. I'm not sure if
20 I've given them enough time. Let me just -- let me just
21 ask Mr. Galati first, for the Applicant. Do you think
22 that, will your part -- would your party witnesses be
23 unable to attend on September 21st, Mr. Galati.

24 MR. GALATI: I am polling them now. I probably
25 need another minute or so, please.

1 HEARING OFFICER LEE: Oh, yeah. And again, I
2 apologize for this inconvenience and if it's not possible
3 to completely figure this out at this moment, we might be
4 able to return to this later on in the Prehearing
5 Conference. But let me just give the parties another
6 couple of minutes to check their calendars.

7 Yes, please, Mr. Galati.

8 MR. GALATI: Yes. It looks like the witnesses
9 that I am certain to use have already responded positively.
10 So I think so. If there's another witness that can't, I
11 think we can -- we can figure that out. So I think that
12 work -- date works for us.

13 HEARING OFFICER LEE: Okay. Thanks so much, Mr.
14 Galati.

15 Mr. Sarvey, do you have -- are you able -- are
16 you able to attend on the 21st?

17 INTERVENER SARVEY: The 21st is fine, Mr. Lee.

18 HEARING OFFICER LEE: Okay, great. Let me just
19 give Staff one more second. Staff.

20 MS. DECARLO: Oh Ralph, I'm ready.

21 HEARING OFFICER LEE: Okay. Ms. DeCarlo, please.

22 MS. DECARLO: Yes. Yes. All of our staff appear
23 to be available on that day, and I will note it is my
24 birthday. So no need to bring presents, but we'll be happy
25 to attend.

1 HEARING OFFICER LEE: Okay. Great. The
2 Committee will make a final decision about scheduling and
3 will issue a revised notice of Evidentiary Hearing
4 following this Prehearing Conference, but at this point, it
5 looks like the Committee will be rescheduling, and that
6 that date will be September 21st.

7 The Committee also notes that the Applicant filed
8 a motion in limine on August 27th, as stated in the
9 Committee's Order. On September 3rd, the Committee will
10 issue a written ruling on Applicant's motion, prior to the
11 Evidentiary Hearing. I just wanted to remind the parties
12 that any response to the Applicant's motion must be filed
13 no later than tomorrow, September 8th at 5:00 p.m..

14 As set forth in the notice, the Evidentiary
15 Hearing will be conducted using a formal hearing procedure
16 modified to fit the remote nature of the hearing. We will
17 be using Zoom. The Committee intends to share screen to
18 display documents such as exhibits. We may also be sharing
19 live video of ourselves. We ask, but do not require, that
20 the parties and the witnesses share video of themselves
21 also.

22 Regarding direct examination, we will deem all
23 parties opening reply and response testimony as their
24 direct examination. If it's admitted into evidence, there's
25 no need to discuss the expert's resumes if we have them in

15

1 writing and if no party objects to the witness as an
2 expert. If witnesses testify who have not filed written
3 testimony, please have them identify themselves by their
4 name, title, and employer. Such as John Doe, air quality
5 environmental specialist, California Energy Commission. If
6 any party has objection to a witnesses qualifications,
7 please be prepared to state the objection and its basis
8 during the Evidentiary Hearing. Any objections will be
9 decided during the Evidentiary Hearing or taken under
10 submission.

11 As set forth in the notice for today's Prehearing
12 Conference, pages 6 through 8, you may only use a document
13 that has been previously identified as an exhibit when
14 questioning a witness. When asking your questions, start
15 by identifying the document either by exhibit number
16 or -- and/or or its TN number and identify the specific
17 page number that you will be referencing. Allow each party
18 representative to finish questioning the witness before
19 asking -- making an objection. Allow the witness to finish
20 answering before moving onto the next question. For the
21 benefit of the court reporter and the transcript, please
22 remind your witness to identify themselves each time they
23 speak. If testifying as a panel, remind the panel to
24 answer each question individually and not to talk over each
25 other or over the person asking the questions.

16

1 As a reminder, the general order of presentation
2 and questioning will be as follows: first, the Applicants,
3 then Staff, and then Mr. Sarvey. The Committee will
4 consider allowing way for further questions, if you want to
5 rebut something that was raised for the first time after
6 your witness testified. Have you all, get to the question
7 to the parties, have you all had a chance to review the
8 notice that sets force -- forth the process for the
9 Evidentiary Hearing, and are there any questions? Mr.
10 Galati for Applicant?

11 MR. GALATI: Yes. I have a question. I was
12 intending to, if possibly, depending on what the Committee
13 rules on the motion to strike, augment exhibit, my
14 exhibits, for purposes of cross-examination, I can do that
15 within one day of the Committee issuing an order. And I
16 would like to leave to be able to do that.

17 HEARING OFFICER LEE: Okay. Would you be
18 augmenting it if the motion's granted or augmenting it if
19 the motion's denied?

20 MR. GALATI: Only if the motion is granted?
21 Excuse me. Only if the motion is denied.

22 HEARING OFFICER LEE: Okay. Well, I'm not having
23 the benefit of seeing what you want to include and also not
24 having a ruling on the motion to strike, I'll just have to
25 say we will consider that. We note that you've given

17

1 notice. You know, I think it would be nice if the parties,
2 the other parties had as much notice as possible of what
3 exhibits you might be including in the record, but we'll
4 have to take that at the time that it's identified.

5 MR. GALATI: Okay. And my commit will be I will
6 file it within one day of the Committee's decision, if I
7 intend to use any exhibits.

8 HEARING OFFICER LEE: Okay. Thank you. Ms.
9 DeCarlo, did you have any questions?

10 MS. DECARLO: Just one. I was wondering if the
11 Committee would consider requiring cross-examination
12 questions in writing prior to the Evidentiary Hearing, with
13 the opportunity to respond in writing as well so that the
14 Evidentiary Hearing could be focused on those issues that
15 weren't satisfactorily addressed.

16 HEARING OFFICER LEE: I'll take that question
17 into submission.

18 MS. DECARLO: All right, thank you.

19 HEARING OFFICER LEE: Thank you. And Mr. Sarvey,
20 did you have any questions?

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

22 HEARING OFFICER LEE: Thank you. One other note.
23 So Mr. Galati, I noticed the Applicant identified a panel
24 of witnesses that are going to testify in disputed topic
25 areas. I just wanted to remind the Applicant that we are

1 using the formal hearing procedure here, so witnesses
2 should testify and respond to specific questions
3 individually and not as a group. Do you understand what I
4 mean?

5 MR. GALATI: Yes. And I'm fine with that as
6 well. There's -- it's very likely that I -- that I
7 would -- all of our direct and reply testimony would
8 have -- would be what has been previously submitted into
9 the record. That's all I would do is identify them and
10 then I would only use them for rebuttal testimony or
11 answering any of the Committee's questions. So
12 it's -- would you like me to refile which -- so you
13 wouldn't allow any of them to testify as a panel, even
14 though they're on the same subject matter?

15 HEARING OFFICER LEE: Well, the way I was
16 envisioning this going is we would -- we could call them
17 and swear them all in and, you know, have them ready to
18 answer questions, but the questions would be addressed to
19 one person at a time and answered by one person at a time.

20 MR. GALATI: Yeah. That's fine. I understand
21 that. That works fine for me.

22 HEARING OFFICER LEE: Okay. Great.

23 MS. DECARLO: Yeah. Mr. Lee, just if I could
24 weigh in here, just on Staff's side. So Mr. Sarvey has
25 identified Mr. Hughes and Mr. Kerr for cross-examination,

1 but those are the supervisors, and they will definitely be
2 available, but we would also like the individual Staff
3 people who actually wrote the sections to participate in
4 the cross-examination, should it be live. The problem that
5 we've had in the past is that sometimes the questioner
6 doesn't know exactly who to ask the question to. So it
7 would be nice, as you said, to swear everyone in as a panel
8 and let the, or I'm sorry, not as a panel, but altogether,
9 and let the individual witness answer who's most
10 appropriate to answer the proffered question. If that
11 makes sense.

12 HEARING OFFICER LEE: Yeah, I was calling
13 it -- yeah, I was calling it a panel, and I think that does
14 make sense to have the witnesses there that would be most
15 knowledgeable if that's not Mr. Hughes or Mr. Kerr, and
16 then they could direct the question to the most
17 knowledgeable person. And Mr. Sarvey could decide who he
18 would like to question.

19 MS. DECARLO: Okay. Although sometimes -- right,
20 right. I mean, obviously, yeah, yeah. Okay, that'll work.
21 Thank you.

22 HEARING OFFICER LEE: Yeah. You would -- you
23 would have -- Staff would, of course, have the opportunity
24 for a rebuttal or redirect.

25 MS. DECARLO: Right, and if the Staff person that

1 Mr. Sarvey's directing the question to isn't the
2 appropriate person to respond, that Staff person can say, I
3 did not write that portion of the testimony. Right. And
4 we can provide a list of who those Staff people would be
5 ahead of time if the Committee is interested in that, or we
6 could just make sure that they're available at the -- at
7 the Evidentiary Hearing, whatever your preference is.

8 HEARING OFFICER LEE: Well, you know it's Mr.
9 Sarvey's questions in your offer. Mr. Sarvey, does that
10 make sense to you?

11 MR. SARVEY: I'm satisfied with whatever Ms.
12 DeCarlo wants to present [indiscernible]. We can muddle
13 through it, probably.

14 HEARING OFFICER LEE: Yeah. Okay. It might be a
15 safe, but we like to know who's going to be testifying in
16 advance.

17 MS. DECARLO: And I could say -- I could say that
18 now or we can submit something formally in writing.
19 However -- whatever your preference is.

20 HEARING OFFICER LEE: If you know offhand, that
21 this would -- that would be fine.

22 MS. DECARLO: Yes. For Air Quality, GHG, and
23 Public Health, it would be Tao Jiang and Wenjun Qian. And
24 then for alternatives, it would be, and that's in addition
25 to Mr. Hughes. For alternatives, in addition to Mr. Kerr,

21

1 it would be Kenneth Salyphone, Shahab Khoshmashrab, Brett
2 Fooks, and Karim Abulaban.

3 HEARING OFFICER LEE: Okay, great. And do we
4 have all of their CVs in the -- in the record?

5 MS. DECARLO: Yes. They were all provided.
6 Their declarations and their CDs were provided in the draft
7 EIR, or the final EIR.

8 HEARING OFFICER LEE: Okay. That sounds fine.
9 Thank you. Okay. Next, while we'll be using the formal
10 hearing procedure, we're not going to be specifically
11 describing the exhibits when they're moved into evidence
12 during the Evidentiary Hearing, and we're not going to
13 describe the topics covered by declarations that are
14 admitted. The Exhibit List displayed here on the screen,
15 thank you, has been compiled by the Hearing and Advisory
16 Unit and is a complete list of the exhibits identified by
17 the parties so far.

18 Mr. Galati, a quick question. I noticed that the
19 Applicant has not identified as an exhibit, the response to
20 Committee questions filed September 2nd. Does the
21 Applicant intend to sponsor that document as an exhibit
22 with the declaration?

23 MR. GALATI: No. We don't have a declaration
24 from that. That was more like a legal brief. Unless you
25 want my declaration, I'm happy to testify.

1 HEARING OFFICER LEE: Well, I'll leave that to
2 the Applicant, but I was just asking. I had a
3 question --

4 MR. GALATI: Yeah. I didn't put any additional
5 testimony there. I thought that all of those questions
6 were one of more argument.

7 HEARING OFFICER LEE: Okay. Thank you.

8 MR. GALATI: So our response is prepared like a
9 legal brief.

10 HEARING OFFICER LEE: Thank you. And I had a
11 similar question to Staff, Ms. DeCarlo. On a September 3rd
12 Staff filed a document with additional declarations. I
13 notice that it has not then identified as an exhibit yet,
14 the document submitted on September 3rd. Do you
15 want --

16 MS. DE CARLO: Yes, we would like to add. I'm
17 sorry. We would like to add that to our Exhibit List.
18 Now, I can refile an updated Exhibit List if you need that
19 formerly produced or if this is sufficient to add that.

20 HEARING OFFICER LEE: I think at this point, I
21 don't need an updated Exhibit List unless we add more.
22 Okay, fine. Yeah, that would probably be helpful if at the
23 end of this Prehearing Conference, since there are -- there
24 is at least one additional exhibit, please do file an
25 updated Exhibit List.

1 MS. DE CARLO: Okay, great. And we'll add the TN
2 number to the previously identified response to Mr.
3 Survey's reply testimony as well.

4 HEARING OFFICER LEE: Right. Yeah, I was
5 thinking of that. And back to Ms. DeCarlo, for Staff. On
6 August 18th, Staff filed an addendum to the final EIR.
7 It's currently listed as Exhibit 202 for identification,
8 but I didn't see a declaration sponsoring it. If Staff
9 believes that a declaration's appropriate and if one hasn't
10 been filed that I missed, then Staff may want to add that
11 one too. Do you know off hand if Staff intends to file a
12 declaration sponsoring Exhibit 202, and if you
13 could --

14 MS. DE CARLO: I will double check, and if
15 there's nothing that's already covers it, we will file that
16 as well.

17 HEARING OFFICER LEE: Yeah. Okay. Just wanted
18 to clarify. Thank you.

19 MS. DECARLO: Yeah, thank you for identifying
20 that.

21 HEARING OFFICER LEE: Yeah. So with those
22 modifications to the Exhibit List, does the Exhibit List
23 contain the exhibits the parties intend to rely on at
24 Evidentiary Hearing? Let me just ask the parties one more
25 time. Mr. Galati.

1 MR. GALATI: At this point, it certainly does.
2 There might be some additional exhibits intended only to be
3 used for cross-examination, depending on the outcome of the
4 motion.

5 HEARING OFFICER LEE: All right. Yeah, thank
6 you. Ms. DeCarlo for Staff.

7 MS. DECARLO: Yes, with the additions noted
8 previously, this encompasses all of our intended exhibits
9 at this time.

10 HEARING OFFICER LEE: Thank you. And Mr. Sarvey.
11 Mr. Sarvey, are you able to unmute?

12 MR. SARVEY: Yes.

13 HEARING OFFICER LEE: Yeah. Does the
14 exhibit -- does the Exhibit List represent all the exhibits
15 you as the intervenor wish to use at the Evidentiary
16 Hearing?

17 MR. SARVEY: At this time, Yes.

18 HEARING OFFICER LEE: Okay, thank you.

19 To conduct this Prehearing Conference
20 efficiently, we require that each party file a Prehearing
21 Conference statement if that party wanted to participate in
22 the Prehearing Conference and if the party wanted to
23 present evidence to cross-examine witnesses at the
24 Evidentiary Hearing. On August 31st, 2021, the Committee
25 received Prehearing Conferences from all the parties,

1 including Applicant, Staff, and the intervenor, Mr. Sarvey.
2 Mr. Sarvey filed a revised Exhibit List on September 2nd,
3 and the Staff will be filing an updated revised Exhibit
4 List.

5 But to summarize the Prehearing Conference
6 statements, the Applicant filed a Prehearing Conference
7 statement stating its agreement with Energy Commission
8 Staff on every issue. The Applicant identified the
9 disputed issues as those that are disputed by the
10 intervenor, Mr. Sarvey, and I'll describe those in a
11 moment. The Applicant identified a panel of four witnesses
12 that the Applicant will offer to testify regarding the
13 disputed subject areas, and the Applicant reserved the
14 right to cross-examine Mr. Sarvey about each of the
15 subjects that he's disputed. Mr. Galati, for the
16 Applicant, did I -- did I get that right?

17 MR. GALATI: Yes, you did, Commission Hearing
18 Officer.

19 HEARING OFFICER LEE: Thank you. And similarly,
20 Staff, Staff filed a Prehearing Conference statement also
21 stating that there are no disputed issues between Staff and
22 the Applicant, but Staff acknowledged that the intervenor,
23 Mr. Sarvey, disputed certain subject areas. Staff's
24 Prehearing Conference statement proposes not to sponsor any
25 live testimony at the Evidentiary Hearing nor to question

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1 Mr. Sarvey. Staff, Ms. DeCarlo, is that still correct?

2 MS. DECARLO: Yes, that's correct.

3 HEARING OFFICER LEE: Okay. The intervener, Mr.
4 Sarvey, also filed a Prehearing Conference statement in
5 which he identified the following technical areas as being
6 disputed and requiring live testimony at the Evidentiary
7 Hearing: air quality, cumulative impacts, greenhouse gas
8 emissions, and alternatives. Additionally, Mr. Sarvey
9 proposes to question various witnesses during the
10 Evidentiary Hearing. Specifically, he wants to question a
11 witness from the Bay Area Air Quality Management District
12 regarding emergency operations and cumulative impacts.
13 He'd like to question Staff witnesses Joseph Hughes, Steven
14 Kerr. Joseph Hughes regarding emergency operations
15 Mitigation Measure, MM GHG-1 and cumulative impacts. Mr.
16 Kerr, regarding the technical areas of alternatives. And
17 as we discussed earlier, Staff may have some additional
18 witnesses there.

19 Mr. Sarvey also proposes to question the
20 Applicants' witnesses, Michael Lisenbee regarding emergency
21 operation modeling and the topic of air quality, and
22 Applicant witness Bruce Frandsen regarding Mitigation
23 Measure MM GHG-1. He also proposed to question another
24 Applicant witness that he didn't identify, or one or more
25 witnesses, regarding the technical area of alternatives. I

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1 have a question, a follow up for Mr. Sarvey.

2 But first, did I accurately state the scope of
3 the witnesses you want to question and the technical areas
4 you want to question them in, Mr. Sarvey?

5 MR. SARVEY: Yes, you did.

6 HEARING OFFICER LEE: Okay, thank you. So you
7 state in that Prehearing Conference statement that you
8 wanted to question a witness from the Bay Area Air Quality
9 Management District, and I note that Staff, neither Staff
10 nor the Applicant, identified the Bay Area Air Quality
11 Management District as a witness. So have you arranged to
12 have someone from the Bay Area Air Quality Management
13 District be present at the Evidentiary Hearing?

14 MR. SARVEY: No, I haven't. Traditionally Staff
15 has presented them as a witness. Staff's -- I mean I
16 suppose I could contact them, see if I could arrange to
17 have them [indiscernible].

18 HEARING OFFICER LEE: Yeah. At this point, you
19 might want to reach out to the Bay Area Air Quality
20 Management District if that's your plan.

21 MR. SARVEY: Okay.

22 MS. DECARLO: Yeah, this is Lisa DeCarlo. Just
23 for clarification, we present Air District personnel as
24 witnesses in Application for Certification proceedings
25 because we are sponsoring the determination of compliance

1 from them, but that does not occur in Exemption proceedings
2 because we're not proposing to certify the project with an
3 air quality component.

4 HEARING OFFICER LEE: Yeah, thank you for that.

5 MR. SARVEY: [Indiscernible] if they're not going
6 to, I'll contact them myself.

7 HEARING OFFICER LEE: I'm sorry, Mr. Sarvey, I
8 didn't quite catch what you said there.

9 MR. SARVEY: Oh, I said that every SPPE
10 proceeding we've had on these cases has had the Bay Area
11 Air Quality Management District as a witness by Staff, but
12 if Staff doesn't want to do that, I will contact
13 [indiscernible].

14 HEARING OFFICER LEE: Okay. Well, yeah. Anyway,
15 I'm glad that I brought it up. Yeah, so. I had another
16 question on cumulative impacts, Mr. Sarvey.

17 You said that you want to question a couple of
18 the witnesses about cumulative impacts.

19 MR. SARVEY: Mm-hmm.

20 HEARING OFFICER LEE: You said in your Prehearing
21 Conference statement you listed that topic for Joseph
22 Hughes and for the Bay Area Air Quality Management District
23 witness. By cumulative impacts, are you talking about
24 cumulative impacts in the topic of air quality?

25 MR. SARVEY: Yes, I am.

1 HEARING OFFICER LEE: That was a yes, right?

2 MR. SARVEY: Yes.

3 HEARING OFFICER LEE: Mr. Sarvey, I'm having a
4 little trouble hearing you, but I believe you said yes
5 there. So let me ask.

6 MR. SARVEY: Yeah, I said yes.

7 HEARING OFFICER LEE: Okay, thank you. Are there
8 any other technical areas that you want to question
9 witnesses about potential cumulative impacts about the
10 Project other than air quality?

11 MR. SARVEY: No.

12 HEARING OFFICER LEE: Okay. So I'm going to put
13 cumulative -- I'm going to list cumulative impacts within
14 the topic of air quality. Is that acceptable?

15 MR. SARVEY: Yes, it is.

16 HEARING OFFICER LEE: Okay, thank you. And one
17 last question for Mr. Sarvey. Were you planning to testify
18 at the Evidentiary Hearing yourself?

19 MR. SARVEY: I probably will if my reply
20 testimony's stricken, I definitely will.

21 HEARING OFFICER LEE: Okay. I understand what
22 you mean if your -- if your testimony's stricken that
23 you'll be testifying. But if you -- if your testimony
24 isn't stricken and so all of that would still be in the
25 hearing record, what would you be testifying about?

1 MR. SARVEY: Just providing a summary of my
2 testimony in my introductory.

3 HEARING OFFICER LEE: Okay, so that's fine.
4 Yeah. We do -- we do consider your, everything filed
5 indirect, if admitted, is going to be deemed your direct
6 examination anyway. So that would not be necessary. But
7 I'll leave it to you.

8 I see Mr. Galati's hand is up. Let me -- let me
9 ask, go ahead and speak, Mr. Galati.

10 MR. GALATI: So in advance of what, in advance of
11 the hearing, I thought I would just clarify this objection.
12 The objection is that the reply testimony that was filed
13 was really opening testimony which prevented us from
14 replying. If Mr. Sarvey believes that if that is stricken,
15 he can just orally testify at the Evidentiary Hearing, he'd
16 be not complying with another rule, which is that there
17 needs to be pre-filed written testimony. So I just wanted
18 to be clear that I'll be objecting if the motion is
19 granted, and the testimony is stricken, I don't believe
20 that allows Mr. Sarvey to testify. He certainly can make
21 all of the public comments he likes to testify in areas in
22 which he has not filed pre-written -- pre-filed written
23 testimony.

24 HEARING OFFICER LEE: Okay. Thank you, Mr.
25 Galati, for clarifying the Applicant's position on that.

1 We do have your -- we have your written motion taken under
2 submission.

3 MR. SARVEY: Robert Sarvey.

4 HEARING OFFICER LEE: Yeah, go ahead, Mr. Sarvey.

5 MR. SARVEY: I wanted to offer this to the
6 Applicant in public. If the Applicant's willing to accept
7 GHG-1 as originally written, draft EIR, where they enroll
8 in the San Jose Clean Energy 100% Green Energy Program, I'm
9 willing to drop out of this proceeding and stipulate. I
10 just wanted to offer the Applicant that. If he's looking
11 for an easy Evidentiary Hearing, this makes it real easy.
12 That's the reason I intervened, and I'm going to make that
13 offer to the Applicant publicly, and I'm hoping he's going
14 to accept it.

15 HEARING OFFICER LEE: Yeah. Well, thank you, Mr.
16 Sarvey. This is a Prehearing Conference. It's not
17 a -- it's not a Settlement Conference, and I don't think
18 that we really want to -- we want to go there, but I think
19 the Applicant heard you and if there's -- if you want to
20 continue that conversation, I think that would be best
21 offline.

22 MR. SARVEY: Thanks, Mr. Lee.

23 HEARING OFFICER LEE: Okay. For the topics I
24 have for the Evidentiary Hearing are air quality, including
25 cumulative impacts; greenhouse gas emissions, and

1 alternatives. This is to all the parties, are there any
2 other technical areas that I didn't list that the parties
3 wish to address at the Evidentiary Hearing? Mr. Galati, go
4 ahead.

5 MS. DECARLO: Lisa DeCarlo for Staff. Oh, I'm
6 sorry.

7 HEARING OFFICER LEE: Let's take Mr. Galati
8 first. He had his hand up.

9 MR. GALATI: Sorry, I'm a little quicker to click
10 on that than you were, Lisa. But first of all, thank you
11 Lisa, for inviting me to spend part of your birthday with
12 you. Second is, I also need to understand whether the
13 Committee might have some questions in other areas. For
14 example, I didn't bring a noise expert and there were some
15 questions that we responded to the Committee in noise. And
16 so if there's any of those kinds of experts in areas
17 outside of the areas that you listed, we certainly can have
18 them available. And so that would be the only caveat was
19 whether the Committee wanted another subject matter added
20 to the to the list of areas that need to be explored.

21 HEARING OFFICER LEE: Yeah, thanks Mr. Galati,
22 for that offer. I think the Committee will let you know
23 about matters like that in some kind of notice or order
24 filed after this Prehearing Conference, but we would let
25 you know.

1 MR. GALATI: Thank you.

2 HEARING OFFICER LEE: Staff, Ms. DeCarlo, did you
3 have something to say?

4 MS. DE CARLO: Thank you. Yes. I don't have any
5 additional technical areas that we would be proposing to
6 present witnesses for availability at cross, but certainly
7 if the Committee directs us to provide in other technical
8 areas, we're more than willing. I do -- I would like some
9 clarification as to the testimony that BAAQMD would be
10 presenting on if Mr. Sarvey is able to produce a BAAQMD
11 witness. They have not presented formal testimony. I'm
12 assuming Mr. Sarvey wants to have them testify based on
13 their comments previously submitted. I would just request
14 that the testimony be limited to the scope of those
15 comments. I mean the testimony really is direct testimony,
16 even though it appears that Mr. Sarvey is presenting it as
17 cross. But so anyway, I would just like that confirmation,
18 for the record, that if BAAQMD participates, they would be
19 testifying to their previously produced comments.

20 HEARING OFFICER LEE: Thank you, Ms. DeCarlo. I
21 think that's a good and reasonable question to answer here.
22 And you know, I had assumed that Mr. Sarvey's witnesses
23 would be testifying. He listed it in the Prehearing
24 Conference statement that he'd -- that he would be
25 questioning BAAQMD, or the Bay Area Air Quality Management

1 District, on cumulative and emergency operations and I had
2 assumed that it would be within the scope of his reply
3 testimony because that's his reply testimony. I hadn't
4 considered that maybe he would be offering these witnesses,
5 this witness as some something additional. Mr. Sarvey, are
6 you able to give us an overview of the subject areas that
7 you wish to have the Bay Area Air Quality Management
8 District testify about?

9 MR. SARVEY: I would only be asking questions on
10 their comments that they submitted on the NOP and the DEIR.

11 HEARING OFFICER LEE: Okay. Their written
12 comments?

13 MR. SARVEY: Their written comments. I listed
14 them as exhibits. They're in my Exhibit List.

15 HEARING OFFICER LEE: Okay. Does that -- does
16 that clarify your question, Ms. DeCarlo?

17 MS. DECARLO: Yes, thank you.

18 HEARING OFFICER LEE: Okay, and I guess this is
19 an easier question. Does it make sense to call the, all of
20 the testimony by subject area in the order I just
21 mentioned? First air quality, then GHG emissions, and last
22 alternatives? Does that makes sense? Does that make sense
23 to everyone, that order? Unless -- I'll leave -- I'll say,
24 if anybody -- if it doesn't make sense, please raise your
25 hand.

1 And same thing, do we have any witnesses with
2 time constraints? If so, please raise your hand right now.
3 And we have covered a few things. Is there anything else
4 that we need to discuss about the Evidentiary Hearing
5 before I move on? If so, please go ahead and raise your
6 hand. This is -- this is the time. Okay, I'm not seeing
7 any raised hands.

8 One final matter that I wanted to mention is
9 briefing for the Evidentiary Hearing and the verbal closing
10 statements at the end of testimony. In his Prehearing
11 Conference statement, Mr. Sarvey requested leave to file a
12 post-hearing brief. Staff and the Applicants' Prehearing
13 Conference statement said no briefing is necessary. The
14 Committee intends to allow an opportunity for voluntary
15 post hearing briefing. The briefs shall be limited to
16 discussing how the evidence that was admitted into the
17 Hearing record applies to the law of this proceeding. The
18 brief shall be limited to 15 pages and are due no later
19 than seven business days after the reporter's transcript
20 from the Evidentiary Hearing is filed in the docket. The
21 Committee will give any further details later at the
22 Evidentiary Hearing or in a written order after this
23 hearing.

24 And at the conclusion of the Evidentiary Hearing,
25 the Committee will permit an optional 10-minute closing

1 statement from each of the parties, beginning with Staff,
2 and then Mr. Sarvey, and concluding with the Applicant.
3 Right. That concludes our discussion of the schedule,
4 status issues, next steps for the Evidentiary Hearing.
5 We'll move on now to public comment. Comments will
6 be --

7 MS. AVALOS: Okay, thank you.

8 HEARING OFFICER LEE: Oh, yeah. That's Ms.
9 Avalos. She can help with the -- or from the Public
10 Advisor's Office, she can assist with public comment. But
11 let me first say, comments are limited to three-minutes per
12 person. If you're on your computer, you can use the raise
13 hand feature to let us know you'd like to make a comment.
14 If you change your mind, you can lower your hand. We'll
15 call on you in the order that your hand was raised. We'll
16 open your line so that you can state your comment. For
17 those on the phone, you can dial *9 to raise your hand. If
18 you've muted yourself, make sure you press *6 to unmute
19 your phone and we'll unmute your phone line from our end.
20 We'll tell you, if you're on the phone, we'll tell you that
21 your line is open, and we'll identify you by reading the
22 last three numbers of your phone number. Ms. Avalos, can
23 you assist with public comment?

24 MS. AVALOS: Yes. Thank you, Hearing Officer
25 Lee. I will start with Zoom raised hand. So first, I'll

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1 call on users of Zoom. Right now if you're not --

2 HEARING OFFICER LEE: Excuse me. Ms. Avalos,
3 excuse me. Just one second. I see that Lisa DeCarlo had
4 raised her hand. Did you have something to say before we
5 move into public comment?

6 MS. DECARLO: I'm very sorry. I forgot to ask
7 something that my project manager had requested we get
8 clarification on. We have status reports due in a few
9 days, and we just wanted to get confirmation that the
10 Committee was not expecting us to file those because we're
11 in the middle of Evidentiary Hearings now.

12 HEARING OFFICER LEE: Yeah, I think we know the
13 status. That's fine.

14 MS. DECARLO: Okay, thank you.

15 HEARING OFFICER LEE: Sorry to interrupt Ms.
16 Avalos. Please continue.

17 MS. AVALOS: All right. Thank you. I'll first
18 call on folks using the raise hand feature on Zoom. And
19 for the record, say and spell your name and state your
20 affiliation if any. And I'm looking at the list and I
21 don't see any raised hands. So I will go ahead and move on
22 to those phone users. If you are interested in making a
23 comment, please raise your hand by dialing *9. And you'll
24 need to unmute yourself by using the *6 feature. Okay,
25 I'll give a few seconds for people to raise their hand.

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1 All right, seeing that there are no raised hands,
2 that completes the public comment period. And I turn to
3 you now, Officer Lee, Hearing Officer Lee.

4 HEARING OFFICER LEE: Yeah, thank you. At this
5 time, I want to turn to the Commissioners, the Committee
6 members, and I'll ask whether Commissioner Douglas or Chair
7 Hochschild would like to make any final remarks. Let me
8 start with Commissioner Douglas. Did you have any final
9 remarks?

10 COMMISSIONER DOUGLAS: Yeah, thank you. I do not
11 have any final remarks. Just no. Looking forward to the
12 Evidentiary Hearing, that's all.

13 HEARING OFFICER LEE: Well thank you.

14 CHAIR HOCHSCHILD: Yeah, no remarks from me
15 either. Thank you, everyone.

16 HEARING OFFICER LEE: Well, thank you. And one
17 final question for the members of the Committee. Would we
18 like to have a -- hold a closed session? This would be the
19 time, Commissioner Douglas.

20 COMMISSIONER DOUGLAS: Yes. Yes. I do think a
21 closed session would be helpful.

22 HEARING OFFICER LEE: Okay. Well, with that,
23 then the committee will now adjourn to a closed session in
24 accordance with California Government Code section
25 11126(c)(3) which allows a state body to hold a closed

1 session to deliberate on a decision to be reached in a
2 proceeding the state body was required by law to conduct.
3 And Commissioner Douglas, if you're still on, can we give
4 an estimate of what time we will not return before? Can we
5 say that, you know, we wouldn't return before noon? Are
6 you able to come back sometime at noon or later to help
7 adjourn?

8 COMMISSIONER DOUGLAS: Yes. Let's say -- let's
9 say 11:50 so that, because I do have a 12:00 o'clock call
10 that I -- to get on, and I think that should leave us
11 plenty of time.

12 HEARING OFFICER LEE: Oh yeah.

13 COMMISSIONER DOUGLAS: Even 11:45 should be fine.
14 Why don't we say that.

15 HEARING OFFICER LEE: Yeah, let's say that. I
16 just don't want everyone waiting around if they don't have
17 to.

18 COMMISSIONER DOUGLAS: Yep.

19 HEARING OFFICER LEE: So we won't return any
20 earlier than 11:45. And we will return to adjourn.

21 COMMISSIONER DOUGLAS: Perfect, thank you.

22 HEARING OFFICER LEE: Okay, and with that, we're
23 in closed session. Thank you.

24 (The Committee adjourned into closed session at 11:04
25 a.m.)

1 (The Committee returned to open session at 11:45 a.m.)

2 HEARING OFFICER LEE: Hello, this is Ralph Lee.

3 The time is 11:45. Do we have Commissioner Douglas online?

4 It looks like Commissioner Douglas needs to be promoted to
5 panelist.

6 COMMISSIONER DOUGLAS: All right, thank you.

7 This is Commissioner Douglas. I am on, and we've returned
8 from our closed session and have no report out. Hearing
9 Officer Lee, is there anything else you wanted to add
10 before we adjourn?

11 HEARING OFFICER LEE: No, just that the closed
12 session ended about 11:38.

13 COMMISSIONER DOUGLAS: Perfect. All right. In
14 that case, with that, we're adjourned. Thank you all very
15 much.

16 (Whereupon the Prehearing Conference adjourned at
17 11:46 a.m.)

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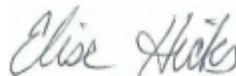
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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of September, 2021.



ELISE HICKS, IAPRT CERT**2176

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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 20th day of September, 2021.



Jill Jacoby
Certified Transcriber
AAERT No. CERT**D-633