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BEFORE THE
CALIFORNIA ENERGY COMMISSION

Application for Small Power)
Plant Exemption for the:)

San Jose City Backup) Docket No. 19-SPPE-04
Generating Facility)
_____)

PREHEARING CONFERENCE

IN PERSON AND REMOTE VIA ZOOM VIRTUAL MEETING

WARRANT-ALQUIST STATE ENERGY BUILDING

ROSENFELD HEARING ROOM, FIRST FLOOR

1516 NINTH STREET,

SACRAMENTO, CA 95814

WEDNESDAY, MAY 18, 2022

1:30 P.M.

Reported by:

Martha Nelson

APPEARANCES

HEARING OFFICERS

Deborah Dyer (via Zoom)

Susan Cochran

COMMISSIONERS

Patricia Monahan, Presiding Member

Kourtney Vaccaro, Associate Member

COMMISSIONER ADVISORS

Mona Badie, Advisor to Commissioner Monahan (via Zoom)

Eli Harland, Advisor to Commissioner Vaccaro

Natalie Lee, Advisor to Commissioner Vaccaro (via Zoom)

CEC STAFF

Jared Babula, Senior Staff Counsel (via Zoom)

PUBLIC ADVISOR

Noemi Gallardo

APPLICANT

Scott Galati (via Zoom)

INTERVENOR

Robert Sarvey (via Zoom)

1 participating remotely; Natalie Lee, Commissioner
2 Vaccaro's Advisor, who is also participating
3 remotely; Eli Harland, Commissioner Vaccaro's
4 other Advisor, who is here in person; Deborah
5 Dyer, the Hearing Officer for this proceeding,
6 who will be participating remotely; Susan
7 Cochran, assisting as Hearing Officer onsite.

8 I would also like to introduce Noemi
9 Gallardo, the Public Advisor, who is here in
10 person.

11 I would ask the parties to please
12 introduce themselves and their representatives at
13 this time, starting with the Applicant.

14 So the Applicant, Microsoft Corporation,
15 are you here?

16 MR. GALATI: Good afternoon. Good
17 afternoon. This is Scott Galati representing
18 Microsoft. I have various members with us. Not
19 all of them are panelists. I wasn't anticipating
20 too much needing to call anyone to answer any
21 questions, however, they are here, people from
22 Microsoft, as well as the support team. I'll
23 introduce them as necessary and ask you to unmute
24 them if it's needed.

25 Thank you.

1 COMMISSIONER MONAHAN: Thanks Mr. Galati.

2 Now Staff.

3 MR. BABULA: Yeah. Hi. This is Jared
4 Babula, Staff Counsel. And I am going to be
5 representing Staff for this event. As needed,
6 depending on where the questions go, other staff
7 are available by phone or web -- or the Zoom to
8 answer questions.

9 COMMISSIONER MONAHAN: Thank you.

10 Now the Intervenor.

11 MR. SARVEY: Yes, this is Bob Sarvey.

12 COMMISSIONER MONAHAN: Okay. Thanks, Mr.
13 Sarvey.

14 Are there any other -- are there any
15 elected officials or representatives from any
16 local, state, or federal governments or agencies,
17 or from any Native American tribes? If so,
18 please introduce yourself if you are in the room,
19 there is nobody in the room, or by raising your
20 hand so we can unmute you online, or if you're
21 participating by phone, by pressing star nine to
22 raise your hand and star six to unmute, I'll say
23 that again, star nine to raise your hand. I
24 don't see any raised hands.

25 Oh, and I should say, so agencies, any

1 elected officials or representatives
2 participating from agencies of the federal
3 government, agencies of the State of California,
4 Native American tribes, Bay Area Air Quality
5 Management District, representatives from the
6 City of San Jose or Silicon Valley Power, or any
7 other nearby towns or cities, any other agencies?
8 So still, no.

9 All right, I see no representatives from
10 any other governments or agencies or from any
11 Native American tribes.

12 Commissioner Vaccaro, do you have any
13 opening remarks before we begin?

14 COMMISSIONER VACCARO: Yes, I do. Thank
15 you.

16 So I am a little disappointed, I have to
17 say, that it's an almost empty room. I
18 understand why it is empty but I was really
19 looking forward to seeing a few folks in person
20 just because it's been very, I think, exciting,
21 and also allows for a different type of
22 engagement with in-person.

23 So I am hopeful, Mr. Galati, to see you
24 before too long, and Mr. Babula, and the clients
25 that you represent.

1 Although I'm not going to suggest that
2 it's completely empty. We have a few people in
3 the room and it's nice to see them. And I think
4 that's really it, it's just I've been so looking
5 forward to moving forward with the various
6 proceedings that we have, including but not
7 limited to this one.

8 And I'm glad that we have the opportunity
9 today to have this prehearing conference and to
10 very swiftly get to the evidentiary hearing so
11 that we can get to a decision, also, very
12 swiftly.

13 So I think that's it, just thank
14 everybody for participating today, and looking
15 forward to seeing you all in-person.

16 COMMISSIONER MONAHAN: Great. Thank you.

17 So I will now hand over the conduct of
18 this prehearing conference to Deborah Dyer, one
19 of the Hearing Officers for this proceeding.

20 HEARING OFFICER DYER: Thank you,
21 Commissioner Monahan.

22 My name is Deborah Dyer and I'm a Hearing
23 Officer with the California Energy Commission.
24 My role today is to assist the Committee with the
25 conduct of today's prehearing conference, as well

1 as other Committee events.

2 Slide four, please. Oh, no, wait, slide
3 three. Sorry. Yeah, you had it right.

4 So the Energy Commission has created an
5 online docket for documents associated with this
6 proceeding and that Docket Number is 19-SPPE-04.
7 The Committee noticed today's prehearing
8 conference in the Notice of Prehearing Conference
9 and Evidentiary Hearing, Revised Scheduling
10 Order, and Further Orders, issued on April 29th,
11 2022. That notice was filed in English, Spanish
12 and Vietnamese.

13 As explained in the April 29th notice,
14 the basic purposes of the prehearing conference
15 are to assess the parties' readiness for hearing,
16 to identify matters in dispute, and to discuss
17 the remaining schedule and procedures necessary
18 to conclude the SPPE process. This notice and
19 other documents that I may refer to today, as
20 well as future documents related to this
21 proceeding, are available in the online docket
22 for this proceeding.

23 Slide four, please. Thank you.

24 Before we proceed further with the
25 substantive portion of this prehearing

1 conference, I wanted to discuss a couple
2 housekeeping issues.

3 So as you heard, this prehearing
4 conference is being held in a hybrid format. The
5 Commissioners, as well as some of the party
6 representatives, are present in the room at the
7 Warren-Alquist Building, the Rosenfeld Hearing
8 Room. Other participants are using Zoom to
9 participate today.

10 I am participating via Zoom but Susan
11 Cochran, who is another Hearing Officer with the
12 Energy Commission, is present in the room and may
13 assist in this proceeding if there are connection
14 issues or if I am unable, otherwise, to continue.

15 We've set up this Zoom meeting so that
16 the parties and any identified witnesses are
17 panelists. That means that they will be able to
18 mute and unmute themselves to speak and have the
19 option to use the video feature. Please note
20 that if you are making noise that disrupts the
21 meeting, we may have to mute you. And if that
22 happens, you will need to raise your hand to have
23 your microphone turned back on when you would
24 like to speak.

25 To find your participation options,

1 please look for the black bar at the bottom of
2 your Zoom screen. If you want to be recognized,
3 please use the raise-hand feature which looks --
4 it says right there, "Raise hand." And if you
5 are on the phone, press star nine to raise your
6 hand. If you've muted your phone by pressing
7 star six, please be sure to unmute yourself by
8 pressing star six again. The raise-hand feature
9 creates a list of speakers based on the time when
10 your hand was raised and we will call upon you in
11 that order.

12 The general public will have an
13 opportunity to speak during the public comment
14 period towards the end of this prehearing
15 conference. And during the public portion of the
16 agenda, we will first recognize speakers in the
17 room, and then we will move on to speakers on
18 Zoom, and then to speakers on the phone line.
19 And we'll go over these directions again once we
20 get to the public comment period.

21 A court reporter is present today who is
22 taking down all of the discussion and will
23 prepare a transcript of what is said. To ensure
24 that we have a complete and accurate transcript,
25 I must ask that only one person speak at a time.

1 Please identify yourself before you speak and,
2 preferably, each time you speak if you are in the
3 room because the participants on Zoom cannot see
4 everyone who is in the room. And when you speak
5 for the first time, please spell your name
6 slowly. Remote participation can make it hard
7 for people and the court reporter to identify who
8 is speaking or who wishes to be recognized.

9 Slide five, please.

10 If you run into difficulties with Zoom,
11 please contact the Public Advisor's Office or
12 Zoom's help center. And both of those contact
13 information -- both of the contact information
14 for those two entities are in the notice for
15 today, as well as on the slide that's up right
16 now.

17 So are there any questions about how to
18 use Zoom for today's prehearing conference? If
19 you're on Zoom, please, raise your hand and we
20 will do our best to respond to your question.
21 And remember, star nine if you're on the phone.

22 Okay, seeing no questions, then we will
23 move on to the purpose of today's prehearing
24 agenda -- I mean prehearing conference.

25 The purpose today is to assess the

1 parties' readiness for evidentiary hearing, to
2 clarify areas of agreement or dispute, to
3 identify witnesses and exhibits, to determine the
4 topics in which the parties wish to provide oral
5 testimony and to cross-examine other parties'
6 witnesses, and to discuss procedural and other
7 matters related to the upcoming evidentiary
8 hearing, as need.

9 I will start by giving some background,
10 including briefly describing the application that
11 is the subject of this proceeding, then
12 describing what a Small Power Plant Exemption is,
13 and then identifying where we are in this
14 proceeding.

15 After I give that background, the
16 Committee and the parties may discuss their
17 readiness for the upcoming evidence hearing,
18 including a discussion of proposed testimony, the
19 use of the formal hearing procedure, and any
20 other matters related to preparing for the
21 evidence hearing. There will then be an
22 opportunity for public comment.

23 The Committee has also given notice that
24 it may hold a closed session following -- it may
25 hold a closed session. So following the closed

1 session, if we -- following the close session, if
2 any, we will adjourn the prehearing conference.

3 Okay, so to start, I will present some
4 background on the application.

5 On November 15th, 2019, Applicant,
6 Microsoft Corporation, filed an Application for a
7 Small Power Plant Exemption for the San Jose
8 Backup Generating Facility. The application
9 seeks an exemption from the Energy Commission's
10 exclusive jurisdiction to license thermal power
11 plants with generating capacity of 50 megawatts
12 or more of electricity. This exemption is known
13 as a Small Power Plant Exemption, or an SPPE for
14 short. The application and many of the other
15 documents I will be mentioning today are
16 available in the online docketing system used by
17 the Energy Commission.

18 The Applicant seeks to construct and
19 operate the San Jose City Data Center, the San
20 Jose City Backup Generating Facility, and related
21 accessories, which are collectively called The
22 Project. The Project is to be located at 1657
23 Alviso-Milpitas road in the City of San Jose,
24 California.

25 The Data Center would consist of two

1 single-story buildings, totaling 396,914 square
2 feet, which would be secure and environmental-
3 controlled structures to house computer servers.
4 The San Jose City Backup Generating Facility
5 would ensure reliable power to the Data Center in
6 the event of loss of power from PG&E, the local
7 electric provider.

8 The Backup Generating Facility would
9 consist of 226 generators, including 224 natural
10 gas backup generators, each capable of providing
11 up to 0.45 megawatts of power, and 2
12 administrative diesel-powered generators capable
13 of providing 1.25 megawatts and 0.5 megawatts of
14 power. The Backup Generating Facility would
15 generate up to 99 megawatts, which is the maximum
16 load of the Data Center.

17 In addition, the Applicant will also
18 construct a new substation on the project site
19 and will serve only the Data Center load.

20 Slide seven, please. Thank you.

21 Under the Warren-Alquist State Energy
22 Resources Conservation and Development Act, which
23 we commonly call the Warren-Alquist Act,
24 specifically, Public Resources Code section
25 25541, the Energy Commission may grant an SPPE

1 only when it makes three separate and distinct
2 findings. Those findings are: one, the proposed
3 powerplant has a generating capacity up to 100
4 megawatts; two, that no substantial adverse
5 impact on the environment will result from the
6 construction or operation of the powerplant; and
7 three, no substantial adverse impact on energy
8 resources will result from the construction or
9 operation of the powerplant.

10 Slide eight, please.

11 So in addition to meeting the Warren-
12 Alquist Act requirements, the Energy Commission
13 also acts as the lead agency under the California
14 Environmental Quality Act known as CEQA. In
15 reviewing an SPPE application, the Energy
16 Commission considers the whole of the action.
17 And for the Application, the whole of an action
18 means not just the Backup Generators, but also
19 the entire Data Center complex and other project
20 features, such as the pipelines and landscaping.
21 I will refer to the Backup Generators, the Data
22 Center, and the other project features
23 collectively as The Project.

24 To assist the Committee in analyzing the
25 project under both the Warren-Alquist Act and

1 CEQA, Energy Commission staff prepared and
2 circulated for public review and comment the
3 Draft Environmental Impact Report, which we
4 shorten to call an EIR, on December 23rd, 2021.
5 The Draft EIR was subject to public review. And
6 the comment period of that Draft EIR ended on
7 February 7, 2022. Comments were received from
8 the Applicant, the Bay Area Air Quality
9 Management District, the County of Santa Clara
10 Parks and Recreation Department, Ada Marquez, and
11 Claire Warshaw. No comments were filed by the
12 Intervenors.

13 Staff then prepared a Final EIR and
14 published it on February 28th, 2022. The Final
15 EIR consists of the Draft EIR, the comments
16 received on the Draft EIR, and Staff's responses
17 to those comments.

18 On March 29, 2022, Staff filed an
19 addendum to the Final EIR and a Mitigation
20 Monitoring and Reporting Program.

21 In the April 29th notice of this hearing
22 the Committee asked several questions. Two of
23 those questions were regarding particulate matter
24 concentrations at sensitive receptors. One
25 question was regarding air quality modeling

1 assumptions and scenarios. One question was
2 related to biological resource surveys and
3 studies. And the final question was regarding
4 the availability of certain biological reports.
5 The Committee directed the parties to provide
6 answers to the questions as attachments to their
7 Prehearing Conference Statements. Both Staff and
8 Applicant filed responses to the questions with
9 their Prehearing Conference Statements.

10 Slide nine, please.

11 So in their Prehearing Conference
12 Statements, neither Staff, Applicant, nor
13 Intervenor Robert Sarvey identified any issues in
14 dispute.

15 Does the Committee have any further
16 questions that they wish the parties to address
17 at the upcoming evidence hearing?

18 COMMISSIONER VACCARO: This is
19 Commissioner Vaccaro. I don't.

20 COMMISSIONER MONAHAN: And this is
21 Commissioner Monahan. I don't either.

22 HEARING OFFICER DYER: All right. Thank
23 you. Okay.

24 In their Prehearing Conference
25 Statements, neither Staff nor Applicant nor

1 Intervenor have proposed to conduct any oral
2 testimony of witnesses. And the Committee also
3 does not anticipate having any questions for
4 witnesses. Therefore, the evidentiary hearing
5 will consist solely of addressing any then-
6 pending motions, including Applicant's pending
7 motion to exclude Mr. Sarvey's testimony and
8 participation in the evidentiary hearing, and
9 then receiving the parties' evidence into the
10 record, along with any objections.

11 Have you all had a chance to review the
12 notice that set forth the procedures for the
13 evidentiary hearing and are there any questions?

14 Mr. Galati, do you have any questions for
15 today?

16 MR. GALATI: No, I don't, thank you. And
17 I would take this opportunity, too. I'd like to
18 be in the room. I had my booster yesterday and
19 I'm, I guess, a typical man, I'm sick. So I
20 will -- I didn't want to complain in front of
21 you, so I'll do that over the Zoom. And I'll
22 gladly be looking forward to seeing both
23 Commissioners and the Hearing Officer at the
24 evidentiary hearing.

25 HEARING OFFICER DYER: Thank you, Mr.

1 Galati.

2 Mr. Babula, do you have any questions
3 before we go forward?

4 MR. BABULA: Jared Babula. No, I don't.

5 But I do -- I also want to echo sort of
6 what Mr. Galati said, though it's not a booster.
7 I actually am sick with COVID and wasn't able to
8 come in. But depending on timing, I hope to be
9 there for the evidentiary hearing. I should be
10 okay by then. But, anyway, but no questions.
11 Thank you.

12 HEARING OFFICER DYER: Mr. Babula, we are
13 glad you stayed home today. Thank you.

14 Mr. Sarvey, do you have any questions
15 before we move forward?

16 MR. SARVEY: I'm not sick and I have no
17 questions.

18 HEARING OFFICER DYER: All right.
19 Fabulous. Thank you.

20 Okay, so to conduct this prehearing
21 conference efficiently, we required that each
22 party file a Prehearing Conference Statement if
23 that party wanted to participate in this
24 prehearing conference, or if that party wanted to
25 present evidence or cross-examine witnesses at

1 the evidentiary hearing.

2 On May 12th, 2022, the Committee received
3 Prehearing Conference Statements from Applicant,
4 Staff, and Intervenor Sarvey.

5 Ms. Tran, will you please display the
6 Exhibit List? Thank you.

7 While we will use formal hearing
8 procedures to conduct the evidentiary hearing, we
9 will not take the time to specifically describe
10 the exhibits that are moved into evidence during
11 the evidentiary hearing, or to describe topics
12 covered by declarations.

13 The Exhibit List displayed onscreen,
14 which is also on the Energy Commission's online
15 docket system, this Exhibit List has been
16 compiled by the Hearing and Advisory Unit and is
17 a complete list of exhibits identified by the
18 parties in their Prehearing Conference
19 Statements.

20 I will note that on May 12th, 2022,
21 Applicant filed a motion in limine to exclude
22 Intervenor Robert Sarvey's purported rebuttal
23 testimony and exhibits and limit participation at
24 evidentiary hearing. More specifically,
25 Applicant's motion refers to testimony and

1 documents that Mr. Sarvey filed in the docket on
2 April 28th, 2022.

3 On May 13th, the Hearing Office filed a
4 memo to the docket amending the agenda of the
5 evidentiary hearing to include consideration of
6 and ruling upon any pending motions. The
7 Committee will not be hearing argument or ruling
8 upon Applicant's motion today.

9 We'd also note at this time that Mr.
10 Sarvey did not file an exhibit list and,
11 therefore, did not identify any exhibits for the
12 proceeding. As a result, those documents that
13 are the subject of Applicant's motion will be
14 treated as comment but not evidence.

15 I have two --

16 COMMISSIONER VACCARO: Hearing Officer
17 Dyer, I'm sorry, this is Commissioner Vaccaro, I
18 just -- could you clarify that? I'm sorry. I
19 mean, I think I understood what you said but if
20 we go backwards just a minute, did Intervenor
21 Sarvey otherwise identify what these exhibits
22 might be and then just missed the step of getting
23 them on an exhibit list or, I mean, could you
24 just sort of unpack that just a little bit more,
25 please?

1 HEARING OFFICER DYER: I will.

2 COMMISSIONER VACCARO: Thank you.

3 HEARING OFFICER DYER: So when Mr. Sarvey
4 filed the documents, the three documents, he
5 identified them in the docket registration as
6 exhibits. However, those exhibits were not
7 listed on an exhibit list that the Committee
8 ordered the parties to file with their Prehearing
9 Conference Statements. And then on May 16th, the
10 Hearing Office filed a memo to the docket
11 regarding the Exhibit List and advising Mr.
12 Sarvey that if he sought to have those three
13 docketed items introduced into evidence, that he
14 would need to file an exhibit list before ten
15 o'clock today. and Mr. Sarvey did not file an
16 exhibit list before that deadline.

17 COMMISSIONER VACCARO: Okay. Thank you.
18 Yeah, that's helpful. Just connecting all those
19 dots made a difference for me. Thank you.

20 HEARING OFFICER DYER: Yes, absolutely.
21 You're welcome.

22 MR. BABULA: Jared Babula, Staff Counsel.
23 I just have a question.

24 And if those documents are now just going
25 to be public comment in the docket, then I'm not

1 sure that Mr. Galati's motion is relevant
2 anymore. So I would like to see if Mr. Galati is
3 interested in still having that motion pending or
4 if he'll withdraw it?

5 HEARING OFFICER DYER: Well, we can ask
6 Mr. Galati if he would like to withdraw that
7 motion at this time or we can hear and rule on
8 the motion at the evidentiary hearing.

9 MR. SARVEY: It might be helpful -- this
10 is Mr. Sarvey -- it might be helpful if you let
11 me explain what's going on so everybody doesn't
12 have to guess what I'm doing here. If you would
13 like that --

14 HEARING OFFICER DYER: Okay.

15 MR. SARVEY: -- I would be willing to do
16 that right now.

17 HEARING OFFICER DYER: Okay. Let's do
18 that right now then, Mr. Sarvey.

19 MR. SARVEY: Okay. Well, I intervened in
20 the McLaren Data Center about three years ago.
21 And at that time, I asked the Commission to
22 require the applicants to use something other
23 than diesel fuel for the many data center
24 projects. And I also asked that GHG emissions be
25 fully mitigated.

1 Now, after five data center proceedings
2 I've participated in, Microsoft has volunteered
3 to use natural gas and mitigate their GHG
4 emissions. Therefore, I will not oppose this
5 project, although there are some issues which the
6 Committee has identified.

7 I will recommend to the Applicant to meet
8 with the public members who have commented on
9 this application and deal with their concerns.
10 When the applicant engages the community, a
11 better project results with community acceptance.

12 As far as the testimony I submitted, I
13 did this for the benefit of the Applicant. The
14 Applicant has objected to the information which
15 provides record clarity on the project's current
16 ability to participate in PG&E's ELRP or BIP
17 Programs. There are petitions for modifications
18 which are being developed and considered. If the
19 Applicant would like more information, I'd be
20 willing to advise them. But, in reality, their
21 lawyers should already know this information.

22 As far as the motion, a motion, my
23 understanding is a motion must be filed under
24 separate cover and not in a Prehearing Conference
25 Statement. So I think the motion itself is

1 irregular but I do not oppose it. I do not
2 intend to ask any questions. I do not intend to
3 provide any exhibits or anything unless the
4 Applicant would like them in the record.

5 Thank you.

6 HEARING OFFICER DYER: Thank you, Mr.
7 Sarvey.

8 Mr. Galati, yes, please.

9 MR. GALATI: Yes. With that
10 clarification, that Mr. Sarvey will not be
11 participating in the evidentiary hearing, I'm
12 glad to withdraw the motion.

13 And Mr. Sarvey is technically correct. I
14 made this motion in limine to provide notice
15 because I could have made it just at the
16 evidentiary hearing but I wanted the Committee to
17 have an opportunity to consider it, and I wanted
18 Mr. Sarvey to have an opportunity to read it. So
19 that's why I filed a motion in limine in that
20 manner with the prehearing conference. And I'm
21 glad to withdraw it and look forward to the
22 evidentiary hearing being swift and getting to a
23 proposed decision since (indiscernible).

24 Thank you.

25 HEARING OFFICER DYER: Okay. Thank you,

1 Mr. Galati.

2 Okay, so we note that Mr. Galati has
3 withdrawn his motion that was filed as part of
4 his Prehearing Conference Statement.

5 Mr. Galati, I do have a couple of
6 questions for you regarding your Exhibit List.
7 On your Exhibit List, you identify your Exhibit
8 number 4, "SPPE Application Volume II, Appendix
9 1A to 3-5A," as being TN number 530763. And I
10 want to confirm that you met to reference TN
11 number 230763; is that correct?

12 MR. GALATI: Yes, I did.

13 HEARING OFFICER DYER: Okay.

14 MR. GALATI: Thank you.

15 HEARING OFFICER DYER: We've made that
16 change on the Master Exhibit List.

17 The second question is regarding your
18 Exhibit number 33. And your Exhibit List --
19 (clears throat) pardon me -- lists that Exhibit
20 as TN237247, titled "Informal Data Response Set
21 1A." The Energy Commission docket log for that
22 same TN lists the title of the document as "Final
23 SJC Data Center Responses to Informal Data
24 Request 3-1-21." And so I just want to confirm
25 that your Exhibit 33 is the document docketed as

1 237247 as "Final SJC Data Center Responses to
2 Informal Data Requests."

3 MR. GALATI: I do believe that is
4 correct. I'm just checking the actual Prehearing
5 Conference Statement and Exhibit List I filed to
6 make sure that that is correct. Yes, that is
7 correct.

8 HEARING OFFICER DYER: Okay. Very good.
9 On the Master Exhibit List we'll use the document
10 title as it appears in the docket but we'll note
11 the discrepancy for the record.

12 I also have one question to Staff's
13 Attorney, Mr. Babula.

14 Your Exhibit number 206 is identified in
15 your Proposed Exhibit List as "Attachment A to
16 Staff's Prehearing Conference Statement" with the
17 TN TBD. On the Exhibit List on the screen, we've
18 identified that document as -- we've identified
19 the Prehearing Conference Statement as Exhibit
20 206 but we are acknowledging that the item that
21 you're offering into evidence is only the
22 Attachment A; is that correct??

23 MR. BABULA: Yes, that's correct.

24 HEARING OFFICER DYER: Okay. So you do
25 not necessarily want the entire Prehearing

1 Conference Statement entered into evidence?

2 MR. BABULA: Correct.

3 HEARING OFFICER DYER: Okay. Thank you.

4 And Mr. Galati, in light of that, do you
5 want your responses to the Committee's
6 questions -- would you like to offer your
7 responses into evidence?

8 MR. GALATI: Yes, I would, and that would
9 make them Exhibit 71, I believe. Yes, 71,
10 please.

11 HEARING OFFICER DYER: Okay, 71. And I
12 will note that since you did not identify the
13 response to questions in your Prehearing
14 Conference Statement as an attachment or an
15 appendix, it's not as easily bifurcated as
16 Staff's attachment to their Prehearing
17 Conference. So we may need to admit the entire
18 Prehearing Conference Statement as that exhibit.

19 MR. GALATI: If it would be helpful, I'm
20 happy to re-docket the -- just the responses and
21 call them Proposed Exhibit 71 if that would be
22 helpful to the Committee.

23 HEARING OFFICER DYER: Yes, I think that
24 would be -- I think would be fine. I think that
25 would make it more clear.

1 MR. GALATI: I'll do that as soon as
2 we're done.

3 HEARING OFFICER DYER: Okay. Thank you.

4 Okay, so with these modifications, then,
5 that we've identified, does the Exhibit List
6 contain all the exhibits that the parties intend
7 to rely upon at the evidentiary hearing on May
8 26th? And were there any other corrections or
9 questions to the Exhibit List?

10 Mr. Galati?

11 MR. GALATI: I was looking at it while we
12 were going through it. I didn't see any
13 corrections. I think all of my exhibits are
14 there with the changes, the addition of 71 and
15 the correct titles that you identified, Madam
16 Hearing Officer, so thank you. That is
17 acceptable to us.

18 HEARING OFFICER DYER: Okay. Mr. Babula,
19 does this contain all your -- all the exhibits
20 that you intend to rely upon at the evidentiary
21 hearing?

22 MR. BABULA: If you can scroll down to
23 the 200s, just double check that really quick?
24 So 200 to 206, yes, that's all of them.

25 HEARING OFFICER DYER: Okay. Very good.

1 Thank you.

2 Okay, so with that, we can move to slide
3 nine, Ms. Tran.

4 Okay, so now we are going to move to
5 discussing matters identified in the parties'
6 Prehearing Conference Statements.

7 To summarize, Applicant filed a
8 Prehearing Conference Statement stating its
9 complete agreement with the Energy Commission's
10 Staff on every issue. Applicant does not propose
11 to support -- to sponsor any oral testimony and
12 does not expect to examine or cross-examine any
13 witnesses with -- (clears throat) excuse me --
14 but noting that Applicant does reserve the right
15 to present live testimony to answer questions
16 from the Committee.

17 Mr. Galati, did I get that correct?

18 MR. GALATI: Yes, that is correct. If
19 the Committee had any questions, I'm not that
20 they do, but if they did they can let me know
21 what subject matter and I can make sure that
22 those witnesses could be actually physically
23 present in the room or on Zoom.

24 HEARING OFFICER DYER: Okay. Great.

25 Thank you.

1 Similarly, Staff filed a Prehearing
2 Conference Statement, reporting that there were
3 no disputed issues between Staff and Applicant
4 but acknowledging that Intervenor Mr. Sarvey had
5 disputed certain subject areas.

6 Pursuant to its Prehearing Conference
7 Statement, Staff does not propose to sponsor any
8 oral testimony at the evidentiary hearing but
9 reserves the right to question witnesses on
10 topics raised by other parties.

11 Mr. Babula, is that still correct?

12 MR. BABULA: Yes, with the addition of
13 the clarifications that Mr. Sarvey mentioned
14 today toward the purpose of the documents that
15 are now public comment. But other than that, the
16 statements in the Prehearing Conference Statement
17 are still correct.

18 HEARING OFFICER DYER: Okay. Thank you.

19 And the Intervenor Mr. Sarvey also filed
20 a Prehearing Conference Statement indicating that
21 there were no issues in dispute. Mr. Sarvey does
22 not propose to sponsor and live witnesses but
23 reserved the right to cross-examine any witnesses
24 responding to Committee questions.

25 Mr. Sarvey, is that all still correct?

1 MR. SARVEY: I do have some issues but
2 this Applicant has volunteered to use natural gas
3 to mitigate their GHG emissions. It would be
4 disingenuous for me to challenge the project, so
5 that's what I've been asking for all along.
6 Thank you.

7 HEARING OFFICER DYER: Thank you, Mr.
8 Sarvey.

9 Okay, so --

10 MR. BABULA: Before you move on --

11 HEARING OFFICER DYER: Yes?

12 MR. BABULA: -- this is Jared again, I
13 just want to also echo that if the, again, the
14 Committee has questions, and I believe at the
15 beginning you indicated that they weren't
16 expecting questions from the Committee, I
17 would -- if we could know the topic so I could
18 ensure that the right technical staff are
19 present, that would be helpful.

20 HEARING OFFICER DYER: Yes. Yes,
21 absolutely. Thank you.

22 Okay, now -- so then, the parties have
23 not identified any topics that need to be
24 adjudicated at the evidentiary hearing; is that
25 correct, Mr. Galati?

1 MR. GALATI: That's correct.

2 HEARING OFFICER DYER: Okay. Mr. Babula?

3 MR. BABULA: Yes, that's correct.

4 HEARING OFFICER DYER: And Mr. Sarvey?

5 MR. SARVEY: That's correct.

6 HEARING OFFICER DYER: Okay. Okay, then
7 is there anything else that we need to discuss
8 about the evidentiary hearing? Okay.

9 MR. BABULA: I would just add -- this is
10 Jared -- that it sounds like we could probably
11 use the evidentiary hearing as just formally
12 submitting the exhibits into the record and then
13 take public comment and that should be it unless
14 there are specific questions from the Committee.

15 HEARING OFFICER DYER: Okay, noted.

16 Mr. Galati, do you have a question?

17 MR. GALATI: Yes. I have noticed, as I'm
18 looking closer at the Exhibit List, it is missing
19 issue documents that are in the docket. If you
20 would allow me to, after the conference, file a
21 document identifying for those as proposed
22 numbers, as opposed to trying to do that in the
23 Zoom, I'll be happy to do that right away. I
24 think there are about three documents that were
25 identified and docketed. Even though they might

1 be duplicated and hidden in other documents, they
2 were called out by the Committee, where are these
3 documents? We've docketed them. I think there
4 are one or two that might be missing from the
5 Exhibit List. I think they were missing from my
6 Exhibit List, so I'll fix this and docket it
7 shortly if that's okay?

8 HEARING OFFICER DYER: Yes, that would be
9 fine. Thank you.

10 MR. GALATI: Thank you. And I'd also
11 say, I agree with Mr. Babula, that the
12 evidentiary hearing should be about just putting
13 the evidence into the record, then taking public
14 comments, since it doesn't appear that there is a
15 need to answer any questions from the Committee.
16 And so I wasn't anticipating bringing any witness
17 unless you guys let me know. Thanks.

18 HEARING OFFICER DYER: Okay. Thank you.

19 Okay, any other questions? Okay.

20 So the final matter that we have today is
21 verbal closing statements at the end of the
22 evidentiary hearing and briefing after the
23 evidentiary hearing.

24 As for the briefing, the notice, the
25 April 29th notice didn't call for briefing, and

1 nor does the Committee foresee the need for post-
2 hearing briefing. And all parties, in their
3 Prehearing Conference Statements, said briefing
4 was unnecessary. And, therefore, the Committee
5 will not be accepting briefs after the
6 evidentiary hearing.

7 As for the matter of closing statements,
8 the Committee will permit an optional closing
9 statement of ten minutes from each of the parties
10 at the conclusion of the evidentiary hearing.

11 Mr. Galati, do you plan to make a closing
12 statement?

13 MR. GALATI: I do not.

14 HEARING OFFICER DYER: Okay. Mr. Babula,
15 do you plan to make a closing statement?

16 MR. BABULA: I do not.

17 HEARING OFFICER DYER: Okay. Mr. Sarvey,
18 do you plan to make a closing statement?

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

20 HEARING OFFICER DYER: Okay. Thank you.

21 Okay, so that's -- we've reached the end
22 of the meat of the Prehearing Conference
23 Statement -- I mean, the prehearing conference.

24 At this time, I'd like to ask if there
25 are any Commissioner remarks from either of the

1 Committee Members?

2 COMMISSIONER VACCARO: So thank you,
3 Deborah. Yeah, I just had a couple of comments.

4 First, to Mr. Babula and Mr. Galati, hope
5 that you are feeling better soon.

6 And I don't know and I'm not asking about
7 Microsoft's strategy of manner of thinking when
8 it came to designing this project. But I am
9 hopeful that some of that has taken into
10 consideration what we're learning and what all of
11 us are seeing through each of the Small Power
12 Plan Exemption proceedings that relate to data
13 centers and sort of building on that.

14 Because I do think hearing what Mr.
15 Sarvey had to say today, positions that he's
16 taken in the past, information that he's brought
17 into various records, and seeing how this project
18 is unfolding, I just think that's really
19 important and powerful. I mean, that's, again,
20 why it's important to have intervenors and why
21 it's important to listen.

22 So I'm not asking a question, Mr. Galati,
23 for you to talk about what happens behind the
24 current. I just want to acknowledge that this is
25 the type of important forward movement that's

1 really good for us to be seeing in all of these
2 cases as they move forward.

3 COMMISSIONER MONAHAN: And this is
4 Commissioner Monahan. I just wanted to express
5 my agreement with what Commissioner Vaccaro is
6 saying and just, I appreciate Mr. Sarvey's
7 clarifying that he does not oppose the project
8 since it uses natural gas rather than diesel as
9 the fuel to power the generators.

10 And you know, like Commissioner Vaccaro,
11 I also look forward to a thorough and swift
12 resolution. And I think what we are seeing here
13 is that the switch to natural gas facilitates
14 that outcome.

15 So I think we can move on to public
16 comment.

17 HEARING OFFICER DYER: Okay. Thank you.

18 So, yes, that, now, that concludes our
19 discussion of schedule status issues and next
20 steps. And we will now take public comments.

21 I'm going to hand control of the meeting
22 over to Ms. Gallardo, the Public Advisor, to
23 assist in running the public comment portion of
24 this prehearing conference.

25 Ms. Gallardo?

1 MS. GALLARDO: Good afternoon, everybody.

2 This is Noemi Gallardo, the Public Advisor.

3 We will start out with asking if there's
4 anyone in the room who would like to make public
5 comment? I just want to make sure I ask in case
6 I don't see somebody behind a pillar or
7 something. All right, it looks like there is no
8 one who would like to make public comment in the
9 room.

10 Now we will look to Zoom to see if there
11 is anyone with a raised hand, indicating that
12 they would like to make public comment. Again,
13 anyone that is joining us remotely via Zoom,
14 please use the raise-hand feature to indicate you
15 would like to make a comment. And I do not see
16 any hands raised either.

17 And I know there was mention about a
18 phone -- or folks calling in by phone but I think
19 that is also via Zoom. So if there's anyone by
20 phone would like to make a comment, please use
21 the star nine -- or dial star nine to raise your
22 hand, and then it would be star six to unmute.
23 And I do not see any hands.

24 So I'll hand it back over to you, Ms.
25 Dyer.

1 HEARING OFFICER DYER: Thank you.

2 Does the Committee have any additional
3 comments you'd like to make before we move to
4 closed session?

5 COMMISSIONER VACCARO: Nothing
6 substantive, just thanking everybody again for,
7 you know, participating today, being ready and
8 prepared to have today's discussion. It was a
9 very effective and efficient prehearing
10 conference.

11 COMMISSIONER MONAHAN: Yeah. And I just
12 wanted to thank everybody, actually, who was
13 involved in putting together this hybrid
14 conference. I mean, we are in a -- we're
15 learning how to move from a remote environment,
16 which was actually quite easy in many, many ways,
17 much easier, I think we all found, than the in-
18 person meetings which force people to travel.
19 And for agencies working on reducing the harmful
20 impacts of unnecessary energy use, this is not a
21 great example that we are setting. But I just
22 wanted to thank everybody for their -- the work
23 to set this up.

24 But, also, I want to thank Mr. Sarvey and
25 Mr. Galati for participating in this process and

1 helping us navigate these issues.

2 Hearing Officer Dyer, thank you so much,
3 and Staff Counsel Babula, as well.

4 So, again, look forward to, hopefully, a
5 swift resolution.

6 HEARING OFFICER DYER: Okay. The
7 Committee will now adjourn to a closed session in
8 accordance with California Government Code
9 section 11126(c)(3), which allows a state body to
10 hold a closed session to deliberate on a decision
11 to be reached in a proceeding the state body was
12 required by law to conduct.

13 We anticipate coming back from closed
14 session, I have it scheduled for an hour, but if
15 either of the Committee Members think that that's
16 too long, please let me know.

17 COMMISSIONER MONAHAN: That's too long,
18 yeah.

19 HEARING OFFICER DYER: Okay.

20 COMMISSIONER MONAHAN: I would say 15
21 minutes.

22 HEARING OFFICER DYER: Okay. We expect
23 coming back in 15 minutes but we do need a little
24 extra time to get to the place where the closed
25 session will be occurring, so maybe we should

1 make that --

2 COMMISSIONER MONAHAN: Twenty minutes?

3 HEARING OFFICER DYER: -- 25 minutes?

4 COMMISSIONER MONAHAN: I mean, I think 20
5 minutes will be -- it only takes us --

6 HEARING OFFICER DYER: Twenty?

7 COMMISSIONER MONAHAN: -- a few minutes
8 to get up there. Yeah.

9 HEARING OFFICER DYER: Okay.

10 COMMISSIONER MONAHAN: It will be fast.

11 HEARING OFFICER DYER: Okay.

12 COMMISSIONER MONAHAN: All right.

13 HEARING OFFICER DYER: Okay, so we will
14 be back in 20 minutes.

15 HEARING OFFICER COCHRAN: Hearing Officer
16 Dyer, do you anticipate the parties needing to
17 remain?

18 HEARING OFFICER DYER: I do not expect
19 them needing to remain. But if we do have
20 something to report out of the closed session, we
21 will announce it upon our return, so I would have
22 the parties remain available until we return from
23 the closed session, yes.

24 HEARING OFFICER COCHRAN: Thank you.

25 MR. GALATI: Absolutely, so thank you.

1 (The Committee adjourned into closed session
2 from 2:23 p.m., until 2:54 p.m.)

3 HEARING OFFICER DYER: So closed session
4 ended at about 2:50 and we had no reportable
5 action.

6 So I'll turn this, the conduct of this
7 conference, back to Commissioner Monahan for
8 adjournment.

9 COMMISSIONER MONAHAN: Okay. The time is
10 2:55 and the meeting is now adjourned.

11 (The prehearing conference hearing adjourned at
12 2:55 p.m.)

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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 3rd day of June, 2022.



MARTHA L. NELSON, CERT**367

CERTIFICATE OF TRANSCRIBER

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 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.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

June 3, 2022