

## DOCKETED

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<b>TN #:</b>	212427
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## APPEARANCES

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Karen Douglas  
David Hochschild  
Janea A. Scott

### Staff Present

Cody Goldthrite, Secretariat

	Item
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Jennifer Martin-Gallardo	2
Courtney Smith	2
Gabriel Herrera	2
Mary Dyas	3
Kevin Bell	3
Susan Cochran	4
Joseph Douglas	4
Elena Miller	4
Joseph Merrill	5
Sylvia Bender	6
Larry Froess	7, 8
Ingrid Neumann	9
Amir Ehyai	10
David Ismailyan	11
Kadir Bedir	12
Christopher Jenks	13
Larry Rillera	14
Susan Wilhelm	15
Jeffrey Doll	16, 17
Andrea Gough	18
Consuelo Sichon	19
Kevin Mori	20
Yu Hou	21, 22
Timothy Smith	23, 24
Rajesh Kapoor	25
Avtar Bining	26
Kourtney Vaccaro	29
Rob Oglesby	30
Alana Mathews	31

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32. PUBLIC COMMENT

(none)

Adjournment

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1 too long. It was this immediate reaction on enforcement.

2 COMMISSIONER DOUGLAS: If there are no other  
3 comments or questions, I'll move Item 1a.

4 COMMISSIONER HOCHSCHILD: Second.

5 CHAIR WEISENMILLER: All those in favor?

6 COMMISSIONERS: Aye.

7 CHAIR WEISENMILLER: This again passes four to  
8 zero.

9 (Whereupon, Item 1a was approved.)

10 CHAIR WEISENMILLER: Let's go onto Item 2, Energy  
11 Commission Committee Appointments. Kevin -- or actually go  
12 ahead.

13 MS. MARTIN-GALLARDO: Good morning, Chair  
14 Weisenmiller and Commissioners. I am Jennifer Martin-  
15 Gallardo with the Chief Counsel's Office. I'm before you  
16 this morning to ask that you assign a committee to hear and  
17 take action on a letter of appeal from the Los Angeles  
18 Department of Water and Power, and any subsequent RPS  
19 certification eligibility, appeals, motions, or requests  
20 filed by LADWP's seeking action by the full Commission.

21 Briefly by way of background, the California  
22 Renewables Portfolio Standard, also known as the RPS, was  
23 established in 2002 and has been periodical modified over  
24 the years. Under the RPS statutes, all sellers of  
25 electricity in California, including publicly-owned

1 utilities such as LADWP, are required to procure a portion  
2 of their electricity retail sales from eligible renewable  
3 resources.

4 Procurement from a renewable facility cannot be  
5 counted towards an entities' RPS obligation unless the  
6 Energy Commission has certified the facility as RPS  
7 eligible. The Energy Commission's Renewable Portfolio  
8 Standards Eligibility Guidebook, which gets updated and  
9 modified from time to time, describes the eligibility  
10 requirements and certification process. To qualify for RPS  
11 certification, a facility must use one or more eligible  
12 renewable resources. Biomethane is an example of an  
13 eligible resource, and the Commission's Guidebook editions  
14 have specified the criteria that must be satisfied for a  
15 facility to qualify for RPS certification using biomethane.

16 Turning now to the LADWP Appeal. Between 2011  
17 and 2014, LADWP and Commission staff were engaged in  
18 communications regarding RPS certification eligibility for  
19 the Scattergood, Harbor, Valley, and Haynes Generating  
20 Stations using biomethane procured from 2009 contracts that  
21 LADWP had entered into with Shell and Atmos. Staff  
22 ultimately notified LADWP that the facilities could not be  
23 certified under the 2009 contracts. LADWP then asked the  
24 Commission's Executive Director to reconsider staff's  
25 determination. The Executive Director subsequently

1 affirmed the staff's denial determination.

2 LADWP has timely filed an appeal of the Executive  
3 Director's determination. And, pursuant to the  
4 Commission's regulations, the Commission Chair consulted  
5 with the Chief Counsel's Office and determined that the  
6 LADWP's appeal meets the basic pleading requirements  
7 specified in the RPS Guidebook. This matter is now before  
8 the full Commission for possible assignment of a committee  
9 to hear and take action on the appeal and any other  
10 certification eligibility motions, requests, or appeals  
11 that LADWP might submit seeking action by the full  
12 Commission.

13 After this agenda posted, LADWP submitted written  
14 comments asking the Commission to clarify the scope of the  
15 language in the proposed order. Representatives of LADWP  
16 are here today and are better able to explain the requests  
17 for clarity. After you hear from LADWP representatives and  
18 possibly staff, I'd be happy to answer any questions that  
19 you have.

20 CHAIR WEISENMILLER: Thank you.

21 May I ask LADWP's two representatives to come to  
22 the table?

23 In the interests of time, if the staff wants to  
24 come up also, that'd be fine.

25 Please sit down. Introduce yourself.

1 MS. CHUA: Good morning, Commissioners. Pjoy  
2 Chua, Regulatory Compliance Manager for LADWP.

3 MR. LEBRON: Good morning, Commissioners. Felix  
4 Lebron, Deputy City Attorney for the City of Los Angeles.

5 CHAIR WEISENMILLER: Good morning. Go ahead.

6 MS. CHUA: LADWP would like to thank the  
7 California Energy Commission for their attention to this  
8 matter. LADWP would also like to thank the CEC staff for  
9 their effort and diligence in working very hard with our  
10 staff in the past several months. However, we have reached  
11 an impasse. At this point, bringing this matter to the  
12 Commission is our final recourse to resolve this critical  
13 issue with the CEC. We appreciate the opportunity to work  
14 on this further in another avenue.

15 LADWP's policy for renewables was initiated in  
16 the early 2000s and has guided the adoption of increasing  
17 levels of renewable energy. LADWP is committed to a  
18 renewable energy policy that seeks to boost the amount of  
19 renewable energy provided to our customers. The longterm  
20 renewable goals are to achieve 25 percent by 2016, 33  
21 percent by 2020, and 50 percent by 2030, which is  
22 consistent with the rest of California utilities.

23 LADWP has invested over one billion dollars in  
24 developing renewable energy and in 2010 was among the first  
25 California electric utilities to achieve 20 percent

1 renewable energy delivered to our customers.

2 All of the renewable energy that was counted  
3 towards achieving the 20-percent RPS target was fully  
4 tracked and met the governing rules and guidelines in place  
5 at that time. LADWP is supportive of the State's effort to  
6 create clarity and consistency in the applicability,  
7 accounting, and reporting of California's leading renewable  
8 energy legislation. This is a complex and very significant  
9 issue. RPS is important to the City of Los Angeles, to the  
10 CEC, and to the State. Therefore, it is vital for the  
11 Commissioners to ensure that this is handled properly and  
12 expeditiously. We look forward to continuing a healthy  
13 relationship with the CEC as we move towards 33-percent and  
14 50-percent RPS.

15 MR. LEBRON: Felix Lebron. A few points I'd like  
16 to make to the Commission. First is that the City supports  
17 the delegation of the biomethane appeal to a subcommittee.  
18 We think that will be helpful for helping to resolve and  
19 adjudicate the legal and factual issues particularly  
20 regarding statutory construction under Senate Bill X12 and  
21 as it applies to biomethane, Assembly Bill 2196. I also  
22 would note that the Commission may want to consider, for  
23 purposes of the committee, using a hearing officer just  
24 because of the scope of the evidence, anticipated expert  
25 evidence dealing with natural gas pipeline transportation

standards under the Natural Gas Act and for transportation regulations.

The second point that I wanted to address is the point that was raised in LADWP's comments dealing with the request for clarification. LADWP supports the proposed order in terms of delegating to the committee that's formed the assignment for resolving any future or subsequent RPS-related motions or appeals directly to the subcommittee. The question that we raised regarding clarification is based on a motion that LADWP intends to file in the near future seeking guidance and an adjudication from the committee regarding issues of statutory interpretation and construction, and legislative intent between Senate Bill X12's grandfathering provisions and how those were meant to apply to publicly-owned utilities, legacy resources that were under the voluntary program before Senate Bill X12 that became mandatory in the middle of the first compliance period.

While this legal-interpretation issue has application to a number of resources, it's of particular importance for LADWP's procurement from British Columbia small hydro facilities under a contract in which LADWP entered into in 2007 which expired in 2011, about two to three weeks after SBX12 became effective. So as to this particular issue we're seeking clarification because the

1 language in the proposed order says reverse future RPS  
2 certification eligibility appeals, and this is not per se a  
3 certification issue, but it does go to the eligibility of  
4 the procurement from BC Hydro for the period from before  
5 SBX12 became effective, so effectively 11 months in 2011.

6 And so, just to be clear, we're not asking the  
7 Commission to make any ruling here. This is just to seek  
8 clarity that we can file the motion before the subcommittee  
9 because to the extent that the proposed order is ambiguous,  
10 it might be just an issue of putting a comma between  
11 "certification" and "eligibility." We think now would be  
12 the appropriate time to clarify that so that we can bring  
13 the motion, and staff would have an opportunity at that  
14 time to respond as to whether or not they thought the  
15 motion was proper or on the merits.

16 I would say that in terms of the resolution of  
17 the motions, there is significant overlap between the  
18 statutory construction issues that I just mentioned and the  
19 biomethane statutory construction issues, which would be  
20 referred to the committee, so in terms of conservation of  
21 resources and achieving an efficient resolution, it would  
22 make sense to hear these issues at the same time because of  
23 the overlap.

24 I'd like to thank the Commission for the  
25 consideration. I also want to thank both Executive Director

1 Oglesby, the RPS staff and their Legal Counsel Mr. Herrera  
2 for working very closely with the Department not only over  
3 the last six months on the biomethane issue but really  
4 going back nearly five years in terms of helping LADWP to  
5 successfully integrate its renewables program into the  
6 State's RPS program under SBX12.

7 This is a very important issue for the City of  
8 Los Angeles which, as my colleague noted, has invested over  
9 a billion dollars in its renewables program, and also very  
10 important for LADWP's ratepayers. So we thank you for your  
11 consideration and time this morning.

12 CHAIR WEISENMILLER: Thank you.

13 Staff, any response?

14 MS. SMITH: Good morning, Chair and  
15 Commissioners. I just wanted to let you all know that you  
16 may be aware that staff are in the process of verifying  
17 eligibility of RECs for all local publicly-owned utilities  
18 as part of Compliance Period 1. And, in a letter dated  
19 June 3rd, 2016, Energy Commission staff provided LADWP with  
20 an update of staff's preliminary eligibility determination  
21 for Compliance Period 1 under the RPS Program. And  
22 explained in this letter there are a handful REC claims  
23 that have been made by L.A. that staff have found  
24 ineligible, one of which is the eligibility of BC Hydro,  
25 which Felix mentioned earlier. Certainly staff believe



1 that the process for creating the RPS Eligibility Guidebook  
2 that we go through here at the Commission appropriately  
3 addressed statutory interpretation of SBX12, however if the  
4 committee decides to entertain these other eligibility  
5 issues beyond biomethane, it is up to it to do so.

6 MR. HERRERA: Good morning, Chair and  
7 Commissioners. Gabriel Herrera with the Energy  
8 Commission's Legal Office. Just a couple points.

9 Some of the issues that L.A. could possibly bring  
10 forward in a future request or motion I speculate are  
11 issues that L.A. has raised before in the past in the  
12 context of both the rulemakings for the Energy Commission's  
13 adoption of POU RPS regulations as well as the RPS  
14 Certification Guidelines. So while I can't speculate  
15 exactly what the nature or substance of those future  
16 requests or motions might be from L.A., I would think it  
17 appropriate for any assigned Committee to decide that  
18 perhaps they will not entertain those requests because the  
19 Commission as a body has already fully addressed those  
20 issues as part of these other rulemaking proceedings, but I  
21 welcome the clarification that L.A. has sought just to make  
22 sure it's clear that they are not precluded from moving  
23 forward with a future request or future motion. But this  
24 order would not direct the Committee to automatically  
25 entertain that motion. And maybe Chief Counsel would speak

1 to that.

2 CHAIR WEISENMILLER: Maybe Chief Counsel would  
3 like the last word. Jennifer.

4 MS. MARTIN-GALLARDO: Yes. I would like to point  
5 out that under the Warren-Alquist Act, Section 2511 does  
6 allow and provide for anything that is assigned to a  
7 committee those issues and items also under our regulations  
8 or anything brought to the committee can be kicked back to  
9 the Commission for full consideration, and also any order  
10 from the Committee would need to be approved by the  
11 Commission in order for it to be an order of the  
12 Commission.

13 So, yes, the concerns that perhaps something  
14 would go to the Committee, not be precluded under this  
15 proposed order, could go to the Committee. And if the  
16 Committee reviewed whatever the motion requests, the  
17 appeal, if the Committee found that it was something that  
18 needed to be heard by the full Commission, it could be at  
19 that point.

20 CHAIR WEISENMILLER: Okay. Thank you.

21 Let's start the discussion among the  
22 Commissioners. I want to at least start out with just a  
23 couple of quick observations. First of all, obviously  
24 issues can go, an appeal can go to the full Commission or  
25 to a Committee. My decision was to go to a committee. I

1 think the issues are sort of complex enough that it would  
2 be burdensome for the Commission as a whole to consider  
3 these.

4 Now that being obviously as the case unfolds,  
5 there may well be issues that come back to the full  
6 Commission for ratification, but at least at this point  
7 just on that Committee-Commission question, that's pretty  
8 straightforward.

9 I think in terms of the Committee itself, I will  
10 be the presiding member, Commissioner Hochschild will be  
11 the associate member. I remember back in the old days,  
12 some of the guidelines that we're now talking about, being  
13 involved in the development of those and adoption of those  
14 and having discussions with LADWP at the time, so. And I  
15 think these are certainly important issues and significant  
16 issues with LADWP, that certainly it's important. And  
17 these, frankly, are I think the first time we've had to  
18 deal with these types of issues on compliance on the RPS  
19 issues, and so we really want to make sure we do it right.

20 Hopefully after we march through this effort it  
21 will be a little bit easier in the future. And I think in  
22 terms of just talking generally about structuring the case,  
23 my hope would be that we can identify the issues which are  
24 legal in nature and the issues that are factual in nature.  
25 And the issues that are legal in nature, we will establish

1 briefing schedules for that. And obviously on the  
2 factually issues, we will schedule hearings on that with  
3 testimony by competent witnesses. So, again, I think the  
4 issues are relatively complex but significant, and it's  
5 important we get these right.

6 Commissioner Hochschild.

7 COMMISSIONER HOCHSCHILD: Well said. I concur  
8 with everything you said. And, just to state the obvious,  
9 that in a piece of legislation this complex and substantial  
10 and consequential, I mean it's to be expected these issues  
11 come up. And we will dig into it thoroughly. I don't  
12 think we need to belabor any more of the details at this  
13 point.

14 MS. VACCARO: Chair Weisenmiller, before any  
15 motion is made or there is further comment, I just wanted  
16 to make sure that the Commission does address the very  
17 specific question that was raised by LADWP as well, which  
18 relates to whether or not the committee would be able to  
19 hear any such motion that L.A. would file.

20 CHAIR WEISENMILLER: Yeah. My impression looking  
21 at the language of the order is that we could. The  
22 question whether it needs any clarity, again I think the  
23 issue for the staff on some level is, is this ripe, is the  
24 BC Hydro issue ripe or not, but certainly again I think I  
25 would just as soon have the committee take a comprehensive

1 approach and resolve the issues moving forward and do it in  
2 an expeditious fashion. I.e., to the extent there are  
3 common issues here, I would just as soon have the record  
4 cover those common issues.

5 COMMISSIONER DOUGLAS: I just wanted to speak in  
6 support of that. I think it is really valuable for this  
7 Committee to be provided the delegated authority to deal  
8 with the suite of eligibility issues. And I don't think  
9 either of you want to be in a situation of parsing the  
10 order and trying to decide whether a certain issue fits  
11 within it or doesn't. Whether BC Hydro is ripe today does  
12 not speak to whether it will be ripe in two months, for  
13 example, in these proceedings. While I know you will  
14 endeavor to be as efficient as possible, you know the issue  
15 may well ripen over the course this proceeding, and it will  
16 be an efficiency to everyone involved I think to know who  
17 to bring matters to. At least as a matter of first  
18 impression, of course the committee could decide it's not  
19 ripe or the committee could decide it prefers to brief it  
20 back to the Commission for whatever reason you chose to.

21 So I guess I have a question for Jennifer or for  
22 Kourtney, if you'd like, which is in your view do you think  
23 it would be beneficial to clarify the order and do you have  
24 language whether the extra comma suggested by LADWP or some  
25 other version of language that would help do so?

1 MS. MARTIN-GALLARDO: It might be a little  
2 difficult to sit here and decide what the best solution is.  
3 We could certainly take some time and come back with  
4 language of the order, or we could provide some suggestions  
5 or take a suggestion.

6 MS. VACCARO: I think it could be we certainly  
7 could go back and you could meet with staff and L.A. or it  
8 could be as simple as putting the word "or" between  
9 "certification" and "eligibility" or interlineating and  
10 just taking out the word "certification" and leaving it  
11 with "eligibility." That seems as if that might address  
12 that.

13 CHAIR WEISENMILLER: Yeah. Okay. So we have  
14 two. Any comments from L.A. or the staff, or do we need to  
15 basically send folks off to talk while we go onto the next  
16 item?

17 MR. LEBRON: Felix Lebron again. I think that  
18 either of Ms. Vaccaro's proposals are fine. Our main  
19 purpose was to confirm with the Commission its  
20 understanding with respect to the scope, and it sounds like  
21 there appears to be consensus that these issues it would  
22 make sense to have the assigned committee review them,  
23 understanding that there may be issues raised by staff as  
24 to whether the motion is ripe for adjudication or not.  
25 What we're just seeking is to make sure that we can file it

1 before the Committee and understanding that whatever  
2 substantive or procedural issues would be raised and  
3 addressed by the Committee. So I think the intent of the  
4 Commission has been made clear. And I think either of the  
5 proposals by staff counsel would be fine.

6 CHAIR WEISENMILLER: Okay. Kourtney, Gabe.

7 MS. SMITH: Yeah. Just one addition on whether  
8 or not the issue is ripe. Just so you know, staff's  
9 determination on BC Hydro is not pending additional  
10 information from L.A.

11 MR. HERRERA: Again, my earlier comments were  
12 just intended to clarify that the Committee assigned could  
13 in fact entertain a motion or a request by L.A. There's no  
14 motion or request at this time, so the order wouldn't  
15 direct the Committee to reevaluate a particular issue.  
16 It's just setting up a process whereby the Committee at  
17 some point in the future can consider a motion or can  
18 consider a request by L.A. to look into it, an additional  
19 issue.

20 CHAIR WEISENMILLER: That's correct. And I think  
21 both parties are on notice that as we brief some of the  
22 issues, you should be briefing it keeping in mind that both  
23 issues could be affected by the same arguments.

24 COMMISSIONER DOUGLAS: So, Commissioners, I guess  
25 we have a very small decision to make which is which of

1 Kourtney's suggestions. The addition of the word "or"  
2 would seem to me to handle it.

3 CHAIR WEISENMILLER: Well, let's do it.

4 COMMISSIONER DOUGLAS: So let's do it. And we'll  
5 see if there are any other comments.

6 COMMISSIONER HOCHSCHILD: Do we need to take a  
7 vote to add the word "or"?

8 COMMISSIONER DOUGLAS: Would you like to make a  
9 motion or should I?

10 COMMISSIONER HOCHSCHILD: I would move to adopt  
11 Ms. Vaccaro's suggestion that we --

12 COMMISSIONER DOUGLAS: Oh, okay.

13 COMMISSIONER HOCHSCHILD: Or do you want to  
14 restate the proposal precisely?

15 COMMISSIONER DOUGLAS: I think we should adopt  
16 both the establishment of the committee and the members,  
17 and the order with adding the word "or."

18 COMMISSIONER HOCHSCHILD: All in one?

19 Okay, can you restate the proposal, Kourtney?

20 MS. VACCARO: So I think what your motion would  
21 be is that you would be moving approval of Item 2a with a  
22 correction to the proposed order so that the fourth full  
23 paragraph of the proposed order would now instead of saying  
24 "certification eligibility," it would say "certification or  
25 eligibility"; and that the third part of that motion would



1 be that you would be moving Chair Weisenmiller as the  
2 Presiding Member and Commissioner Hochschild as the  
3 Associate Member.

4 COMMISSIONER HOCHSCHILD: What she said. I would  
5 make that motion.

6 COMMISSIONER DOUGLAS: Second.

7 CHAIR WEISENMILLER: All those in favor?

8 COMMISSIONERS: Aye.

9 CHAIRMAN WEISENMILLER: So this motion also  
10 passes four to zero.

11 (Whereupon, Item 2a was approved.)

12 CHAIR WEISENMILLER: Thank you.

13 MS. MARTIN-GALLARDO: Thank you.

14 CHAIR WEISENMILLER: Thanks for being here.

15 MR. LEBRON: Thank you, Commissioners.

16 CHAIR WEISENMILLER: Let's go onto Item 3, Blythe  
17 Energy Project. Staff.

18 MS. DYAS: Good morning, Commissioners. My name  
19 is Mary Dyas and I'm the Compliance Project Manager for the  
20 Blythe Energy Project. With me this morning is Kevin Bell,  
21 Senior Staff Attorney, and technical staff is also in  
22 attendance.

23 The Blythe Energy Project, or BEP, is a combined-  
24 cycle, natural gas-fired, 520-megawatt facility that was  
25 licensed by the Energy Commission in March 2001 and began

**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were 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 30th day of June 2016.

A handwritten signature in black ink that reads "Susan Palmer". The signature is written in a cursive, flowing style.

Susan Palmer  
Certified Reporter  
CERT 00124

**TRANSCRIBER'S CERTIFICATE**

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

And I further certify that I am not of counselor 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 30th day of June 2016.

A handwritten signature in black ink that reads "Susan Palmer". The signature is written in a cursive, flowing style.

Susan Palmer  
Certified Reporter  
CERT 00124