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BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the matter of,)
) Docket No. 16-RPS-02
)
Appeal by LADWP RE RPS)
Certification or Eligibility)

APPEALS COMMITTEE STATUS CONFERENCE
RE: LOS ANGELES DEPARTMENT OF WATER AND POWER

CALIFORNIA ENERGY COMMISSION
ART ROSENFELD HEARING ROOM (Hearing Room A)
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 25, 2017

2:00 P.M.

Reported By:
Peter Petty

APPEARANCES

Committee Members and Advisors Present

Chair Robert B. Weisenmiller, Presiding Member

Mike Murza, Advisor to Chair Weisenmiller

Commissioner David Hochschild, Associate Member

Emelio Camacho, Advisor to Commissioner Hochschild

Hearing Officer

Paul Kramer

CEC Staff Present

Courtney Smith, Deputy Director, Renewable Energy
Division

Drew Bohan, Chief Deputy Director

Mona Badie, Staff Counsel

Gabriel Herrera, Staff Counsel

Ralph Lee

Petitioner LADWP

Felix Lebron, Deputy City Attorney, City of Los Angeles

Jean-Claude Bertet, Deputy City Attorney, City of Los
Angeles

Pjoy Chua, LADWP, Regulatory Compliance Manager

Louis Ting, LADWP, Power Plan Development Director

Priscila Kasha, Attorney (Present via telephone)

Public

Barry Moline, CMUA

Tanya DeRivi, SCPPA

INDEX

	Page
1. Call to Order	4
2. Hearing on any pending motions	54
3. Committee Conference	5
a. Comments on Committee Proposed Decision	
b. Discussion of further activities	
4. Public Comment	54
5. Closed Session	61
Adjournment	62
Reporter's Certificate	63
Transcriber's Certificate	64

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1 P R O C E E D I N G S

2 JANUARY 25, 2017

2:00 P.M.

3 HEARING OFFICER KRAMER: Okay, we'll start
4 today's Committee Conference. It is regarding the LADWP
5 RPS Appeals. The Docket Number is 16-RPS-02.

6 My name is Paul Kramer. I'm the Hearing Officer
7 for this proceeding.

8 And up here on the dais with me are, to my left,
9 Chair Weisenmiller, and his Advisor, Mike Murza. And to
10 my right, Commissioner Hochschild and his Advisor,
11 Emilio Camacho.

12 And we'll let the parties introduce themselves,
13 starting with the Appellant, LADWP.

14 MR. TING: Louis Ting, Department of Water and
15 Power, the Power Plant Development Director.

16 MR. LEBRON: Good afternoon, Felix Lebron, Los
17 Angeles Deputy City Attorney, on behalf of LADWP.

18 MR. BERTET: Good afternoon, Jean-Claude Bertet,
19 Deputy City Attorney, City of Los Angeles, LADWP.

20 MS. CHUA: Pjoy Chua, LADWP Regulatory
21 Compliance Manager.

22 HEARING OFFICER KRAMER: Okay. And do we have
23 anyone on the phone, I think we do, from LADWP? Go
24 ahead and unmute everyone.

25 MS. KASHA: Priscila Kasha, Supervising Attorney

1 at DWP.

2 HEARING OFFICER KRAMER: Okay, could you spell
3 your name for us?

4 MS. KASHA: Priscila, P-r-i-s-c-i-l-a. Last
5 name Kasha, K-a-s-h-a.

6 HEARING OFFICER KRAMER: K-a-s-h-a. Thank you.

7 And I see on the list Adriana Zerda and Adriana
8 Ayuso. Is there anyone else from LADWP?

9 Okay, staff.

10 MS. BADIE: Good afternoon. Mona Badie, Counsel
11 for Energy Commission staff.

12 MR. HERRERA: Good afternoon. Gabe Herrera,
13 Counsel for Energy Commission staff.

14 MS. SMITH: Courtney Smith, Deputy Director,
15 Renewable Energy Division.

16 MR. BOHAN: Drew Bohan, Energy Commission Chief
17 Deputy.

18 HEARING OFFICER KRAMER: Okay, thank you.

19 For those of you on the phone, if you can use *6
20 on your telephone to mute your phone, and hit *6, again,
21 if you need to unmute yourself, we'd appreciate that.
22 Please don't put us on hold because some of the bigger
23 systems play music at us when you do that.

24 This meeting is primarily for the receipt of
25 comments on the Committee Proposed Decision that was

1 issued on January 5. We've read your written comments,
2 and you don't need to repeat them. We would like to
3 hear, though, any additional comments, thoughts you
4 have, and responses to the other parties' comments.

5 So, we'll begin with LADWP.

6 MR. LEBRON: Thank you, Hearing Officer Kramer,
7 and thank you to the Committee. I'd like to start by
8 thanking the Committee, the Hearing Officer, and your
9 staff for the time and effort that was spent preparing
10 the Proposed Decision in this Administrative Proceeding.

11 The Committee had a voluminous evidentiary
12 record, including over 500 exhibits, over a dozen
13 declarations, lengthy initial and reply responses by
14 both parties, which addressed complex legal issues that
15 are under consideration, for the first time, by the
16 Energy Commission.

17 So, LADWP wants to acknowledge and extend our
18 sincere appreciation to the Committee and the Hearing
19 Officer for the substantial amount of work that went
20 into analyzing the issues and preparing the Proposed
21 Decision.

22 That said, LADWP raised a number of important
23 concerns regarding the Proposed Decision, including the
24 failure to address certain legal arguments that LADWP
25 raised, that will impact the Committee's tentative

1 determinations and certain findings that were
2 inconsistent with the evidentiary record.

3 Now, LADWP previewed a number of these concerns
4 in its written comments. We will try to avoid being
5 redundant with issues in our written comments, but there
6 are issues that we do want to expand upon and have an
7 opportunity to address in this proceeding.

8 So, we have a lot of issues to get through and I
9 want to make sure we can get them covered in the
10 proceeding.

11 So, let me start with the issue, the primary
12 issue of the Committee's interpretation and our concerns
13 regarding retroactive applications of law.

14 The Proposed Decision tentatively determined
15 that Public Utilities Code Sections 399.16(d), and
16 399.12(e)(1)(c), must be construed as requiring the
17 application of the Energy Commission certification and
18 RPS eligibility standards.

19 Now, the foundation for this interpretation is
20 the Committee's interpretation of Section 399.16(d)(1),
21 which refers to a renewable energy resource eligible
22 under the rules in place when the contract was executed.

23 So, I want to spend some time focusing on that
24 phrase, "rules in place when the contract was executed,"
25 because we have a number of undisputed facts,

1 established in the evidence, that are going to be
2 relevant to this determination. There's no dispute
3 LADWP executed the BC Hydro Power Purchase Agreements on
4 March 28, 2007. LADWP's Board of Water and Power
5 Commissioners, and City Council, approved the execution
6 of the BC Hydro Power Purchase Agreements for the
7 express purpose of providing renewable energy to allow
8 LADWP to meet its RPS goals under LADWP's then existing
9 2005 RPS policy.

10 SB 1078, which was enacted in 2002, imposed a
11 requirement on retail sellers to certify their resources
12 under the Energy Commission's Certification Standards.
13 Publicly Owned Utilities, or POUs, were exempt from this
14 certification requirement. The Energy Commission's
15 certification standards did not determine the
16 eligibility of POUs' renewable resources under Public
17 Utilities Code Section 387.

18 Senate Bill X1 2, or SBX1 2, took effect on
19 December 10th, 2011. SBX1 2 imposed, for the first
20 time, a certification requirement on Publicly Owned
21 Utilities to certify their resources with the CEC.

22 When you look at the facts, if you go back to
23 March 28th, 2007, the Energy Commission's rules didn't
24 apply to LADWP's procurement. And, specifically, we are
25 focused on this proceeding on our -- the determination -

1 - on the BC -- eligibility of the BC Hydro renewable
2 energy.

3 The Energy Commission's rules didn't determine
4 the eligibility of the renewable energy on March 28th,
5 2007. Thus, the determination in the Proposed Decision,
6 by the Committee, that the 399.16(d)(1) must be
7 construed as applying the Energy Commission's rules and
8 standards as a retroactive application of the law.

9 Now, the proposed decision did not address
10 LADWP's arguments or evidence regarding retroactive
11 application of the law. Now, we think this is a
12 material omission because, in order for the Committee's
13 Proposed Decision and Determination to stand, California
14 law requires that you make express findings of fact and
15 law to support a retroactive interpretation.

16 Now, in California, there's a presumption that
17 law applies prospectively. Now, that presumption
18 applies unless there's, one, express statutory language
19 stating that the statute applies retroactively or, two,
20 clear evidence of legislative intent to apply
21 legislation retroactively.

22 The California Supreme Court defined a
23 retroactive law as "One that affects the rights,
24 obligations, acts, transactions and conditions which are
25 performed or exist prior to the adoption of the

1 statute."

2 The U.S. Supreme Court has held that, "Any
3 statute that impairs vested rights, acquired under
4 existing laws, creates new obligations or imposes a new
5 duty, to transactions already passed, must be deemed
6 retrospective."

7 So, there's no question that the determination
8 in the Proposed Decision has applied SBX1 2
9 retroactively.

10 When the Committee considers the evidence and
11 arguments on this issue, what you'll find is that there
12 are no express statutory provisions in SBX1 2 that state
13 the legislation applies retroactively. There is also no
14 evidence of clear legislative intent to apply the
15 legislation retroactively.

16 To the contrary, the legislative history of SBX
17 1 2, and evidence of legislative intent, which I'll be
18 discussing in a second, is clear that the Legislature
19 intended to grandfather renewable energy resource
20 contracts, entered into by Publicly Owned Utilities
21 before June 1st, 2010. And when we say "grandfather",
22 what does that mean.

23 The California Supreme Court's also addressed
24 that issue. This is a quote. "The purpose of a
25 grandfather clause is to give those engaged in a

1 business, being brought under regulation, the right to
2 continue their existing business without being subject
3 to the certification requirements that would be
4 applicable if the business were then being started for
5 the first time."

6 When the Committee considers these issues, we
7 think it will show why the determination on BC Hydro is
8 both wrong as a matter of law, but also inconsistent
9 with the legislative intent, showing -- reflecting that
10 the Legislature wanted to grandfather POUs' resources,
11 not apply retroactive standards.

12 But even if the Committee, after considering
13 this evidence, doesn't change its outcome, it still has
14 to make these Findings of Fact in the Proposed Decision
15 to be in accord with California law. And to the extent
16 that the Committee does address these issues, LADWP
17 should be afforded an opportunity to respond to the
18 Committee's assessment of the retroactivity issue.

19 I want to turn, now, to specific comments
20 regarding the Committee's interpretation of the Statute,
21 Section 399.16(d) and 399.12(e)(1)(c). I'll start with
22 Section 399.16(d).

23 The Proposed Decision determined that the term
24 "renewable energy resource" referred to the defined
25 term, "eligible renewable energy resource." Now, this

1 interpretation required the Committee to have to rewrite
2 the statutory language.

3 Now, we think the Legislature meant what they
4 said when they used different terms. There's support
5 for that and we've addressed this, but when you look at
6 SB 107, which was enacted in 2007, the Legislature at
7 that time amended then-existing Public Resources Code
8 Section 387. And in that amendment, they distinguished
9 between POUs' renewable energy resources as compared to
10 the eligibility renewable energy resources, as defined
11 in Section 399.12, of the Public Utilities Code.

12 So, the Legislature was aware, in 2008, that
13 there was a distinction. When they passed the law in
14 2011, we think they were also aware of the law.

15 Now, we note, in response to the Proposed
16 Decision -- well, let me rephrase that. The Proposed
17 Decision references other provisions of Section 399.16,
18 specification subsections (b) and (c). On those
19 subsections, those deal with the portfolio content
20 category, or PCC bucket requirements. And those
21 provisions apply prospectively. And I don't think
22 there's any dispute that for new procurement, after the
23 effective date, the PCC requirements apply.

24 Section 399.16(d), in contrast, is an exemption
25 from the PCC requirements. That's what the count in

1 full provisions being, that they're essentially exempt
2 from PCC requirements and they're designed to provide
3 credit for the contracts that were entered into before
4 June 1st, 2010.

5 I want to turn to the legislative history
6 because I think for the Committee to be able -- the
7 interpretation to stand, you have to be able to rewrite
8 the statutory language to effectuate the Legislature's
9 intent. And I think on the legislative history, the
10 Proposed Decision states that, "LADWP relied on two
11 isolated excerpts from Legislative Committee Reports."

12 The evidence that LADWP submitted on the
13 legislative intent and legislative history was,
14 actually, substantially more. There were seven
15 different either legislative history reports, analysis,
16 or letters indicating legislative intent.

17 So, I'd like to go through, because this is a
18 very important issue for the outcome of interpreting the
19 statute and being able to effectuate the Legislature's
20 intent in a way that recognizes why the BC Hydro
21 procurement should be counted.

22 So, let me start with the first piece of
23 legislative history that LADWP submitted into evidence.
24 And this is the Senate Energy, Utilities and
25 Communications Committee SBX1 2 bill analysis, dated

1 February 15th, 2011. This is Exhibit TN 213449.

2 And on these, I'm just going to quote some
3 excerpts that discuss legislative history. This is the
4 first excerpt.

5 "Current law exempts local Publicly Owned
6 Utilities, POUs, from the State RPS Program and,
7 instead, directs these utilities to implement and
8 enforce their own Renewable Energy Purchase Programs
9 that recognize the intent of the Legislature to
10 encourage increasing use of renewable resources."

11 Go to the second excerpt.

12 "This bill grandfathers all contracts
13 consummated by an IOU, ESP, or POU prior to June 1st,
14 2010. Going forward, all contracts for an electricity
15 product would be required to meet the requirements of a
16 loading order that mandates minimum and maximum
17 quantities of three product categories, or buckets."

18 The second piece of legislative history that
19 we've submitted into evidence is the Senate
20 Appropriations Committee Fiscal Summary Staff Comments,
21 dated February 23rd, 2011. This is TN 213450 in the
22 record. Okay, and I'll excerpt portions from this
23 legislative history.

24 "Existing law also requires Publicly Owned
25 Utilities to adopt their own Renewable Portfolio

1 Standard."

2 Separate excerpt. "The State's Publicly Owned
3 Utilities, which collective serve about 25 percent of
4 the State's electricity market, vary considerably in
5 their procurement of renewable energy. The Los Angeles
6 Department of Water and Power receives 14 percent from
7 renewable resources."

8 The sentence continues on.

9 The next excerpt. "This bill increases the
10 State's Renewable Portfolio Standard requirement to 33
11 percent of electricity supplied by 2020, and brought
12 into the Renewable Portfolio Standard Mandate to include
13 Publicly Owned Utilities."

14 The next excerpt. "Under the bill, all existing
15 renewable energy contracts signed by June 1st, 2010
16 would be grandfathered into the program. Going forward,
17 new renewable resource" -- I'm sorry, I misstated
18 that -- "Going forward, new renewable energy contracts
19 must meet a loading order that characterizes renewable
20 resources."

21 I want to turn to our third piece of legislative
22 history evidence. This is the Senate Rules Committee
23 bill analysis, third reading of SBX1 2, dated February
24 23rd, 2011. This is TN 213451, in the record.

25 Excerpt. "Current law exempts local Publicly

1 Owned Utilities from the State's RPS Program and,
2 instead, directs these utilities to implement and
3 enforce their own renewable energy purchase programs
4 that recognize the intent of the Legislature to
5 encourage increasing use of renewable resources."

6 Next excerpt. "Current law requires renewable
7 resources to be generated in or delivered to California
8 grid. This bill grandfathers all contracts consummated
9 by an IOU, ESP, or POU prior to June 1st, 2010. Going
10 forward, all contracts for electricity products would be
11 required to meet the requirements of a loading order."

12 Now, in addition to the legislative history we
13 cited regarding Senate Bill SPX1 2, we also provided
14 legislative history for Assembly Bill 2196. And that
15 legislative history will be important to the biomethane
16 issues that we're not addressing today. They also
17 reflect what the Legislature understood about the then-
18 existing law under SBX1 2. So, this is less than a year
19 later, after the Legislature had just passed Senate Bill
20 X1 2, and reflects their thoughts about what the bill --
21 what they understood the bill to do.

22 So, the fourth piece of legislative history,
23 this is the Senate Energy, Utilities and Communications
24 Committee fiscal hearing regarding AB 2196, dated June
25 25th, 2012. This is Exhibit TN 213429, in the record.

1 The excerpt. "Current law permits procurements
2 and contracts for renewable generation, executed prior
3 to June 1st, 2010, to count in full toward a retail
4 seller or POU's RPS requirements and, further, exempts
5 those contracts from three product categories for bucket
6 requirements."

7 Our fourth piece of legislative history, this is
8 a Senate Floor analysis of Assembly Bill 2196, third
9 reading, dated August 31st, 2012. This is Exhibit TN
10 213453, in the record.

11 Another excerpt. "To finesse a transition from
12 the 20 percent, by 2010, RPS Program, to the 33 percent,
13 by 2020, program, SBX1 2 grandfathered all RPS contracts
14 entered into prior to June 1st, 2010, and provided that
15 those contracts will count in full under the new program
16 requirements."

17 I want to go to our fifth piece of evidence, of
18 legislative intent. This is a letter from the
19 California Legislature, to the Energy Commission
20 Chairman Weisenmiller, dated May 18th, 2016, signed by a
21 delegation of ten California Assembly Members. It is TN
22 211968.

23 I'm going to read two excerpts from the letter.
24 "The passage of the California Renewable Energy
25 Resources Act, SBX1 2, in 2011, for the first time

1 brought POU's, like LADWP, under State jurisdiction to
2 the CEC. The CEC, after evolving its rulemaking over a
3 number of years, is now considering applying those rules
4 retroactively to investment made years ago. If allowed
5 to enforce retroactive rulemaking, and LADWP's contracts
6 are not counted in full by the CEC, LADWP ratepayers may
7 face a potential liability of \$130 million."

8 This is another excerpt from that letter.
9 "Grandfathering provisions in SBX1 2 were intended by
10 the Legislature to seamless transition, from a voluntary
11 program of renewable energy for POU's, to a mandatory
12 program. SBX1 2 also stipulated that the CEC shall
13 certify procedure renewable energy resources under the
14 rules in place at the time of the contract execution.
15 The Legislature provided grandfathering language in SBX1
16 2 and, later, in Assembly Bill, AB 2196, to expressly
17 account for the investments made, on behalf of the
18 public, by POU's to ensure those investments would be
19 fully counted by the CEC."

20 I'm going to turn to our seventh piece of
21 evidence of legislative intent. This is a letter from
22 Senator Robert Hertzberg, also to CEC Chairman
23 Weisenmiller, dated May 27th, 2016. TN Number 213432,
24 in the record.

25 Again, I'll quote excerpts. The first excerpt.

1 "As you're well aware, municipal utilities, like LADWP,
2 were not part of the State's RPS until 2011. The bill,
3 SBX1 2, added municipal utilities to the RPS and
4 contained provisions meant to honor contracts for
5 renewable energy resources entered into prior to its
6 passage."

7 This is the second excerpt from that letter.
8 "The spirit of the statutory language clearly intends to
9 honor and count those early actions in renewable energy
10 resources, by LADWP, prior to the passage of SBX1 2."

11 So, the proposed decision doesn't address all of
12 the legislative history. So, we would request that the
13 Committee consider the evidence. Which, we think when
14 they look at the statements that I just read, and the
15 evidence that's in the record, they will see a clear
16 indication of legislative intent to grandfather
17 procurement, and provide reasons why the Committee, in
18 this case, should count and honor the renewable energy
19 that LADWP procured and received under the BC Hydro
20 Power Purchase Agreements.

21 I want to transition to the next issue,
22 regarding Section 399.16(d). There's a statement in the
23 Proposed Decision that states that, "If the Committee
24 were to accept LADWP's interpretation of the statute,
25 that that would permit the grandfathering of large,

1 hydroelectric generation resources."

2 Well, this statement is also inconsistent with
3 the record. The evidence that's on files shows that
4 LADWP, as early as October of 2004, the City Council and
5 LADWP's Board of Commissioners considered and expressly
6 excluded procurement from Hoover, which was a large,
7 hydroelectric generating facility.

8 So, it was never the case in 2004, or any
9 subsequent LADWP policy, that large hydro would be
10 grandfathered. And I remind the Committee that this is
11 an evidentiary proceeding. And, so, when you look at
12 the evidence that's in this case, there is no evidence
13 that LADWP's interpretation would result in
14 grandfathering of large hydro.

15 And, in fact, we agree, LADWP's interpretation
16 that large hydro is excluded under SBX1 2, and large
17 hydro was not grandfathered by SBX1 2.

18 And this is a transition, going into Section
19 399(e)(1)(c), which really addresses this issue.
20 Because there's a statement in the Proposed Decision
21 that states, "LADWP did not give meaning to the
22 reference to the phrase Public Resources Code Section
23 25741 in that provision."

24 And LADWP's initial and reply responses did
25 address this issue to provide evidence, and provide an

1 explanation. Public Resources Code Section 25741,
2 that's included in Section 399.12(e)(1)(c), was included
3 to exclude large hydro generation from being
4 grandfathered or being certified.

5 Now, what's the support for this? Well, there's
6 textual support, if you look at Section 399.30, which is
7 the provision that deals with POU's, and what's been
8 labeled as the exceptions in those provisions.

9 So, if you look at what is now Section 39930(j),
10 it addresses POU's that receive greater than 67 percent
11 of those electricity from hydroelectric generation
12 located within the State, that does meet the definition
13 of a renewable electrical generating facility, pursuant
14 to Section 25741 of the Public Resources Code.

15 So, we see in two provisions, both in Section
16 399.30(j), and you see in Section 399.12(e)(1)(c), which
17 is specific to POU's, references to facilities that don't
18 meet the definition of Public Resources Code Section
19 25741. And both of these were added at the same time.

20 In addition, at the time the statute -- at the
21 time SBX1 2 was passed and became effective, there was
22 another specific exception that dealt with large hydro.
23 This is Section 399(g), was previously 39930(h).

24 Section 39930(g) addresses a POU that received
25 electricity pursuant to the Trinity River Division Act

1 of 1955. Now, the Trinity River Act -- River Division
2 Act of 1955 resulted in development of large
3 hydroelectric facilities in the Central Valley,
4 specifically the Trinity Dam and the Lewiston Dam, both
5 of which are over 140 megawatts and are, clearly, large
6 hydroelectric generation. For those facilities, they
7 were essentially -- those facilities that receive energy
8 under that Act were deemed to be RPS compliant.

9 There's a third exception listed in Section 3933
10 -- I'm sorry, 39930, that also addresses large hydro.
11 This is Section 39930(k), that addresses hydroelectric
12 generation that does not meet the definition of an
13 eligible renewable energy resource. Again, the
14 reference in this provision deals with large
15 hydroelectric generating facilities.

16 So, when you look at the definition and standard
17 for what should be grandfathered, and you look at the
18 exceptions in Section 39930, what they were designed and
19 intended to do was to exclude large hydroelectric
20 generation.

21 Now, LADWP never included large hydro in its RPS
22 policies. We acknowledge other POU's did. Those POU's
23 aren't -- RPS policies, to the extent they existed,
24 aren't at issue or in dispute in this proceeding, so we
25 think they're immaterial.

1 But LADWP has given meaning to both the
2 reference to the Public Resources Code, Section 25741,
3 and we've done it in a way that also explains the
4 exceptions that are listed in Section 39930, which deal
5 with large hydro.

6 I want to turn, now, to the Proposed Decision's
7 interpretation of Section 399.12(e)(1). When you look
8 at the definition in 399.12(e), of an eligible renewable
9 energy resources, it's defined and referenced to the
10 definition in the Public Resources Code, Section 25741.

11 And then it says, "Subject to the following."
12 And the subject to the following are exceptions, or
13 qualifications to that general definition of the
14 standard in Section 25741. And there are four there
15 listed, subsections (a) through subsections (d). (a)
16 and (b) address small hydro facilities and conditions
17 that apply, depending on whether or not the facility
18 commenced commercial operation after January 1st, 2006.

19 Subsection (d) addresses small hydro facilities
20 less than 40 megawatts. And, then, we have subsection
21 (c).

22 So, I think the Committee should stop to ask
23 themselves why was this provision added? And if you
24 look at the interpretation that's offered in the
25 Proposed Decision, it states that, "The Energy

1 Commission Certification Standards apply and that LADWP,
2 for the facility to be grandfathered, has to meet the
3 definition of Public Resources Code Section 25741."

4 But that's the same definition that applies in
5 399.12(e). That's the basic definition, a facility that
6 meets the standards of Section 25741. There is no
7 difference between that and the standard that the
8 Committee's applying, now. So, the Committee has given
9 no meaning to the first part of Section 399.12(e)(1)(c),
10 that references, "A facility approved by a POU, before
11 June 1st, 2010, to meet renewable procurement
12 obligations adopted under Section 387."

13 So, I think the Committee, when you ask the
14 question of why was this added? And you look at the
15 legislative history that I just read into the record,
16 it's clear that the Legislature understood that the June
17 1st, 2010 date was the date that they were going to use
18 for grandfathering contracts. So, we see June 1st, 2010
19 in Section 399.16(d). And you see it again,
20 specifically, in Section 399.12(e)(1)(c).

21 And what they thought they were doing was
22 providing protection for POUs, like LADWP, who had
23 invested in good faith and reliance on then-existing
24 laws, and their renewable program to ensure that those
25 contracts would be honored, and the renewable energy

1 received under those contracts recognized by the Energy
2 Commission in the transition period, when you went from
3 a voluntary system under section -- former Section 387,
4 and to SBX1 2. And that was the transition period.

5 And the Proposed Decision has not given effect
6 to the legislative intent to grandfather and recognize
7 this energy. Well, I say "this energy," I mean the
8 energy procured under the BC Hydro Power Purchase
9 Agreements. Which was renewable energy, generated from
10 small hydro facilities, less than 30 megawatts. This
11 energy was paid for, at the cost of \$46 million, by
12 LADWP's ratepayers. The energy was generated, was
13 received at LADWP's balancing -- into LADWP's Balancing
14 Authority at the North Nevada/Oregon border, delivered
15 into LADWP's Service Territory to serve its native load.

16 So, we'd ask that the Committee take the
17 evidence and arguments into account in assessing the
18 interpretation of both Section 399.16 and
19 399.12(e)(1)(c), and to also take into account the
20 legislative history that we've submitted, to be able to
21 really give effect to what the Legislature was intending
22 to do.

23 And at the time, the Legislature did not think
24 that they were impairing or undoing renewable energy
25 contracts entered into in good faith and reliance on the

1 law.

2 And this takes us to our last major point that
3 we wanted to address, which is that the Committee did
4 not take into account or address LADWP's equitable
5 arguments that were raised. And these are particularly
6 important because, after considering the additional
7 evidence and arguments that we've raised both in this
8 hearing, and in our comments, if the Committee decides
9 to maintain its decision, there is a substantial
10 prejudice that would result to LADWP.

11 And my colleague, Mr. Bertet, is going to
12 address that issue.

13 MR. BERTET: I moved to a different mic. Is
14 this mic working?

15 HEARING OFFICER KRAMER: Yes.

16 MR. BERTET: Good afternoon, Commissioners. So,
17 Deputy City Attorney Felix Lebron went through the
18 retroactive application of the law and why we don't
19 believe that the Proposed Decision should reinterpret
20 statutes to apply the law retroactively.

21 So, I won't go into the details of that. The
22 main point is just to identify that the interpretation
23 provides a disability to the Department retroactively.
24 And that's the main point.

25 If you go back in time and try and apply the law

1 today, that you're interpreting today, and apply it back
2 in time, and there's no specific legislation within SBX1
3 2 allowing the Committee to do that, then it's a
4 retroactive law. And we believe it's not legal.

5 The other point, with the retroactivity, is the
6 ex post facto laws. Because there's a criminal
7 liability or potential criminal liability imposed and
8 enforced through the California Air Resources Board,
9 you're looking at the imposition of a retroactive law
10 that could have criminal liability. And that's,
11 basically, not legal under the U.S. Constitution or the
12 California Constitution.

13 The main point of the retroactivity, and ex post
14 facto laws, is essentially notice and it's a due process
15 requirement. That when the Legislature comes and
16 creates laws, and wants particular individuals or
17 entities to comply and conform with the law, that
18 they're all put on notice. And that they can then
19 conform their actions to the law.

20 It's a fundamental process within our Nation,
21 it's a fundamental process within California. And
22 that's what we believe the Legislature did was to create
23 laws that would engage these entities on a prospective
24 basis.

25 If you look at the Senate Bill 107, which was

1 identified in the Proposed Decision, we believe that the
2 Proposed Decision correctly identified some of the
3 legislative history. However, there is part of this
4 legislative history that we believe is omitted. And, in
5 essence, reinterpreting the law to require the
6 Department to certify resources it didn't own, but it
7 procured through Power Purchase Agreements, we believe
8 is a misinterpretation of SB 1078, which was enacted 15
9 years ago, now. We believe it's a reinterpretation of
10 SB 107, which was enacted over a decade, now, or a
11 decade ago, and it's a reinterpretation of SBX1 2, which
12 is now five years old. Five or more years old.

13 And when you look at SB 107, you can see that
14 the Legislature talked about two types of energy
15 resources. One was renewable energy resources and the
16 other was eligible renewable energy resources. And it's
17 a distinction that we believe was important, as the
18 Legislature tried to encourage POUs to procure renewable
19 energy resources and eligible renewable energy
20 resources.

21 We believe that part of the regulatory scheme
22 and the legislative scheme was to encourage POUs to
23 procure renewable energy resources, and to look to the
24 future and procure eligible renewable energy resources
25 under its own RPS programs.

1 So, the meaning of "eligible," in essence, can
2 be viewed several ways, to include renewable energy
3 resources under an RPS program, approved by a public --
4 a local public owned electric utility such as LADWP.

5 And that's what the City Council did and the
6 Board of Water and Power Commissioners did in 2004, when
7 they looked at coming up with an RPS policy, and they
8 specifically looked at Hoover. And, so, they decided to
9 exclude power generation from Hoover Dam.

10 So, that was a resource that elected officials
11 and the City Council decided to exclude from its RPS
12 policy. And it determined that power generation from
13 Hoover Dam was not eligible under the local program.

14 The other term for eligibility, as the
15 Legislature tried to encourage renewable procurement,
16 was the view of eligibility, and that would be
17 certification by the Energy Commission. But it wasn't
18 mandated and it wasn't required.

19 So, when the Department of Water and Power
20 procured renewable energy with Powerex, for the BC
21 Hydroelectric generation, it could have renegotiated the
22 contracts, if it believed that eligibility required a
23 mandate to certify the resources. It did not require
24 the certification of these resources.

25 So, when you look at the notice the Department

1 was placed on, and if you're looking at SB 107, which
2 was enacted in 2007, that was the law, the rules in
3 place at the time. So, you had eligibility under a
4 local program and you had an encouragement to eventually
5 certify resources, whenever that might be. But you had
6 specific language in both Utilities Code 387, that
7 required or mandated POU's to do reporting. Part of this
8 reporting was to identify renewable energy resources, as
9 part of its resource mix, and eligible renewable energy
10 resources as part of its resource mix.

11 There was a very strong distinction and the
12 Legislature intended to make that distinction. We think
13 that's very important as you look at notice to POU's, at
14 the time.

15 So, if you look at the impact of the Proposed
16 Decision on BC Hydro, you're looking at an impairment of
17 contract. These regulations, in this Proposed Decision,
18 are stripping the benefits of a contract entered into
19 under existing law, in good faith, by these parties.

20 LADWP did not own the Powerex facilities and
21 LADWP had no contractual right, or other ability, to
22 compel Powerex to apply for certification.

23 It was looking at expending -- LADWP was looking
24 at expending close to \$200 million for this resource.
25 Had it known what the Proposed Decision put forward,

1 that it has to certify these resources, it would have
2 negotiated either a different contract or looked to a
3 different resource.

4 And it was mentioned that the Department of
5 Water and Power paid over \$46 million for the
6 procurement in 2011 alone, and it was delivered into
7 LADWP's service territory and used to serve LADWP's
8 native load for retail sales.

9 If you're looking at a penalty that has to be
10 similar to the CPUC's penalty structure, you're looking
11 at a penalty of possibly upwards of \$50 per REC, for
12 retail sellers. So, assuming your CARB adopts a similar
13 penalty structure, then the Department of Water and
14 Power is looking at a potential penalty in excess of \$22
15 million.

16 So, you have a loss of public funds of \$46
17 million, in 2011. You have a potential penalty of \$22
18 million. And these are public funds that are in
19 jeopardy. It's a financial loss to the Department and
20 one that it won't stand to let go.

21 There's no ability to procure RECs,
22 retroactively, after the close of the first compliance
23 period, that ended on December 31st, 2013.

24 The Department of Water and Power believes that
25 there are equitable powers, that lie within this

1 Committee, that can rectify this decision, and justice
2 can be accomplished.

3 Now, you may ask, well, how is this possible?
4 And we believe that within the Public Resources Code
5 there are equitable powers afforded the Commission. We
6 believe that the Proposed Decision could either be
7 revised to take a look at how it defines renewable
8 energy credits, and we know that the Proposed Decision
9 requires the eligibility to apply only to renewable
10 energy credits. And, so, it wonders how it could
11 accomplish it, however there are equitable powers that
12 are afforded, that perhaps could be a separate set of
13 renewable energy credits, or separate set of energy that
14 could be counted. And we believe this Commission has
15 that authority to direct the Commission staff to count
16 the energy.

17 So, so long as LADWP faces the prospect of \$22
18 million of potential exposure, and a loss of \$46 million
19 in public funds, it has no choice but to continue to
20 challenge any decision made by this Commission.

21 However, we don't believe that that is a good
22 use of staff resources.

23 LADWP's regulatory staff, and CEC's staff,
24 particularly Courtney Smith, has done a fantastic moving
25 forward as SB 350 was enacted, and we're looking to

1 obtain very aggressive goals by the State of California.
2 And we believe they can continue to work together to
3 meet those goals.

4 And that's where we believe that most of the
5 energy or all of the energy from LADWP and CEC staff
6 should be expended.

7 We have some additional issues that we are
8 requesting in the Proposed Decision to complete its
9 findings of fact and conclusions of law. We've
10 identified those in our written comments, so I won't go
11 into those in detail.

12 We also believe that there should be an
13 additional issue for the Committee to consider, which
14 would be to hold the proceeding open for the
15 verification of the RECs by the CEC staff. Which, as
16 they go through on the biomethane agreements and,
17 hopefully, for also the BC Hydro.

18 Thank you. We'll entertain any questions you
19 may have.

20 HEARING OFFICER KRAMER: Well, sorry, it wasn't
21 doing that a minute ago. Let's first hear from the
22 staff and then we may have a question or two for
23 everyone.

24 MR. HERRERA: Good afternoon. Gabe Herrera,
25 representing Energy Commission staff. So, both Mona

1 Badie, and myself, are going to be making comments on
2 behalf of staff. Mona's going to start off with a
3 summary, a quick summary of staff's position regarding
4 the cumulative analysis of the BC Hydro agreements and
5 the biomethane facilities. And, then, I'm going to
6 follow up with some points of rebuttal on some of the
7 arguments that L.A. has made regarding the Proposed
8 Decision.

9 And with that, let me just turn it over to Mona.

10 MS. BADIE: Good afternoon. Energy Commission
11 staff supports the Proposed Decision regarding the RPS
12 eligibility of LADWP's BC Hydro contracts.

13 The Committee correctly determined that the
14 phrase, "rules in place," referenced in the RPS
15 statutes, refer to the RPS statutory and the Energy
16 Commission RPS Eligibility Guidebook Rules, not the POU
17 adopted rules.

18 Staff supports the Committee's analysis of the
19 RPS statutory references to the phrase, "rule in place,"
20 including the rules in placed referenced in Public
21 Utilities Code Section 399.16(d)(1).

22 The Proposed Decision interpretation of "rules
23 in place" is consistent with the development of the RPS
24 Program into a uniform statewide program.

25 As determined by the Committee, prior to SBX1 2,

1 unlike retail sellers, POU's had discretion to establish
2 and enforce their own RPS policies. After SBX1 2, POU's
3 became subject to the same or similar RPS requirements
4 as retail sellers.

5 Under LADWP's interpretation of the phrase
6 "rules in place", there would be conflicts in how the
7 law's interpreted and applied throughout the State, as
8 there would be one set of rules for retail sellers and
9 different sets of POU's rules.

10 Staff also supports the Committee's
11 determination that the Legislature did not grandfather
12 all procurement eligible under POU's pre-SBX1 2 rules.
13 Instead, the Legislature provided narrowly tailored
14 exceptions for a few of the POU resources that meet
15 stringent criteria. This is apparent from the
16 exceptions found in Public Utilities Code Section
17 399.30, as well as other provisions from Article 16.

18 The Legislature's approach does not square with
19 LADWP's interpretation of a wholesale grandfathering of
20 all POU pre-SBX1 2 RPS resources.

21 LADWP's renewable energy resources must meet the
22 definition of an eligible renewable energy resource
23 under Public Utilities Code Section 399.12(e)(1)(c).
24 The Committee correctly determined that Section
25 399.16(d) requires resources to be eligible renewable

1 energy resources.

2 This interpretation is consistent with the goals
3 and design of the RPS Program and gives meaning to every
4 part of the statute, including the phrase, "If the
5 facility is a renewable electrical generation facility,
6 as defined in Section 25741, of the Public Resources
7 Code." LADWP's interpretation, on the other hand, would
8 completely ignore this entire clause.

9 LADWP's interpretation would also render other
10 render other provisions of the RPS statute surplus.
11 Since, because the narrowly tailored exception --
12 narrowly tailored grandfathering provision, excuse me,
13 would grandfather many of the same resources that would
14 be grandfathered under LADWP's wholesale grandfathering
15 interpretation.

16 LADWP's BC Hydro facilities do not qualify for
17 RPS certification. Therefore, LADWP's BC Hydro
18 renewable energy credit, also called REC, claims cannot
19 be counted towards LADWP's RPS procurement requirements.

20 The Committee correctly determined that
21 certification of eligible renewable energy resources is
22 exclusively in the Energy Commission's purview.

23 Public Utilities Code Section 399.25(a)
24 authorizes only the Energy Commission to certify
25 eligible renewable energy resources for the RPS, for

1 retail sellers and POU's.

2 SBX1 2 repealed Section 387, and any discretion
3 POU's might have had in this regard, and established a
4 single, statewide RPS program applicable to both retail
5 sellers and POU's.

6 There is no record of either LADWP or Powerex
7 applying for Energy Commission certification of the BC
8 Hydro facilities. And the deadline to do so was
9 December 31st, 2013.

10 The Committee also correctly determined that
11 certification is a prerequisite to applying RECs toward
12 RPS program compliance and, therefore, LADWP's BC Hydro
13 procurement cannot be counted toward its RPS procurement
14 obligations.

15 Very briefly, with regard to LADWP's appeal
16 concerning RPS certification of its Scattergood, Harper
17 Valley, and Haines facilities, based on the use of
18 biomethane procured under LADWP's 2009 Shell and Atmos
19 contracts, again, Energy Commission staff support the
20 Committee's analysis of the RPS statutory reference to
21 the phrase "rules in place." And that the "rules in
22 place" reference in RPS statute, including Public
23 Utilities Code Section 399.12.6, regarding biomethane
24 eligibility, refer to the RPS statutory and Energy
25 Commission RPS Eligibility Guidebook rules, not the POU

1 adopted rules.

2 And Energy Commission staff also agree with the
3 Committee's Proposed Decision that the RPS Eligibility
4 Guidebook Third Edition are the rules in place,
5 referenced in 399.12.6, applicable to the 2009 Shell and
6 Atmos contracts. Thank you.

7 MR. HERRERA: So, let me turn to a couple of the
8 points LA made, just in rebuttal. Let me address these,
9 the retroactivity of SBX1 2, the legislative history of
10 SBX1 2, whether the Proposed Decision rewrites Public
11 Utility Code Section 399.16, and then, lastly, the
12 equitable arguments regarding the BC Hydro.

13 So, LA is arguing that the Proposed Decision
14 improperly applies the Energy Commission's RPS
15 Eligibility Rules retroactively, to cover LADWP's RPS
16 policy resources, under the Section 387 Program it had
17 implemented.

18 That's not correct. I mean, what the Proposed
19 Decision is doing is it's applying the rules under SBX1
20 2 to January 1, 2011. That's when the statute was
21 intended to take effect. And this is clear from
22 language within the statute.

23 I mean, there are a number of provisions in SBX1
24 2 that clear advance the Legislature's intent that the
25 RPS Program, under SBX1 2, start January 1, 2011.

1 You've got the Legislature establishing, in the
2 statue, the start of the compliance period, the first
3 compliance period on January 1. And you have provisions
4 for both retail sellers and for POU's. You've got
5 provisions in the statute that say that with respect to
6 any new procurement contracts after June 1, 2010, that
7 there are new sets of minimum and maximum procurement
8 requirements to satisfy the portfolio balance
9 requirements.

10 Now, that's significant because we're talking
11 about June 1, 2010 and January 1, 2011. And these are
12 two dates that appear in the statute and clearly show
13 that the Legislature intended the statute to start
14 sooner than the effective date of December 10th, 2011.

15 I mean, I think LA is suggesting that what we're
16 trying to do is apply the Energy Commission's RPS
17 certification rules back to 2005, back to 2008, when
18 they had their programs in place. That's not true.
19 We're establishing the Energy -- or, excuse me, we're
20 applying the Energy Commission's requirements with the
21 start of the new RPS program, under SBX1 2, which is
22 January 1, 2011.

23 The second point, regarding legislative history.
24 So, LA has argued that the Committee did not properly
25 consider the legislative history and some of the

1 legislative analyses, reports that were prepared for
2 SBX1 2, but I don't agree. And I think there's a
3 different way of looking at that language in those
4 legislative analysis reports.

5 First of all, I think at that point in time the
6 Legislature was focusing on two kinds of procurement
7 activities. Procurement activities that would be
8 classified as count in full, which was not subject to
9 the more rigorous limitations on procurement
10 requirements. And, then, you've got the procurement
11 requirements that applied to contracts entered after
12 June 1, 2010.

13 And, so, when you look at the legislative
14 analysis reports, and the language in those reports, it
15 is reasonable that when they were being drafted what
16 they were referring to was the difference between count
17 in full procurement, which wasn't subject to the more
18 rigorous portfolio content category requirements, and
19 then the separate requirements for the portfolio content
20 category contracts.

21 Regarding LA's position that the Committee is
22 rewriting Section 399.12(d). We don't agree with that,
23 as well. I mean, we believe the Committee, in the
24 Proposed Decision, correctly determined that the rules
25 in place, under Section 399.16(d)(1), refers to the

1 CEC's RPS Eligibility Rules, not the POU rules.

2 I mean, it was reasonable, the approach the
3 Committee took in interpreting that provision, and it's
4 consistent with maxims on Constitutional -- maxims on
5 statutory interpretation.

6 If, as Mona had mentioned, Section 399.16(d) is
7 interpreted, as LA argues, to cover -- to apply the POU
8 rules, then what ends up happening is we're set up with
9 a different set of rules that would apply for retail
10 sellers versus POUs. That's not consistent with the
11 statewide program the Legislature had in mind. It had
12 in mind one set of rules that would apply to both POUs
13 and retail sellers.

14 It doesn't make sense, for example, to have one
15 facility that is selling power both to retail sellers,
16 and to POUs, being subject to a different set of
17 certification requirements. That doesn't fit within the
18 scheme we think the Legislature had in mind when it
19 established SBX1 2, and the new RPS Program, under that
20 statute.

21 On the point LA mentioned, regarding large
22 hydro. It indicated -- Mr. Lebron indicated that LA did
23 not include large hydro in its pre-SBX1 2 RPS Program.
24 But, in fact, if you define large hydro by anything
25 greater than 30 megawatts then, in fact, LA did.

1 Because LA's program, under Section 387, did allow its
2 hydro larger than 30, that was part of its aqueduct
3 system, to be included as part of the program.

4 Now, the Legislature established a separate
5 exemption that would cover that aqueduct hydroelectric
6 system, when it enacted SBX1 2. So, it's clear that the
7 Legislature did not want to grandfather this resource
8 under LA's Section 387 program. It wanted to exempt it
9 and grandfather it under a separate provision that it
10 included in 399.12(e)(1)(c).

11 I should also note that a report the Energy
12 Commission funded, back in 2008, had identified 21
13 separate POUs that had large POUs as part of their
14 Section 387 program. These large hydro resources would
15 all be grandfathered as part of the Section 387, if you
16 believe and accept LA's arguments. That's not what the
17 Legislature had in mind because SBX1 2 generally places
18 a cap on eligible hydro at 30 megawatts.

19 Regarding LA's equitable arguments. It's staff
20 view that it's appropriate for the Committee to reject
21 these arguments regarding BC Hydro. I mean, the purpose
22 of the Committee's review, under the appeal process,
23 under the RPS Guidebook, is to determine whether staff
24 applied the CEC certification rules correctly.

25 The task before the Committee is not to develop

1 new rules, or to waive existing rules. I mean, this, in
2 and of itself, would be tantamount to creating new
3 rules. That's beyond the scope of the appeal process
4 and beyond the Committee's authority, in our view.

5 LA argues that if it's not granted relief, that
6 it could be subject to a penalty of up to \$22 million.
7 Well, we think it's a little premature to say whether
8 it's going to be -- whether it could be held in
9 violation of the RPS and subject to these penalties, or
10 not. There's a lot of things that need to happen
11 between now and then.

12 I mean, if staff determines that LA did not
13 procure sufficient resources to meet its first
14 compliance period obligations, then there's a whole
15 process to determine whether they may be excused because
16 of optional compliance measures.

17 I mean, LA has adopted cost limitations and
18 other optional compliance measures which may excuse it
19 from any liability.

20 And even if we get to the point where staff
21 moves forward with a complaint against LA, LA will have
22 an opportunity to raise, before the Commission, any
23 equitable arguments, mitigating circumstances that they
24 believe is prudent and reasonable to excuse them. And
25 the Commission, at that time, can consider those

1 mitigating factors.

2 Lastly, concerning the findings and facts --
3 findings, and facts, and conclusions of law that LA has
4 proposed, in staff's view, we don't think it's
5 appropriate to add these additional findings of fact and
6 conclusions of law.

7 In our view, the decision is supported by the
8 facts, the finding of facts included in the Proposed
9 Decision. Including, for example, the findings of fact
10 concerning LA's RPS policy under former Public Utility
11 Code Section 387. And the approval of its BC Hydro
12 Power Purchase Agreements, with Powerex, kind of goes
13 beyond what is necessary for the proposed -- the
14 proposed decision. Because, in this case the Committee
15 has already determined that Section 399.12(e)(1)(c)
16 requires that the resources for the BC Hydro facilities
17 meet the definition of a renewable electrical generation
18 facility under Public Resource Code Section 25741.

19 LA hasn't demonstrated that, so there's no way
20 they can satisfy the requirements of that particular
21 statute.

22 Likewise, we don't think that the Committee
23 should entertain LA's suggestions for the additional
24 conclusions of law because we don't think those
25 conclusions of law accurately support the statute.

1 Concerning next steps, you know, we agree that
2 perhaps there may be a need for another Committee
3 conference. But it would be, in our view, solely for
4 the purpose of touching bases regarding staff's
5 assessment of the BC -- excuse me, the biomethane
6 generation. At this point, we're still waiting to get
7 some confidential data that LA has submitted into the
8 record. Once we get that information, staff anticipates
9 it might take as much as two weeks to take a look at
10 that data and verify the biomethane-based generation.

11 If that's completed within that period of time,
12 then perhaps there's not a need to have another
13 Committee conference. But if, for example, we do need
14 some additional information, then another Committee
15 conference might be good in order to gather that
16 information.

17 That concludes my remarks.

18 HEARING OFFICER KRAMER: Then, one question
19 following up what you just said. Is a review of staff's
20 determination of the proper amount of credit to be
21 given, is that something that appropriately would come
22 before a Committee or is that supposed to be reviewed in
23 some other way?

24 For instance, when you present your findings to
25 the full Commission, would that be the time to address

1 that?

2 MR. HERRERA: That would be the time. And that,
3 in fact, is how it's occurred before in the past, when
4 we've presented RPS verification results. At least with
5 respect to retail sellers, the retail sellers had a
6 disagreement with staff's assessment of the verification
7 results, and they could raise it to the full Commission
8 at a Business Meeting, when those results were being
9 considered.

10 HEARING OFFICER KRAMER: Do they also have the
11 option of raising that by way of an appeal to a
12 Committee?

13 MR. HERRERA: Not an appeal pursuant to the
14 appeal process, in the RPS Guidebook, no.

15 HEARING OFFICER KRAMER: Okay, thank you.

16 MR. LEBRON: Mr. Kramer, if I may, I'd just
17 address -- this is Felix Lebron -- on that issue.

18 LADWP believes that the proceedings should stay
19 open to address the verification. We think staff --
20 we've submitted a joint request, as Mr. Herrera noted,
21 to have the -- grant staff access to the biomethane data
22 they need to do the verification. But we think it's
23 within the scope of the proceeding.

24 And that if there's an issue, if the Committee
25 keeps the proceeding open, we have the ability to come

1 back, quickly and efficiently, to address it with the
2 Committee. So, at least as to the biomethane portion's
3 decision, we can finalize both the ruling and the total
4 amount of RECs. But we think it should be open and
5 would recommend that the Committee have a future status
6 conference.

7 This is independent of the request that we've
8 made on the reconsideration on the BC Hydro
9 determination. But that it should be kept open just to
10 all us, the parties, to complete that process.

11 HEARING OFFICER KRAMER: Okay. Did you have
12 anything else before we close out the receipt of --

13 MR. LEBRON: Yes.

14 MR. HERRERA: Can I just comment on that point,
15 Mr. Kramer?

16 HEARING OFFICER KRAMER: Go ahead.

17 MR. HERRERA: So, would it be possible for the
18 Committee to schedule a conference, and then the ability
19 to cancel that, for example, if there's no need for
20 additional information?

21 I mean, once staff does the verification of the
22 biomethane, it will consult with LADWP to present its
23 findings. And if there are no issues, then it seems to
24 me that perhaps there's not a need to go forward with
25 any conferences.

1 HEARING OFFICER KRAMER: Mechanically, we can
2 certainly do that. At this point, the question is, is
3 that something that we should be addressing. So, we'll
4 probably consider that when we go into closed session.

5 Something else, Mr. Lebron?

6 MR. LEBRON: And, then, a couple things just in
7 response to their rebuttal. There's some statements
8 that I think are, again, inconsistent with the
9 evidentiary record.

10 I think this argument that LADWP's
11 interpretation would allow grandfathering, and
12 incorporate 60 -- or 43 other POU sets of rules, again,
13 this is an evidentiary proceeding. There's no evidence
14 of other POUs' RPS policies. LADWP's is the only one at
15 issue in this proceeding.

16 I understand the Commission, earlier this
17 morning in the Business Meeting, adopted Compliance
18 Period 1 Reports for other POUs. So, LADWP is the only
19 entity that has an issue trying to get the Energy
20 Commission to recognize grandfathered resources.

21 So, the argument or suggestion that somehow
22 accepting LADWP's arguments is going to lead to a parade
23 or horrible or expansive adoption of renewable resources
24 that are just inconsistent with the State's standards, I
25 think is just not true.

1 On the statement about LADWP's aqueduct
2 facilities, that is correct that LADWP's policy allowed
3 for the small hydro under 40 megawatts.

4 There's a suggestion that the Legislature
5 included a provision in 399.12(e)(1)(d) because LADWP's
6 resources weren't grandfathered. Well, that's not true
7 because Section 399(e)(1)(d) provides eligibility for
8 both the retail sellers and publicly owned utilities.
9 So, there is a purpose for that and that was to make
10 retail sellers and POUs on equal footing, with regard to
11 the 40-megawatt facilities.

12 So, that wasn't a carve out for LADWP or just
13 POUs, in general.

14 And then, finally, on the procedural issues.
15 One question that I did have, before you break into
16 closed session, is also just on the process. And, so,
17 we've asked that the Committee consider additional
18 evidence and arguments which we think should result in a
19 revised Proposed Order.

20 But once the Committee has -- whether it revises
21 it or not, has a decision, I know that under the Energy
22 Commission regulations it's at the election of the
23 Chairman as to whether or not a decision, before it's
24 rendered final, would go back to the full Commission.

25 And, so, if that was guidance on that in terms

1 of process of what the Committee anticipates doing on
2 this, once it does have a -- it's prepared to issue a
3 Final Decision, whether they would allow that to go to
4 the full Commission, so that the parties would have an
5 opportunity to address some of these issues.
6 Recognizing that this is the first time where I think
7 the Energy Commission has really gotten into the details
8 of the RPS legislation.

9 CHAIR WEISENMILLER: I just had one
10 clarification. I thought I heard you say that you
11 admitted that LA would include the aqueducts under 30.
12 And I assume what you meant is the aqueducts over 30 was
13 part of the LA policy.

14 MR. LEBRON: So, LA had small hydro. There were
15 certain aqueduct facilities that were between 30 and 40
16 megawatts. So, the policy that was adopted in 2004
17 permitted, under LA's local policy, those small hydro,
18 less than 40 megawatts did count.

19 CHAIR WEISENMILLER: Right. No, that was my
20 understanding, too. I just think you may have misspoke.

21 MR. LEBRON: Thank you for correcting that.

22 MR. BERTET: I had just a couple of points.
23 This is Jean-Claude Bertet, from the City Attorney's
24 Office.

25 So, one of the key points of distinction is the

1 effective date of SBX1 2. And there was a statement
2 that the intent was to have it effective as January 1,
3 or have the RECs count as January 1, 2011. We believe
4 that's completely inaccurate.

5 The legislative history, and part of why this
6 was urgency legislation was because SB 722 failed in the
7 Legislature. And, then, urgency legislation was issued
8 through. And that's why we have an effective date of
9 December 10th, 2011. And none of the dates within SBX1
10 2 were revised.

11 So, you have an interesting confluence of dates
12 that don't necessarily match up because SB 722 just
13 didn't pass through.

14 So, you have a time period of looking at
15 December 10th, 2011, which the Proposed Decision
16 accurately stated is the effective date of SBX1 2. We
17 believe that LADWP has proposed arguments to create a
18 seamless transition to count the renewable energy up to
19 that point, that date and time is December 9th, 2011.

20 If you count the BC Hydro all the way up to that
21 point and time, it affords a seamless transition as to
22 when the effective date started. And that's what the
23 Department of Water and Power has basically put forward,
24 and argued that it provides a seamless transition.

25 You've heard the grandfathering arguments, that

1 I won't reiterate, but we believe that they should be
2 counted regardless of whether they're within the
3 grandfathering arguments, or within the seamless
4 transition.

5 You can foster an equitable remedy that is
6 afforded by this body.

7 Thank you, those are the only points I had.

8 COMMISSIONER HOCHSCHILD: Thanks. So, just a
9 question for Mr. Herrera, just in light of the fact this
10 is the first appeal we've had, since we've been doing
11 compliance for the POU's.

12 Just assuming there is no change to the
13 Committee decision could you, in light of that, just
14 walk through, again, the options that would be available
15 to LADWP going forward, just so we're all on the same
16 page, process-wise?

17 MR. HERRERA: Well, so, the first thing that
18 would need to happen is that staff would need to
19 complete it's -- you know, the verification process for
20 LADWP, like it did with the other POU's, the reports of
21 which were approved earlier at a Business Meeting,
22 right.

23 Then, a determination would need to be made by
24 the Executive Director in terms of whether LADWP
25 satisfied the requirements in the RPS, or not. If it

1 did not, then the Executive Director could in initiate a
2 complaint against LADWP. And as part of that process,
3 there would be a hearing to adjudicate the complaint.

4 But also as part of that process, the Energy
5 Commission's regulations allow LADWP to put forward, for
6 example, any mitigating circumstances, any equitable
7 arguments that they felt were compelling. The arguments
8 that they've made today, about their ratepayer -- what
9 they've paid. And the fact that, you know, the BC Hydro
10 facility didn't satisfied the requirements, but it was
11 entered in good faith. I would expect LA to make those
12 arguments at that time, and it would be appropriate for
13 the Commission, at that time, to consider them.

14 But before we would even get to the initiation
15 of a complaint, staff would need to determine whether LA
16 is otherwise excused from any shortfall because of
17 optional compliance measures.

18 And that's my understanding that LA has optional
19 compliance measures, cost limitations. Staff needs to
20 evaluate those and apply them.

21 So, it could be that we never even get to a
22 complaint against LA because LA is excused because of
23 cost limitations or other optional compliance measures.

24 And that also gets to the point about whether,
25 you know, the ratepayers are really out any money. If

1 they're excused, then one might argue that they haven't
2 suffered anything because they've gotten the benefit of
3 the energy they procured.

4 COMMISSIONER HOCHSCHILD: Thank you.

5 MR. HERRERA: Mr. Kramer, one more request. On
6 January 12th, I believe the staff and LA filed a joint
7 statement and a request that we have access to
8 confidential information. Staff still needs that
9 information to complete its verification process. And
10 we were hoping that you would issue a ruling allowing
11 staff to access that information.

12 HEARING OFFICER KRAMER: You're leading
13 perfectly to my segue. I skipped over Item 2 on the
14 agenda, which was hearing on any pending motions. And
15 one of those would be that request.

16 We'll take that up in closed session and
17 probably have an answer for you at the end of the closed
18 session.

19 Did anyone want to speak anymore to that joint
20 request?

21 MR. LEBRON: This is Felix Lebron. No, we
22 don't. We agree with the statements by Mr. Herrera, it
23 was a joint request. The staff needs access to the
24 data. So, as soon as that can be granted to them, that
25 will help expedite the verification process.

1 HEARING OFFICER KRAMER: Okay, thank you.

2 Anything else?

3 Okay, the last item, before we go into closed
4 session, then, is public comment. An opportunity for
5 the public and other interested persons to speak up to
6 three minutes on an item appearing on the agenda.

7 Do we have anyone in the room who wishes to make
8 a public comment?

9 Oh, even using the blue cards, thank you. And
10 while we're getting her up here, does anyone on the
11 telephone wish to make a public comment? It looks like
12 everyone is unmuted.

13 One more time, anyone on the telephone? Okay,
14 hearing none, our first commenter is Barry Moline, the
15 Executive Director of the California Municipal Utilities
16 Association.

17 MR. MOLINE: Thank you, Chair Weisenmiller,
18 Commissioner Hochschild, and Commission staff.

19 I'm Barry Moline, Executive Director of the
20 California Municipal Utilities Association.

21 CMUA is a state trade association, representing
22 community-owned electric utilities and water agencies
23 across California. And, as you know, California has
24 adopted aggressive environmental goals that pose
25 significant implementation challenges.

1 Achieving the 50 percent RPS, while also
2 reducing greenhouse gas emissions to 40 percent below
3 1990 levels, by 2030, will require significant
4 expenditures to develop new resources and new
5 technologies.

6 Publicly Owned Electric Utilities need to meet
7 these goals, while maintaining a safe and reliable
8 electric grid, as well as keeping rates affordable for
9 consumers. And locally owned POUs also need to maintain
10 flexibility to meet these environmental goals in a
11 manner that is consistent with the direction of their
12 locally-elected governing boards, and with the values of
13 their local communities.

14 Our collective focus should be on the
15 substantial task before us and ensuring that we can
16 devote sufficient resources to meeting these challenges.

17 CMUA opposes an outcome in this case that does
18 not recognize the good faith investments made by Los
19 Angeles in renewable energy, and could result in the
20 imposition of a penalty in the future.

21 POUs, like the Los Angeles Department of Water
22 and Power do not have shareholder funds to draw upon.
23 We are owned by our citizens. And any penalty would be
24 paid out of the pocket of consumers. These are the same
25 funds that would otherwise go towards meeting the RPS

1 and greenhouse gas reduction goals.

2 So, it's our understanding that the generation
3 here, at issue, meets the eligibility requirements of
4 the RPS. And, more importantly, it's consistent with
5 the broader goals of the RPS, of reducing air pollution
6 and promoting a diversified portfolio of resources.

7 So, therefore, I ask that you be reasonable,
8 that you focus on the bigger goal of more renewable
9 energy and greenhouse gas reduction, and provide relief
10 to LADWP, and count the renewable energy that has been
11 received. Thank you.

12 HEARING OFFICER KRAMER: Thank you.

13 Next is Tanya DeRivi, Director of Government
14 Affairs for SCPPA.

15 MS. DERIVI: Thank you very much for the time.
16 I just wanted to reiterate the comments that Barry
17 Moline had made, and wanted to provide some high level
18 contextual information for the benefit of the Committee,
19 as well.

20 As a former LADWP ratepayer, and 10-year long
21 resident of the City of Los Angeles, I also had the
22 honor of working for two Los Angeles mayors, as early as
23 2003, when initial discussions were ongoing to evaluate
24 and establish a renewable portfolio type program for the
25 City of Los Angeles.

1 This was at the direction of the then Los
2 Angeles Mayor Jim Hahn, well before the State of
3 California acted in establishing its own RPS program.
4 The City of Los Angeles had established a Green Ribbon
5 Commission, back in 2003, to solicit stakeholder input
6 from both our residents, and outside stakeholders,
7 towards establishing that RPS program and good faith
8 effort in order to encourage LADWP to invest in greater
9 renewable energy resources, and to help combat the
10 effects of climate change.

11 LADWP funded a variety of renewable projects and
12 programs back then, even earlier than 2003, when I
13 joined the Mayor's office, and this had to be done
14 carefully to ensure that there were no undue impacts to
15 Los Angeles ratepayers. Particularly those who had low
16 income status, since 20 percent of LADWP's ratepayers
17 are low income residents, or on their lifeline programs.

18 And keeping in mind, of course, that renewable
19 projects were much more expensive back in the early
20 2000s, than they are now.

21 I believe that LADWP has demonstrated a good
22 faith effort to try to comply both with their own RPS
23 program, up until the State's RPS program took effect
24 for Publicly Owned Utilities.

25 Urge the Committee to give some deference to the

1 local governing board, both the Water and Power
2 Commissioners, which are appointed by the Mayor of Los
3 Angeles, and confirmed by the Los Angeles City Council,
4 governing the decision making and policy process for
5 LADWP and the Los Angeles ratepayers.

6 Also wanted to highlight that there should be
7 some deference afforded in the first compliance period,
8 in particular for the RPS program, since it certainly
9 was a transitional type period, and one with dramatic
10 changes, as well.

11 POU's transitioned from a voluntary RPS program,
12 like LADWP had adopted, to one that was required to be
13 certified by the State of California.

14 Further, the 33 percent RPS law was not adopted
15 by the Legislature until the middle of 2011, and that
16 the legislative session -- from that legislative
17 session, and did not become effective until the end of
18 2011. Despite the fact that these requirements are now
19 being applied retroactively to the beginning of 2011, so
20 there was some confusion in that process, as well.

21 History supports the need for added flexibility,
22 I hope, for LADWP, when assessing compliance for this
23 first compliance period, as LADWP could not possibly
24 have known about retroactive requirements when these
25 early adopter contracts were entered into under the

1 direction of city officials, nor were they afforded the
2 opportunity to retroactively go back and make
3 corrections.

4 So, hopefully, it will be found that LADWP tried
5 to adhere to the spirit of the law in procuring
6 renewable resources, even before California's RPS became
7 into effect, and in as affordable manner as possible for
8 their ratepayers. Again, who do not have any
9 shareholders over the utility. So, urge your deference
10 to that, as well.

11 Thank you very much for the opportunity.

12 HEARING OFFICER KRAMER: Thank you.

13 One more time, anyone in the room or on the
14 telephone wish to make a public comment?

15 Okay, hearing none -- hold on a second.

16 (Pause)

17 HEARING OFFICER KRAMER: Okay. For your
18 convenience, although I'm sure some of you are trying to
19 get back to the airport, we're going to go into closed
20 session and we will be back as early as 4:30, but
21 perhaps closer to 5:00, to report out the results of the
22 closed session.

23 So, the official boiler plate reads, the
24 Committee will adjourned into a closed session in
25 accordance with Government Code Section 11126,

1 subdivision (c)(3), which allows a State body, including
2 a delegated committee, to hold a closed session to
3 deliberate on a decision to be reached in a proceeding
4 the State body was required by law to conduct.

5 So, we'll see you back as early as 4:30. And we
6 will leave the WebEx open. For those of you on the
7 phone, you can either hang up and call back, or just
8 stay on the line. Thank you.

9 (Closed Session convened at 3:22 p.m.)

10 (Open Session reconvened at 4:28 p.m.)

11 HEARING OFFICER KRAMER: Okay, this is Paul
12 Kramer, reporting back out of the closed session, at
13 4:38. It actually ended at about 4:15, just for the
14 record.

15 The report is that we thank the parties for your
16 comments. The next step will be to submit the Proposed
17 Decision, with any modifications we decide are
18 appropriate, to the full Energy Commission for its
19 consideration.

20 A notice of that meeting will be filed in this
21 docket. The earliest possible date, just to note for
22 you, is February 15th. That's the next Business
23 Meeting.

24 We are not scheduling any further Committee
25 conferences, but we note that the parties are free to

1 comment during the full Commission's consideration of
2 the Proposed Decision that we submit.

3 We will shortly issue an order granting staff
4 access to the confidential documents for which the
5 parties jointly requested access.

6 If an issue arises about the exchange of data,
7 during the verification process for the biomethane
8 agreements, the Committee will consider scheduling a
9 conference to address such issues. Obviously, you'll
10 have to let us know and request it.

11 And that is the extent of the report. Any
12 questions? Okay.

13 MR. LEBRON: Hearing Officer Kramer, just a
14 clarification. The Administrative Proceeding, 16-RPS-
15 02, will remain open, it's just there's not going to be
16 any Committee status conference scheduled.

17 But if we needed to come back, we still have the
18 ability, by filing something on the docket, to request a
19 status conference with the Committee?

20 HEARING OFFICER KRAMER: Certainly in the time
21 between now and the full Commission hearing. Whether
22 the full Commission will keep the docket open is to be
23 determined.

24 MR. LEBRON: Thank you.

25 HEARING OFFICER KRAMER: And with that, then --

1 did you want to say anything?

2 Okay, we're adjourned. Thank you.

3 (Thereupon, the Workshop was adjourned at
4 4:40 p.m.)

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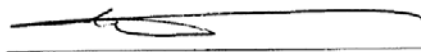
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under 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 8th day of February, 2017.




PETER PETTY
CER**D-493
Notary Public

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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 8th day of February, 2017.



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