

DOCKETED

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

In the Matter of:)
)
) Docket No. 18-RPS-01
COMPLAINT AGAINST)
STOCKTON PORT DISTRICT FOR)
NONCOMPLIANCE WITH THE)
RENEWABLE PORTFOLIO STANDARD)
_____)

COMMITTEE CONFERENCE

CALIFORNIA ENERGY COMMISSION
CHARLES IMBRECHT HEARING ROOM
(HEARING ROOM B)
1516 NINTH STREET
SACRAMENTO, CA 95814

WEDNESDAY, MARCH 7, 2018
3:00 P.M.

Reported by:
Julie Link

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APPEARANCES

HEARING OFFICER

Caryn J. Holmes, Hearing Officer

COMMISSIONERS

Karen Douglas, Commissioner, Presiding Member

David Hochschild, Commissioner, Associate Member

ADVISERS

Jennifer Nelson, Adviser to Commissioner Douglas

Le-Quyen Nguyen, Adviser to Commissioner Douglas

Terra Weeks, Assistant to Commissioner Hochschild

CEC STAFF

Courtney Smith, Chief Deputy Director

Gabe Herrera, Staff Counsel

Mona Badie, Staff Counsel

APPLICANT

Justin Wynne, Braun Blaising Smith Wynne for
Port of Stockton

Steven W. Escobar, Deputy Port Director, Port of Stockton

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<p>Committee Closed Session consideration of the following item:</p> <p>COMPLAINT AGAINST STOCKTON PORT DISTRICT FOR NONCOMPLIANCE WITH THE RENEWABLES PORTFOLIO STANDARD</p> <p>Deliberation by the Committee on any matters submitted for decision by the Committee including, but not limited to, pending motions and scheduling.</p> <p>The Committee will adjourn to Closed Session in accordance with Government Code section 11126, subdivision (c) (3), which allows a state body, including a delegated committee, to hold a Closed Session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.</p>	
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P R O C E E D I N G S

March 7, 2018

3:03 p.m.

COMMISSIONER DOUGLAS: Good afternoon, everyone. This is Commissioner Karen Douglas. I'd like to welcome all of you today and we are here for the Introductory Status Conference concerning the complaint against the Port of Stockton for RPS noncompliance.

I wanted to just start by -- start with some introductions, if we could. And let me just back up too. So just as we said in the Notice, one of the things we'd like to do today is to allow the parties to make short presentations about the Motion to Bifurcate and the Proceeding Schedule and to allow the Committee to deliberate in closed session. So we'll hear from the parties on these topics, take public comment, and then go into closed session.

At the end of today's conference we hope to have a list of the contested legal and factual issues in this matter. And that will assist us in setting a schedule for the proceeding.

Commissioner Hochschild, any introductory remarks?

COMMISSIONER HOCHSCHILD: No.

COMMISSIONER DOUGLAS: Okay. So with that, I

1 will turn this over the Hearing Officer and I guess
2 you'll do introductions?

3 HEARING OFFICER HOLMES: I guess I will,
4 thank you.

5 COMMISSIONER DOUGLAS: Or I'm happy to,
6 actually why don't I just do that?

7 Port of Stockton, would you like -- could
8 you introduce yourselves for the record?

9 MR. WYNNE: Sure. Hi. Justin Wynne with Braun
10 Blaising Smith Wynne here on behalf of the Port of
11 Stockton.

12 MR. ESCOBAR: Steve Escobar, Deputy Port
13 Director -- Director Port of Stockton.

14 COMMISSIONER DOUGLAS: Thank you.
15 Staff?

16 MS. SMITH: This is Courtney Smith, the Chief
17 Deputy Director of the California Energy Commission.

18 MR. HERRERA: Okay. Good afternoon, Gabriel
19 Herrera from the Energy Commission's Legal Office
20 representing staff.

21 MS. BADIE: Mona Badie with the Energy
22 Commission's Legal Office representing the staff as
23 well.

24 COMMISSIONER DOUGLAS: All right. Thank you
25 very much.

1 And so we'll introduce the Committee, so
2 Commissioner Hochschild?

3 COMMISSIONER HOCHSCHILD: Yeah, David
4 Hochschild of the Energy Commission.

5 MS. WEEKS: Terra Weeks, Adviser to
6 Commissioner Hochschild.

7 COMMISSIONER DOUGLAS: All right, and my
8 advisers?

9 MS. NELSON: Jennifer Nelson, Adviser to
10 Commissioner Douglas.

11 MS. NGUYEN: And Le-Quyen Nguyen, Adviser to
12 Commissioner Douglas.

13 COMMISSIONER DOUGLAS: Great. And our
14 Hearing Officer is Caryn Holmes and I'll at this
15 point, turn the matter over to her.

16 HEARING OFFICER HOLMES: Okay. Thank you.

17 This Committee Conference was Noticed on
18 February 23rd. As we've mentioned, it involves a
19 complaint filed January 8, 2018 alleging compliance
20 (sic) by the Port of Stockton with the procurement
21 target requirement, and portfolio balance requirement
22 elements of the RPS.

23 The complaint also addressed equitable
24 considerations and requested a bifurcated proceeding.

25 On the same day staff also filed a Motion to
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1 Bifurcate, requesting four specific items. The first
2 one is that the Committee consider the complaint in a
3 bifurcated two-phased manner such that the mitigating
4 circumstances would be considered separate and in
5 advance of the merits of the alleged violations.

6 Number two, that if the Commission
7 determines that the mitigating circumstances excuse
8 the Port's alleged violations, that the Committee end
9 the adjudication at that point.

10 Number three, that the adjudication
11 regarding the mitigating circumstances be open to
12 other local publicly owned electric utilities, so
13 that they could provide input on whether the
14 mitigating circumstances raised in this complaint
15 affected their procurement activities for the same
16 compliance period.

17 And lastly, that the Port be permitted to
18 first file an initial answer addressing the
19 mitigating circumstances portion of the proceeding.
20 And then subsequently file an answer regarding the
21 alleged violations of the complaint if the Commission
22 determines that the deficits are not excused by
23 virtue of mitigating circumstances.

24 The Port filed a response to the Motion to
25 Bifurcate on January 31st, expressing support for the

1 motion and also included a motion of its own
2 addressing the deadline for the answer.

3 The Chair of the Energy Commission issued an
4 order on February 14th saying that the decision about
5 an answer would be the later of either the date that
6 the Committee chooses, or on March 21st.

7 So I think that's the status of where we are
8 right now. And what I'd like to do now is offer the
9 parties a brief opportunity to provide comments on
10 either the motion and/or the schedule. And I'll begin
11 with staff as the Moving Party.

12 (Colloquy re: audio.)

13 MR. HERRERA: Yeah. I just wanted to know if,
14 for the record, you wanted to identify the
15 individuals that might be participating by phone or
16 WebEx.

17 HEARING OFFICER HOLMES: Certainly. We can
18 ask whether or not there are any individuals who are
19 participating by phone or by WebEx who wish to
20 identify themselves? Is the Public Adviser on the
21 phone? Thank you.

22 MR. HERRERA: Okay, so staff moved for a
23 bifurcated two-phased proceeding, because it believes
24 that there are compelling reasons for excusing the
25 Port's procurement deficit for the 2011-2013 RPS

1 compliance period. Specifically, staff determined
2 that Stockton met most, but not all of the
3 Commission's regulatory requirements for applying
4 compliance measures to excuse its procurement
5 deficits.

6 Additionally, Stockton's actions in
7 attempting to satisfy its RPS procurement
8 requirements appear to be reasonable.

9 Also, the timing of the enactment of Senate
10 Bill X1 2 in 2011 impacted the Commission's ability
11 to adopt regulations applicable to the Port and to
12 other publicly owned utilities in a timeframe that
13 provided POUs with additional guidance on how to
14 comply with the RPS including how to comply with the
15 adoption and application of optional compliance
16 measures.

17 Additionally, we think that the timing of
18 the enactment of Senate Bill X1 2 may have affected
19 Stockton's efforts to satisfy its RPS procurement
20 requirements. And hopefully, Stockton will address
21 that in their comments.

22 When considering potential violations of the
23 RPS it's appropriate for the Commission to consider
24 these as well as other mitigating circumstances.

25 The Commission's regulations for the
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1 enforcement of the RPS on local publicly owned
2 utilities clearly contemplate that mitigating
3 circumstances will be considered as part of the RPS
4 complaint proceeding. Specifically, the Commission's
5 regulations provide for a local publicly owned
6 utility in its answer to include any mitigating or
7 other relevant circumstances in its answer to the
8 complaint.

9 Additionally, staff believes that the
10 complaint can be adjudicated more efficiently through
11 a bifurcated two-phased proceeding. Staff, through
12 the Commission's adoption of the RPS Verification
13 Report for Stockton has already determined the amount
14 of Stockton's procurement deficits for the 2011-2013
15 compliance period. These procurement deficits are the
16 basis of the alleged violations identified in the
17 complaint. And the RPS Verification Report for
18 Stockton was adopted by the Commission in January
19 2017.

20 Staff has also assessed Stockton's
21 application of optional compliance measures in the
22 form of cost limitations and delay in time of
23 compliance. And staff determined that Stockton's
24 application of these optional compliance measures did
25 not satisfy the Commission's regulatory requirements.

1 And therefore these measures cannot be used to excuse
2 Stockton's procurement deficits. Hence there's a
3 strong basis for the alleged violations identified in
4 the subject complaint against Stockton.

5 While the Committee could choose to evaluate
6 the merits of the allegations first, followed by an
7 evaluation of the mitigating circumstances this would
8 likely result in Stockton contesting -- or excuse me,
9 the Port of Stockton contesting staff's RPS
10 verification results and also staff's assessment of
11 the Port's application of optional compliance
12 measures, thereby prolonging the hearing process.

13 Moving forward with a bifurcated two-phased
14 proceeding as proposed by staff has the potential
15 benefit of avoiding a prolonged hearing process
16 saving time, and allowing Stockton to avoid a public
17 debate of its alleged RPS violations in the actions
18 that it took or failed to take regarding its RPS
19 obligations.

20 And that concludes my remarks.

21 COMMISSIONER DOUGLAS: Thank you.

22 Mr. Wynne?

23 MR. WYNNE: Thank you.

24 As the Port stated in its response, the Port
25 fully supports the Commission staff's motion to

1 bifurcate the proceeding. We agree that this is the
2 most efficient way to resolve the matter.

3 And for the Port, the Port is an extremely
4 small POU. They have very limited staff resources and
5 they need to be focusing on when they're operating
6 their utility, meeting their goals of bringing
7 economic development to the community, as well as
8 meeting future RPS requirements. And in particular,
9 after the third compliance period and the fourth
10 compliance there are additional complexities such as
11 the long-term contract requirement. And staff is
12 fully engaged in trying to position themselves to
13 able to reach those future requirements.

14 We think it's in the state's interest; it's
15 in the Port's interest, to allow them to be able to
16 focus on ensuring future compliance.

17 We agree that it makes sense to address the
18 mitigating circumstances first. We anticipate that
19 there would not be any legal or factual matters of
20 dispute between the Port and Commission staff on that
21 issue. It's also relatively straightforward and can
22 be addressed as staff stated with relatively few
23 procedural steps.

24 By in contrast, the alleged violation would
25 be a much more complex issue and would require a much

1 more comprehensive process.

2 And the Port also agrees with the staff's
3 assessment of the legal authority of the Commission
4 to structure the proceeding in this way and then
5 dismiss the case -- dismiss the complaint based on
6 the mitigating circumstances.

7 Thank you.

8 HEARING OFFICER HOLMES: I'd like to just
9 follow up with a couple of questions if I could. If I
10 understood you correctly, Mr. Wynne, you were
11 agreeing with Mr. Herrera that if Stockton were to
12 file an answer that addressed the facts of the
13 alleged noncompliance, that there could be
14 litigation. There could be disagreement about what
15 those facts are?

16 MR. WYNNE: That is correct.

17 HEARING OFFICER HOLMES: Thank you. But that
18 if you were to -- but you don't believe that there
19 would be any disagreement about the facts of the
20 mitigating circumstances? In other words, if you were
21 to file an answer addressing mitigating circumstances
22 it wouldn't add additional or different or new facts?

23 MR. WYNNE: What we would anticipate is that
24 it would be consistent with the points that have
25 already been raised by staff and we would primarily

1 expand from those points.

2 HEARING OFFICER HOLMES: Okay. Thank you.

3 I have a question for staff about the POU
4 participation part of your request?

5 MR. HERRERA: Uh-huh.

6 HEARING OFFICER HOLMES: As you probably
7 know, participation is already allowed in this
8 proceeding although intervention is not allowed,
9 unless there's a suspension of the rule. What's your
10 specific proposal for participation? That was a bit
11 unclear to me.

12 MR. HERRERA: So you're right, Mrs. Holmes,
13 Ms. Holmes, the regulations right now acknowledge
14 that a publicly owned utility or any party can
15 participate, but cannot intervene. We just wanted --
16 staff wanted to make sure that the Committee was
17 aware that there could be other POU's that have
18 similar mitigating circumstances and could come
19 forward to share their reasons as to why these
20 mitigating circumstances made it difficult for them
21 to satisfy the RPS requirements.

22 While staff has completed the verification
23 process for almost all of the POU's, there is still
24 one POU that's ongoing and that is the Los Angeles
25 Department of Water and Power. And staff is in the

1 process of doing the verification now. If at the end
2 of the day, Los Angeles finds themselves in the same
3 situation as Stockton where they need to apply
4 optional compliance measures, the Committee's
5 decision here, determination here on mitigating
6 circumstances could be helpful, or they could
7 certainly in light of the actions L.A. may want to
8 take.

9 HEARING OFFICER HOLMES: Are the facts of the
10 mitigating circumstances then that would be
11 applicable to Los Angeles the same as would be
12 applicable in this proceeding?

13 MR. HERRERA: They could. I mean, we don't
14 know. We, I should say staff, are not aware that L.A.
15 applied optional compliance measures in the same way
16 that Port of Stockton did, but they could have.

17 But, for example, the late enactment date of
18 Senate Bill X1 2 affecting a POU's procurement
19 decisions, that likely affected L.A. I suspect that
20 it affected the other POU's as well.

21 HEARING OFFICER HOLMES: Okay. Thank you.

22 Do either of the Committee members have
23 questions?

24 COMMISSIONER DOUGLAS: Not right now.

25 HEARING OFFICER HOLMES: Then if they don't

1 have questions I'll move on to a couple of procedural
2 items.

3 First of all, with respect to the schedule
4 that will be identified in a ruling that the
5 Committee will issue, hopefully shortly after the
6 closed session.

7 I wanted to let everybody know if they don't
8 already, that this proceeding is governed by the
9 Administrative Procedure Act and there's an *ex parte*
10 rule that's in effect. And that means that generally
11 speaking, all direct and indirect communication
12 regarding any issue in the proceeding -- and it could
13 be a procedural issue, it's anything that's at issue
14 in the proceeding to a Presiding Officer, which is
15 any of us up here: a Commissioner that's
16 (indiscernible) to this proceeding, Hearing Office
17 and Adviser -- from staff or an interested person
18 without notice and an opportunity to comment is
19 prohibited.

20 And the second thing that I wanted to talk
21 or the second procedural item was the Bagley-Keene
22 Open Meeting Act. This proceeding is subject to
23 Bagley-Keene and therefore Committee events such as
24 this one that we're having today must be publicly
25 noticed. We may find that we Notice a series of

1 conferences between now and hearings as placeholders
2 in case we decide that there is Committee business to
3 conduct.

4 Some may be canceled and some may be
5 convened primarily to hold a closed session. We will
6 let you know about that in advance, so that if it's
7 primarily a closed session you can choose to
8 participate via telephone or via WebEx. If you choose
9 with respect to evidence, exhibits, and service we'll
10 address those in an order that's coming out shortly.

11 And finally, I wanted to talk about public
12 participation. A portion of each of these public
13 meetings is set aside for public comments. Public
14 comments can be filed to -- through our electronic
15 commenting system, by email to our docket. Everything
16 that's filed in this proceeding will be available via
17 our website that we have set up for this. And if you
18 want to receive an email notice when a new document
19 is filed you can sign up on our listserv. There's a
20 link in the box for this proceeding on the webpage
21 now.

22 And we also have a Public Adviser who can be
23 available to help you understand what the rules are.
24 She can be reached at the link on the Public
25 Adviser's page on the Energy Commission's webpage.

1 And that's (indiscernible). Are there any
2 comments to make?

3 COMMISSIONER DOUGLAS: Yes, so is there any
4 public commenters? Anyone join us on WebEx?

5 (No audible response.)

6 HEARING OFFICER HOLMES: Yeah, no. I don't
7 think so.

8 MR. HERRERA: So Ms. Holmes I've got an
9 additional comment and maybe it's a question, is that
10 staff consulted with Port of Stockton in advance of
11 the Conference on tentative schedules. What would
12 work in terms of answers, replies and what not. We
13 actually prepared a bulletized form for a tentative
14 schedule. We're more than happy to make that
15 available to the Committee if you think it might be
16 helpful.

17 HEARING OFFICER HOLMES: Great. It would be
18 excellent.

19 MR. HERRERA: Okay. One additional question,
20 is the Committee going to reconvene after it goes
21 into closed session?

22 (Off mic colloquy.)

23 HEARING OFFICER HOLMES: We would not have a
24 substantive report out at the end of today's closed
25 session. We do have to come down to close the

1 proceeding formally.

2 MR. HERRERA: Okay.

3 HEARING OFFICER HOLMES: So while Gabe's
4 handing these out I'll go through the requirements
5 that I do for a closed session.

6 The Committee closed session is to consider
7 the Executive Director's complaint against the
8 Stockton Port District for the noncompliance with the
9 RPS. The Committee will adjourn to closed to session
10 in accordance with Government Section Code
11 11126(c)(3), which allows a state body including a
12 delegated committee to hold a closed session to
13 deliberate on a decision to be reached in a
14 proceeding, which the state body was required by law
15 to conduct.

16 We will adjourn shortly. And we don't
17 believe we will have any questions or additional
18 comments to make at the end of the closed session,
19 although I or Commissioner Douglas will return to
20 this room to formally close the meeting.

21 COMMISSIONER DOUGLAS: So there's no need to
22 stay here in case we say something informally. I
23 wanted to be clear on that.

24 Is this docketed?

25 HEARING OFFICER HOLMES: Probably not. I

1 think we should do it in closed session.

2 COMMISSIONER DOUGLAS: All right.

3 HEARING OFFICER HOLMES: I would ask that
4 staff docket the proposed schedule and we will take
5 it under submission. And if there are no further
6 questions at this point, then we will adjourn into
7 closed session.

8 COMMISSIONER DOUGLAS: Great. Thank you.

9 HEARING OFFICER HOLMES: Thank you.

10 (Adjourn to Closed Session at 3:20 p.m.)

11 (Return to Public Session at 3:47 p.m.)

12 HEARING OFFICER HOLMES: On the record, the
13 Committee Conference is adjourned.

14 COMMISSIONER DOUGLAS: Thank you.

15 (Adjourned at 3:47 p.m.)

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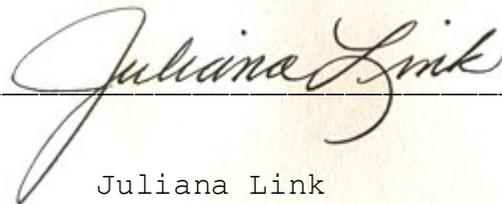
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And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2018.



Handwritten signature of Juliana Link in cursive script, positioned above a horizontal line.

Juliana Link
CER-830

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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 a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2018.



Myra Severtson
Certified Transcriber
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